

1896-020

SOUTHAMPTON COUNTY
CHANCERY PAPERS

J.C. JAMES et al

VS. WHITEHEAD et al ~~W~~

JAMES et al vs WHITEHEAD'S ADMR et al

8/1896

Other SURNAMES : J.C. James
+ Company, DONNAN, BURWELL,
Tazewell, [BURWELL, Tazewell],
Squire, Drewry, Musgrave,
Joyner, Ellis, Vick, Smith,
Woodard, Bryant, Peete,
Goodwyn, GRIZZARD

Papers in Chancery
Suit of James Fox &c.

vs. Whitehead &c.
Filed Nov. 17th 1896

PAPERS IN CHANCERY
SUIT OF JAMES FOR
TC VS WHITEHEAD
AND FILED NOV. 17th
1896

No. _____

J. B. James & Co.

rs

John Whitehead & als

Bill of Complaint

1896 July 2nd

Docketed in General

Circuit Court

The Hon.C.W.Hill, Judge of the Circuit Court of Southampton
County:

Your complainant J.C.James late merchant trading and doing business as J.C.James & Co. who sues for the benefit of H.Q. Donnan his trustee, of the said county of Southampton, humbly complaining, sheweth to your honor:

That on the 1st day of June 1890 John Whitehead of the aforesaid County was indebted to your petitioner in the sum of \$396.36 as will appear by reference to a copy of the bond evidencing the same herewith filed as an exhibit marked "A" and prayed to be taken as a part of this bill:

That said indebtedness arose by reason of goods and money furnished said Whitehead by your complainant in the year preceeding the signing of said bond and during that year; that said goods and money were furnished said Whitehead to enable him to operate his farm and to complete a dwelling then in course of construction on the same.

That at the time the indebtedness aforesaid was contracted by said Whitehead he was seized of valuable real estate and considerable personal property in the aforesaid County of Southampton, that the real estate was richly worth \$4000. and the personal estate worth \$1000.

That on Sept. 3rd, 1889 the said John Whitehead by a paper purporting to be a deed of bargain and sale, attempted to convey all his real estate to Anna F.Whitehead who was then and there his wife for the alleged consideration of the sum of \$2500. for the receipt of which amount acknowledgement is made in said deed, a copy of which is herewith filed as an exhibit marked "B" and prayed to be read as a part of this bill; that on the 2nd of April 1890 by a paper purporting to be a Bill of sale duly recorded in the Clerk's Office of Southampton County he attempted to convey

2nd, sheet,

tempted to convey all his personal property of every nature and description liable to be subjected by a Fieri Facias or other legal process, to his said wife Anna F. Whitehead, for the alleged sum of \$850. the receipt of which amount in cash is acknowledged in said writing, a copy of which is herewith filed as an exhibit marked "C" and prayed to be read as a part of this Bill.

Your petitioner states further that the personal property conveyed by the said John Whitehead to his wife, has all the while since the said transfer been in the possession and under the management and control of the said grantor just as though the same were his own, and that he has controlled and operated the farm in like manner.

Your complainant further alleges that the sums of money stated to have been received by the said John Whitehead from the grantee, his wife, as a consideration for the said conveyances, to wit, \$2500. for the land and \$850. for the personal estate nor any part thereof was ever received by the said grantor.

Your complainant believes, charges and alleges that the said conveyances were wholly without valuable consideration, were made by a married man to his wife, were a post-nuptial settlement on said wife without consideration, were made to hinder, delay and defraud the creditors of said John Whitehead of which your complainant is one, and he is entitled to have said conveyances set aside and the property therein named subjected to the payment of his debt.

3rd, sheet.

And your complainant says that John Whitehead owns no other property except that included in said conveyances.

In tender consideration whereof and forasmuch as your complainant is remediless in the premises, save by the aid of a court of equity where matters of this kind are alone and properly cognizable, he prays that John Whitehead and Anna F. Whitehead be made parties defendants to this bill and required to answer its allegations, but answers under oath are hereby waived, that the ^{said} deed and bill of sale from the said John Whitehead to his wife Anna F. Whitehead be set aside as fraudulent and void and the property embraced therein or so much thereof as is necessary to satisfy your complainants claims be sold and the proceeds applied thereto and that a reasonable fee be allowed counsel conducting this suit, and that such other and further relief may be granted to your orator as the nature of his case may require and as in equity may seem meet. And your orator will ever pray &c.

McLemore & Hall and p.g.

Virginia:

I, J.C. James do solemnly ~~swear~~ swear that the statements contained in the foregoing bill in Chancery are true and correct to the best of my knowledge information and belief:

J. C. James

Subscribed and sworn to before me this 13th day of *Apr* 1891.

B. F. McLemore

James & Co. for, etc.

vs. }

Whitehead, and wife,

Petition of
Burwell & Tazewell.

1891. May 27th filed.
B. F. H. cc.

J. C. PARKER,
ATTORNEY-AT-LAW,
Main St., Franklin, Va.

To the Hon.C.W.Hill, Judge of the Circuit Court of Southampton County;

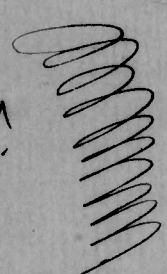
Your petitioners, *J.S.* Burwell & *L.W.* Tazewell, partners intrade under the firm name and style of Burwell & Tazewell, humbly petitioning, showeth unto your Honor that on the first ~~x~~ rule day in March 1891, J.C. James, trading as J.C. James & Co. who sues for the benefit of H.Q. Donnan, Trustee, filed in the clerk's office of this court his bill of complaint against John Whitehead and Anna F. Whitehead his wife, wherein they set forth that the said John Whitehead had conveyed all his property, both real and personal, to the said Anna F. Whitehead his wife, in consideration of the sum of \$3300., which said sale they aver is fraudulent in that the said Anna F. Whitehead has never paid the said John Whitehead the said sum of money as alleged, but that the said deed was made with the intent & purpose to hinder delay and defraud the creditors of the said John Whitehead, of which the said H.Q. Donnan is one; and they further say that even if the said sum of \$3300. was ever paid to the said John Whitehead, that it was an inadequate price for the said property, and that therefore it ought to be set aside and resold and the surplus paid to the parties to the said suit and the other creditors of the said John Whitehead.

Your petitioners further show to your Honor that on the 2nd day of October 1889, the said John Whitehead was indebted to your petitioners in the sum of \$54.96, and that he has never paid said sum to your petitioners, but still owes them the same. Therefore your petitioners beg that they may be made parties plaintiff to this suit and be allowed to make the allegations in said bill their own; that the said deed be set aside and

the property therein conveyed sold to pay the debts of the said John Whitehead; that your petitioners may have a lien on the property conveyed in the said deed from the date of this petition being filed in the said suit; and that all such other further and egeneral releif be granted your petitioners as is neccessary and usual in such cases. And your petitione rs will ever pray, etc.

J. C. Parker
Atty for the Petition
Quinn & Tagwell
D. S. Quinn
Leo Tagwell

J. C. James & Co.
for R.

N.  Petition of
Margaret E. Whitehead

John Whitehead
Anna F. Whitehead

1891. Oct. 26. filed.

The McLennan will please
file this & acknowledge
receipt of same on the
enclosed postal

R.R.P.

Oct 24. 1891

7)

CIRCUIT COURT OF SOUTHAMPTON COUNTY.

J. C. James, late merchant trading as J. C. James & Co., who
sues for the benefit of H. Q. Donnan his Trustee Compl't.

Against

John Whitehead and Anna F. Whitehead.

THE PETITIONER, Margaret E. Whitehead, respectfully represents
to the Court that John Whitehead is justly indebted to her
in the principal sum of \$574.38 with interest on \$450. part
thereof from August 5th. 1887, and on \$124.38 the residue
thereof from January 1st. 1891. A statement of the items of
such indebtedness is herewith filed, and the Petitioner prays
that it may be read as part of this Petition.

That a Chancery suit is now pending in the Circuit Court of
Southampton County, the object of which is to set aside and
annul certain conveyances made by John Whitehead to his wife
Anna F. Whitehead, on the ground that such conveyances were
executed with intent to hinder delay and defraud the credi-
tors of John Whitehead, and upon consideration not deemed
valuable in law.

The petitioner joins in all of the allegations and prayers
of the Bill in the said cause, which is filed in the name of
J. C. James, late merchant trading as J. C. James & Co., who
sues for the benefit of H. Q. Donnan, his Trustee, against
the said John Whitehead and Anna F. Whitehead, and prays to
be admitted as a party Complainant in the said suit, that a
decree for the payment of her said debt out of the assets
properly chargeable with the same may be pronounced, and for
all such other, further and general relief as to equity shall
seem meet.

And the petitioner will ever pray &c.

Robert R. Prentiss,
Counsel for the Petitioner.

Amounts due to Margaret E. Whitehead by

John Whitehead, deceased.

Copy of Due bill:

I owe and promise to pay M. E. Whitehead Four Hundred and Fifty dollars for value received and I do hereby waive the benefit of my Homestead exemptions as to this debt signed and sealed August 5, 1887

John Whitehead

Additional amounts due to M. E. Whitehead by John Whitehead:

1890 July 14. Balance on account	\$61.83
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Balance on rent for 1890	30.00
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Amount paid John Whitehead

by Mr. Niblett for me	10.62
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White oak timber cut Nov. 24.

1890 by Mitchell & Steele

and credited on John White-

head's account	21.93
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Total	<u>\$124.38</u>
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Interest claimed on \$450. from August 5th. 1887, and on \$124.38 from January 1st. 1891.

The separate answer of Anna F. Whitehead
to the bill in chancery filed in the Circuit
Court of Southampton County Va by J. B. James
Esq against her and John Whitehead

This defendant for answer to the said
bill or as much thereof as she is
advised it is material for her to answer,
answering says that she denies most
emphatically and indignantly all fraud
in the making of the said deeds from
her husband John Whitehead to her, but
that the same were for a fair bona
fide and valuable consideration paid
by her to the said John Whitehead for
the lands and personal estate which
he sold and delivered to her. This
defendant is fully aware that when
a charge of fraud is brought and
alleged in a bill in chancery that
a denial of all fraud on the part
of the defendant puts the plaintiff
to the full proof of the allegations
of his bill or he must go out of
court. but this defendant not only
denies all fraud, and that she has
colluded with her husband to defraud
his creditors, but the deeds themselves
show that this real and personal
estate was sold and delivered for the
sum of money therein stated, but
she now here goes on to state and show

that she received from Commissioner
Wm Shands the sum of \$181.³⁸/₁₀₀ on Feb'y 11th
1887 and on March the 5th 1888 the sum
of \$427.²⁵/₁₀₀. in all the sum of \$608.⁶³/₁₀₀ her
part of the proceeds of sales of land
of her brother Joseph E. Drewry. and from
Commissioner B. F. McLenore the sum of \$137.³³/₁₀₀
on Oct 25 1886 from her sister Bettie
Drewry's estate as will more fully
appear by copies of receipts from her
to Commissioners Shands & McLenore filed
in the chancery papers of Peebles re
vs Drewry & als and Drewry vs Drewry's estate
herewith filed marked exhibit I and
prayed to be read as a part of this
answer. that she received from Hattie
S. Musgrove the sum of \$2500⁰⁰ for the
sale to her of her lands in Southampton
County Va. as will more fully appear
from a copy of the said deed herewith
filed marked exhibit 2 and prayed
to be read as a part of this answer, from
these vouchers the court will at once
see that this defendant had ample
means to make this purchase. that
the allegations that she did not pay
full value is untrue. that she paid
within a few dollars of the assessed
value of the real estate as will more
fully appear from an authenticated
abstract from the lands books of

Southampton County Va herewith filed and
marked Exhibit No 3 and prayed to be read
as a part of this answer. She states further
that she has already paid J. B. James & Co.
the sum of \$745.⁸⁷/₁₀₀ a debt of her husband's
as will appear by a receipt so herewith
filed. marked exhibit No 4 and prayed
to be read as a part of this answer. This
defendant is fully advised that the
property of the wife is not liable for
her husband's debts. All the property sold
her by her said husband now is and
has been ever since the sale thereof
in her possession and under her control
That by virtue of the sale and delivery
to her of this farm and chattel property
her husband now lives with her on
her land in her house and this
chattel estate is in her possession on her
land under her control. This defendant
says further she would cheerfully if
she could pay all her husband's debts
that she has already paid many - amounting
to several hundred dollars. that he has
become sick and infirm and for many
months been confined to his bed. and
wholly incapacitated for business and
she has had to devote her whole time
and means to his support so that she
besides incurring large medical bills
at home for him. has had to carry
him for treatment to a hospital and

skilled physician in one of the large cities
that she has paid all this heavy expense
that he is still grievously ill and she
is doing all she can out of her slender
means to support and take care of him
and having thus fully answered. prays
hence to be dismissed with her costs &c
Anna F. Whitehead.

Virginia

Shands Son J. &

Southampton County to wit

Anna F. Whitehead made oath before me
this day that the statements made in
the foregoing bill so far as made of her
own knowledge are true and so far as
made from information derived from
others she believes them to be true
Given under my hand this 25th day of
April 1891.

William Shands Court De Chancery

James & Co for &c
vs Anna F. Whitehead

Whitehead & wife
1891. May 5 - filed.

James Hooper vs

vs } Answer of John Whitehead

Whitehead & wife.

1891. May 5. filed

The separate answer of John Whitehead to the bill in chancery filed in the Circuit Court of Southampton County Va by J. C. James esq against him and Anna F. Whitehead

This defendant for answer to the said bill or as much thereof as he is advised it is material for him to answer, answering says that he most positively and indignantly denies all fraud and collusion in the making of the deeds referred to in the plaintiffs bill. That his wife bought the real and personal estate at the prices therein stated and paid him the money therein stated not only that, but the prices which she paid were the full value of the property. That since buying it, she and not this defendant has had full possession and control of it. That she has gone on and used her own means in improving the real estate which when she bought it was in a poor state of improvement, buildings being out of repair. That she made the payments and did this out of her own individual estate, which she derived from her brother Joseph E. Drury and sister Bettie Drury and from the sale of land to Bettie S. Musgrave &c. That she has already paid J. C. James esq for this defendant the sum of \$745.⁸⁷/₁₀₀

That this defendant used the money
which he got for his property in paying
off his debts. That it was not his
intention to; nor has he tried to
defraud. nor has he made any deeds
defrauding his creditors. His wife
has bought his property at a fair
market^{+value} & paid the cash for it and
taken deeds therefor just like any
other purchaser would have done
not only that. but both before
and since she has paid many of
his debts; that for many long
months this defendant has been
a helpless invalid - confined to his
bed. entirely dependent upon his
wife. that during all that time
and now. for he is still grievously
ill and unable to do anything - she
has taken care of him - paid his
medical bills which were no small
sum - had him carried to a hospital
in a city & treated by a skilled physi-
cian there - done all in her power to
restore him to health so that he
might once more return to his work
and gain means to pay off every
cent he owes. That if he were able he
would gladly pay every cent he
owes. that only his unfortunate state
prohibits him from doing so. that he

is not afraid of work and as soon as he
is restored to health he expects to
bend all his energies of mind and
body to win means to pay each
and every honorable debt that he
owes. And having thus fully answered
he prays hence to be dismissed with
his costs &c Jno Whitehead
Shands Don Jd.

Virginia

Sussex County to wit
I J. A. Grizzard a Justice of the peace
in and for the county and state aforesaid
do certify that John Whitehead whose
name is signed to the above answer
this day personally appeared before
me in my county aforesaid and made
affidavit that the statements contained in
the above answer and made of his own
knowledge are true and those therein
contained and made from information
derived from others he believes to be
true. Given under my hand this
30th day of April 1891.

J. A. Grizzard J.P. [L.S.]

James Fisher & Co. at. at.

27

Whitehead & Co.

Secru

To be entered

Nov. 11- 91

C. M. ~~31~~

Entered

James & Co. per & c.

25,

Whitehead and others

This Court came on
This day to be heard on the bill of com-
plaint, petition of Margaret E. Whitehead
and Burwell & Lywell, and the answer
of defendant John & Anna F. Whitehead
with general replication thereto, and
it being suggested to the Court
that the ~~said~~ defendant John
Whitehead is dead and was
argued by counsel on consideration ^{whereof and the merits} the
Court doth adjudge order and
decree that this suit be removed in
the name of the personal representative
of said John Whitehead, Anna F.
Whitehead administratrix of John
F. Whitehead dead, and that she
be summoned at next Rules
holder for this Court to an-
swer the said bill of complaint

James for &c.

v. 3 Deer

Whitehead & ali.

1892 Nov. 18.

To be entered

C M J

Entered

James Fox &c.
v.  Deane
Whitehead & al.

This day this cause come on
to be heard on the papers formerly read,
the deposition of witnesses and was argued
by counsel. On Consideration whereof
and by Counsel of parties, it is ordered
that Counsel for the parties submit their
argument to the Court by Brief. and
~~also that this be made a vacation~~
~~cause~~ by consent of all parties given
in open Court is ordered that this cause
may be ~~submitted~~ to the Judge of the Circuit
Court in vacation for his decision therein.

James for 10

N. ~~3~~ Deced

Whitehead 10

To be entered

C. H. S.

May 11. 1894

Entered 671

Joshua C. James for &c
v.
Whitehead and others

By consent of parties in open Court, by counsel it ~~is ordered~~ being suggested that the complainant Joshua C. James, ~~and that~~ is dead, and the defendant Anna F. Whitehead has intermarried with Peter Squire, it is ordered that this cause be ~~revised~~ and hereafter proceeded with in the name of J. M. Williams Sheriff of Southampton County and Administrator of Joshua C. James, deceased and against Peter Squire and Anna F. Squire, his wife. -

Leave is given complainant and defendants to take and file further depositions in this cause within ninety days from this date. -

J. C. Janner ~~20~~
21 $\frac{3}{3}$ Decree
Mo Whitehead's

Enter This decree
April 17th 1895
B. A. 1/4.

James for re.
vs. J. Decree
Whithead vs.

1896. January
To be entered.

Enter this decree
Jan'y 21 1896,
B. A. H.

We consent to this
decree.

J. L. McLeure of
Counsel for plaintiff
Shoud Bar for defense

(17)

Entered.

James for &c. vs.

VS.

Whitehead et als.

This day this cause came on to be heard in the Circuit Court of Greenville County, upon a removal thereof from the Circuit Court of Southampton; upon the papers formerly read, the depositions of witnesses and argument of Counsel submitted in writing. On consideration whereof, and by consent of Counsel for plaintiffs and defendants, given in open Court, the Court doth enter a compromise decree herein, and without deciding any of the questions raised in this cause, doth adjudge, order and decree, that unless the defendant, Anna F. Squire, who was formerly Whitehead, or some one for her, shall pay to the plaintiffs and petitioners the sum of \$600. within *six months* from the date of this decree, and shall also pay the cost of this suit, that *J. B. Prince* be and he is hereby appointed a special Commissioner for the purpose, who shall proceed after 20 days notice *or so much thereof as may be necessary* thereof, to make sale of the real estate, held by the defendant, Anna F. Squire, formerly Anna F. Whitehead, at the time of the filing of the plaintiffs bill, to-wit: March 1st. 1891. or so much thereof as may be necessary to pay the cost of this suit as aforesaid, and the sum of \$600. to plaintiffs and petitioners as of this date, said sale to be at Courtland, Va., and for cash. And the Court doth further adjudge order and decree, that upon receipt by the plaintiffs and petitioners of the \$600. as aforesaid, the same shall operate as a settlement of the said debts, and this cause is continued.

James Forre.
vs. ³/₃ Deasee
Whitehead et al.

Enter this, April
21st. 1896.

Full and entire
2-

Enter This decree
April 21 1896
B. A. A.

(6)

James for &c.
vs. Decree
Whitehead et al.

This day this cause
came on to be again heard upon the
papers formerly read, and it appearing
from statements of Plaintiff's Counsel
that the matters in controversy herein
have been settled by compromise; and
nothing further remaining to be done in
this cause, it is ordered that the same
be recommitted to the Circuit Court
of Southampton County.

James, for &c.
Sum

Whitehead &c.

1891. 1st Mch. Rules

Leir: Lt:

Executed Feb. 13th 1891

by delivering a copy of
this Sum. to each of
the within named parties

J. H. Williams
Shff.

Ex. 13th Feb. 1891 To wife

John Seale

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF SOUTHAMPTON COUNTY—Greeting:

WE COMMAND YOU TO SUMMON

*John Whitehead and
Anna F. ~~his wife~~ Whitehead.*

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 *1st* Monday in *March 1891* next, to answer a Bill in Chancery exhibited against *them* in our said Court by *J. C. James, late merchant, trading and doing business under the firm, name and style of J. C. James & Co. who sues for the benefit of N. Q. Pannan, his Trustee.*

And this *they* shall in no wise omit under penalty of law. And have then there this writ.

WITNESS, B. F. McLEMORE, Clerk of our said Court, at the Courthouse, this *9th* day of *February*, 1891, in the 116th year of the Commonwealth.

B. F. McLemore

C. C.

James. for J.
v Depositions

Whitehead J.

1892. April 8. filed.

Depositions of A. R.
L. Wiggard

A: I do not.

And further this deponent saith not.

A. P. Gizzard

Virginia -

Southampton County - to wit:

J. B. F. McLeod, a Commissioner in
Chancery of the Circuit Court for Southampton
County, State of Virginia, do certify
that the foregoing deposition of A. P. Gizz-
ard was duly taken, subscribed and
sworn to before me, ~~at~~ the time and
place, and for the purposes mentioned
in the Caption thereof, pursuant to
Notice.

Given under my hand this 8th day of
April 1892.

B. F. McLeod,
Comm^r in Chancery

Comm^r fee

\$2.50 -

on perff

The Depositions of A. P. Grizzard. Taken
by B. F. McLenore, a Commissioner in Chan-
cery of the Circuit Court for the County of Tanti-
ampron, at his Office in Louisville, on
the 8th day of April 1892. to be read as
evidence in a certain Chancery suit
now pending in the Circuit Court of
said County. between J. B. James & Co. for
Plaintiff against John Whitehead and Anna
F. Whitehead, Defendants

Present: McLenore & Holland.

Attorneys for Plaintiff

Shands & Son. Attorneys
for Defendants.

The witness A. P. Grizzard, being duly
sworn, deposes as follows:

Q: What is your age, residence and
occupation. and do you know the
parties to this suit?

A: My age is 25 years. residence is in
Roanoke. my occupation is Bookkeeping
and know the parties to the suit.

Q: What do you know about the debt mentioned
due by John Whitehead to J. B. James & Co.
and mentioned in the proceedings in
this cause?

A: At the time the debt was made I was.

Book Keeper for J. L. James & Co. ~~and continued to do so~~
from 1885 ~~to~~ 1891. From the first day of
January 1887. Mr John Whitehead never owed
James & Co. less than the amount of the
Bond. Filed ⁱⁿ the proceedings of this Cause.
In 1890 J. L. James & Co. made an Assign-
ment. and very soon thereafter I had
instructions from the trustee, H. Z. Dorman,
to close all open accounts by note. and
therefore, took the bond from Mr Whitehead
referred to above. The first note was ~~made~~
dated Jan^y 1. 1890. with interest from date.
~~for the 1st day of January 1890.~~ and payable
January 1. 1891. ~~with interest from the 1st day~~
~~of Jan^y 1890.~~ On the 6th day of June 1890
Mr Whitehead came to the store and told
me he preferred having the note dated
June 1. 1890, instead of January 1. 1890. (which
was the date of the first note) I told him
that I did not think it necessary to make
the change, as it would amount to the
same, so far as interest was concerned.
he replied that he preferred the date of the
note should be changed to June 1. 1890
as it would suit him better; ~~this amount~~
in order to satisfy Mr Whitehead I changed
the date. or, in other words, drew a new
Note. and dated it June 1. 1890. bearing
interest from date. Mr J. L. James was

absent at the time the last or new bond was taken, and I was left in charge of the business; On Mr James's return home I told him what Mr Whitehead had requested. Concerning the bond - and what I had done - and Mr James then informed me that Mr Whitehead had made a deed conveying his property to his wife, Anna F. Whitehead.

Q: Then I understand that both, on the 3rd day of September 1889 - which was the date of the conveyance of his (John Whitehead's) land to his wife - and on the 2nd day of April 1890 the date of the conveyance of his personal property to his wife - and for the entire intervening period - he was indebted to J. B. James & Co. in an amount equal to the Note filed as an Exhibit in this cause?

A: He was.

Q: Do you know anything about the farm of John Whitehead at the time of the conveyance referred to above - and if so - state what you consider the fair valuation of it, at the time of the transfer?

A: I knew the farm, and think it worth \$5000.00 at the time of the transfer.

Cross Examination.

Q: by Deft's atty: Were you born and reared in that immediate neighborhood?

A: No. I was not born near the place, but lived near the farm for eleven years. From 1880 to June 1891.

Q: Have you been on the farm often?

A: A few times.

Q: Do you know how many acres are in the farm?

A: I do not know the exact number of acres.

Q: Do you know the assessed value of this farm?

A: I do not.

Q: Were you present on the 3rd September 1889 when John Whitehead delivered the deed of bargain and sale to Mrs Anna F. Whitehead & conveying his tract of land?

A: I was not present.

Q: Do you know whether or not twenty five hundred dollars was paid for the farm?

A: I know nothing about the deed.

Q: Were you present when John Whitehead sold and delivered his personal property to Mrs Anna F. Whitehead - for the sum of \$850.00?

A: No Sir.

Q: Then I understand you to say you know nothing whatever of the making and delivery of these deeds. by John Whitehead. of the consideration for the same - and whether the money was paid?

James for 104

vs 3 Depositions

Whithead vs

1892 Aug. filed.

Whitehead

ad 3 Notices

James McFarlane

I acknowledge
legal service of
this ~~document~~ notice
J. R. McFarlane
att'y.

To Joshua Emms for me

You are hereby notified
that I shall on Wednesday the 4th day of
May 1892 at the office of Mr. B. Shance,
in the Town of Southamptⁿ between
the hours of 10 O'clock A.M. and
Sunset presence to take the depositions of
J. F. Smith and others to be made as
evidence in my behalf in a certain suit
in chancery now pending in the circuit
court of Southamptⁿ wherein I and others
are defendants and you and others are
plaintiffs.

Anna F. Whitelaw

The Depositions of R. N. Musgrave & others.
taken this 7th day of October 1892. before B. F.
McLemore. Commissioner in Chancery of the
Circuit Court for Southampton County. to be
read as evidenced in behalf of J. C. James,
who sues for the benefit of H. D. Donnan,
his Trustee. in a certain Chancery suit
pending in the Circuit Court of said
County under style of J. C. James, for W. F. Whitehead.

Present: W. S. Holland & J. L. McLemore, Attys. for Plff.
Shands & Son. " " Dfnd.

The Witness R. N. Joyner, being duly sworn,
deposes as follows:

Q: What is your age, residence and occupation
and do you know the parties to this suit?

A: My age is 43 years. reside in Southampton
County. a farmer by occupation and know
the parties to the suit.

Q: Did you have a deed of trust on the property
of Mrs Anna F. Whitehead. at the time the
same was sold by her to Mrs Maggie S.
Musgrave. and if so, state by whom
and how it was paid?

A: Yes. I had a deed on the property at the
time it was sold to Mrs Musgrave. Mr
John Whitehead paid a part of it. and
Mrs Whitehead paid the balance since
Mr Whitehead's death.

Q: How much money did you receive from Mr Whitehead at the time of the sale of the land to Mrs Musgrave?

A: As much as \$700.00. perhaps more.

Q: Is this money I am pretty sure, was a part of the money arising from the sale of the land to Mrs Musgrave. because Mr Whitehead had told me he was waiting for his wife to get the money from Mrs Musgrave. to pay of his indebtedness.

Crop Examined. by Dyli Council.

Q: Was this money paid to you before or after the sale of the land to Mrs Musgrave?

A: It was paid to me after the sale.

Q: Do you know whether or not Mr Whitehead received from Mrs Musgrave the money for which his wife's land was sold?

A: Yes, of course he did

Q: Do you know whether or not Mr Whitehead, out of this money, paid Mr James any thing. and if so, how much.

A: I ~~heard~~ heard Mr James say that Mr Whitehead paid him some six or seven hundred dollars. dont remember the ~~exact~~ amount.

Q: Do you know whether or not Mr James knew that John Whitehead was trying to

1
see his wife's land. and get the money
therefor to pay on his (Whitehead's) debt. and
make a deed to his land in exchange
therefor? (Accepted to. by Plff's atty. - because
the deed, if any such has been made would
be the best evidence) and for reasons appearing
on the face of the question)

A: I can't say that Mr James knew any thing
about any deed from Whitehead to his wife,
but he knew that Mr Whitehead was
trying to see the land ^{of his wife} to get money to
pay his debts.

Q. Did you not also have a deed of
trust on the land of Jno Whitehead?

A. I did.

Q. How much did Jno Whitehead owe you?

A. I think his debt was for about \$700-

Q. Did he not when he received this money
from the sale of his wife's land pay you
the sum of \$1100.?

A. Here the witness is shown a receipt marked
"J" herewith filed and after inspecting the
same said. "Of course that must be right."

Q. You state did not a portion of
this go to pay the debt off on the said
Jno Whitehead land?

A. It did.

Q. Has not Mrs Whitehead since the death

of her husband paid off the balance of the debt due on her land, as will appear by receipt herewith filed marked "K" ?

A. Yes sir she did, a little more than one year ago.

Re-direct Examination by Plaintiff
Dunnell.

Q. The receipt shown you by Mr. Shands for \$1100. states on its face that it was to be applied as credit on notes. How much of that \$1100. was paid on ~~the~~ ^{the} debt secured by deed of trust on Mrs. Whitehead's ^{marital} land, & how much on the note that Mrs. Whitehead owed you secured as you have stated?

A. I had two notes, one against him & one against her in the bank. When the payment of \$1100. was made it was applied to both notes & the balance then due on both of the notes was \$213⁰⁰. I then turned over the old notes, and took a new note, signed by both of them. which new note is the paper marked "K". which Mr. Shands handed me a few moments ago. in the payment of the two notes. no instructions were given as to how this money was to be applied or ~~on~~ which bond was to be credited. he, Mr. Whitehead, asked me if I would release the deed of trust, provided he

said me about Eleven or twelve hundred dollars. I told him I would - provided he would give me a new Note for the balance, signed by him and his wife. Mrs Whitehead never owed me any thing until after her marriage. The money Mrs Whitehead borrowed of me was to pay for the interest of one of her sisters - in the real estate of her ~~late~~ father - which she had purchased. so Mr Whitehead told me when he came to borrow the money.

Accepted to by Counsel for Defendant - hereof I do not And further this deponent says etc not.

R. H. ^{Wm} ~~Wm~~ Jones

The witness, R. P. Ellis - being of lawful age and a resident of Southampton County, being duly sworn, deposes as follows:

I should judge the John Whitehead farm to be worth between four and five thousand dollars - ^{in 1889. at the time it was sold.} I lived on and cultivated the farm for seven years. Have known the farm for twenty years.

Crop Examined -

Q: How long has it been since you lived on this farm?

A: Between eight and ten years - but have lived near to and seen the farm ever since

Q: When is the last time you were on the farm prior to Sept 1889.

A: I don't remember.

And further this deponent says not.

R P Ellis
1 1

The witness E. R. Vick - being fifty years of age - a farmer by occupation - residing in Southampton County - near the Whitehead farm - duly sworn, deposes as follows:
I think the John Whitehead farm is worth about four thousand dollars - now - and in 1889 - in 1889 I think \$4000.⁰⁰ Cash, would have been cheap for it. Mr Whitehead, about 2 or 3 weeks before his death, offered to sell me the farm for \$5500.⁰⁰ -

(Answer excepted to on the ground that the husband's declaration or testimony - cannot be used as evidence for or against his wife)

Q: Please state your opportunities for knowing the value of this farm?

A: I moved on the farm in 1869 and remained there until 1876. and since then have resided within three miles of it.

Q: Are you a real estate owner, if so state about the amount?

A: I am. I own about 1000 acres - in about three miles of the Whitehead farm.

Q: Up to the death of John Whitehead, who managed and controlled the farm and personal property thereon?

7

A. I think John did - but don't know positively -
Cross Examination by Dependent
Counsel -

Q. Was not Mr Whitehead confined
to his home & bed with a sickness from
which he died some twelve month
or more before he died?

A. Some times he was & some times he
was not, I saw him at Branchville some
times during the time -

And further this dependent says etc
not.

E R Vick

The witness, H. R. Smith being
of lawful age, a resident of Southampton
County & knowing the parties to this suit.
being first duly sworn deposes & says:-

The John Whitehead farm was at
the time it was sold by him to his
wife worth \$400 ^{in cash} & is now worth
that amount, I live about 4 miles from
the farm and know it.

Q. Are you a land owner?

A. I am - own about 500 acres within
four miles of the farm in question -

Cross Examination by defendant
Counsel.

Q. Have you been all over this farm of John Whitehead's?

A. I have not - but know all the cultivating land.

Q. When was the last time prior to Sept. 3rd 1889. that you went over the land?

A. Several years prior to

Q. How many times have you ever been all over this land, if any?

A. Once or twice I know -

Re-examination by plaintiff Counsel.

Q. You have stated in answer to question of defendant as to "how many times you have been all over this land". "Once or twice I know". do you mean that you have been over all of the land, once or twice, or that you walked over the cultivated or open land -

A. The cultivated or open land -

And further this Dependent says that
H. S. Smith

The Defendants' witness - J. J. Woodard -
~~being of lawful age~~ fifty years of age,
a farmer by occupation - residing on the

adjoining farm to the one in question, being duly sum - depres as follows:

Q: Did you know the John Whitehead farm in Sept 1889. and if so what would you consider a fair value of it at that time.

A: I have known the farm for twenty years - was one of the Commissioners to divide it - and have been over the farm ^{time & time again} ~~several~~ ^{times}. I think \$2000.⁰⁰ a fair price for the land in 1889.

Q: Is not most of the land in the low ground, & subject to overflow?

A: There is about 60 acres of good, arable land. the balance of the land is low and subject to overflow, and will not pay to cultivate.

Q: Has not the freshets from the River, in the last few years, flowed over the low lands entirely?

A: Yes.

Q: Do you know whether or not, some year or so ago, Mr J. C. James made a deed or assignment, thereby cutting out several of his creditors?

A: Yes, I know. he cut me out of \$1000.⁰⁰ which ^{he has never paid.}
(Question & Answer accepted to, because irrelevant & not the best evidence)

~~Prop 24~~

Q: You are a member of the Board of Supervisors of this County. and a land owner, are you not?

A: I am a member of the Board of Supervisors - and own about 3500.00 acres of land. part in this County and part in Greenville Co.

Cross Examined:

Q: What steps have you taken to collect the debt which you say J. B. James owes you. and "cut" you out?

A: I have tried every legal way I know how to try.

Q: Have you ever obtained any judgment against J. B. James. and if so, in what Court, and when?

A: I obtained a judgment in Judge Hill's Court.

Q: Are you on speaking terms with J. B. James. and if so. how long has that relation existed?

A: I don't have any thing to do with Mr James.

Q: Have you taken any legal steps to invalidate the assignment of J. B. James? in part or in whole. on the ground of fraud, and if so, did the Court adjudge said assignment to be fraudulent. or honest. valid and binding?

A: It never went before the Court. I got a judgment. and there the matter dropped.

Q: Why did you let the matter drop?

A: It was said that Mr James would plead usury to the debt, if fraud was established.

Q: If he has pleaded usury, the plea would have been true and correct, would it not?

A: On the note on which I obtained judgment Mr James never paid but 6% interest - but on the note previously held - and he has paid 8% - for which this last note was a renewal.

Q: How do you know that J. C. James would ^{not} have "Cut" you out, by pleading usury even tho he had never made the Assignment deed, to which you alluded in your direct examination?

A: I don't know.

Q: How then, can you say that you know J. C. James made a deed of Assignment thereby cutting you out of \$1000.00?

A: While I don't know what Mr James would have done, had he not made an Assignment. I do know what he did when he made the Assignment. When he made the Assignment he did not secure me in it.

(Questions and answers on Cross Examination excepted to by Defendant Counsel, as being irrelevant and not tending to prove the facts.)

and further this defendant say etc not.

J. J. Woodward

The witness B. R. Bryant. being of lawful age. and residing in Southampton County. duly sworn deposes as follows:

Q: Do you live in the neighborhood of the land. and do you know the parties to the suit?

A: yes.

Q: What would you say was a fair value of the land in Sept 1889?

A: I should think \$2000.⁰⁰ - ~~would~~ ^{\$2500.⁰⁰ a big price} have been a fair value. in 1891, before Mr Whitehead's death. he was talking to me about seeing the farm. said he was not able to farm. and wanted to dispose of it. I told him I did not think it could be disposed of to any advantage. because nothing could be made by farming.

Q: Do you know what the farm rents for per year?

A: I think \$225.⁰⁰ a fair rental for the farm per year.

Crop examined -

Q: You have put down the value of the farm at \$2000.⁰⁰ as a fair price and \$2500.⁰⁰ as a big price - what would you affirm that

value between the land and the buildings.

A: I would not know how to apportion it.

Q: In your direct examination, you did not hesitate to estimate the value of the farm - Now please tell me if the buildings thereon did not constitute an important element in that estimation?

A: The dwelling house ~~house~~ has something to do with it.

Q: State, as nearly as you can, the cost of the dwelling house, and how long it has been built?

A: I ~~think~~ suppose it costs \$1000.⁰⁰ and has been built five or six years I think.
Re. direct examination.

Q: In seeing land, does one generally get the full value that it costs to build thereon or the full value of the land?

A: I think not.

Q: In estimating the sale of this land at \$2000. About what would be fair in that sale for land & for building?

A: I would not know how to apportion it.

And further his deponent says etc not
B. B. Bryant

The witness R. N. Musgrave who is 31 years of age a resident of this County & know the parties to this suit, being first duly sworn deposes & says:-

Q. Did your wife Mrs. Hattie Musgrave in the year 1889 buy the farm owned by Anna T. Whitehead & if so, what she gave for it, & to whom the money was paid.?

A. Yes. she gave \$2,500. & the money was paid to John Whitehead her husband.

Q. ~~Do you see~~

And further this deponent says the not.

R. N. Musgrave

The witness W. B. Goadmyn being first duly sworn deposes & says:-
I am 31 yrs of age, reside in Lanesboro County & know all the parties to this suit.

Q. How long have you lived on the farm in question?

A. 3 years. I always understood it was Mrs. Whitehead's.

Q. Did Mr. Whitehead hire you as agent for Mrs. Whitehead?

A. He did not hire me as agent, but hired me one year that I did not work

on the farm. the other two years I was working on the farm for my sub -

Q: Did you rent land there then?

A: I did.

Q: Then you know the land & if so state what you think a fair value for it?

A: I think \$2000. a fair valuation -

And further this deponent says that
W.B. Goodwyn

Mr. J.C. Fette who is a resident
^{merchant & land owner.} of this county, knows the parties to the suit,
and is 48 years of age. having been
first duly sworn deposes & says:-

Q: Do you live in the vicinity of this land & know it, if so what would you consider a fair valuation of the same in Sept. 1889.?

A: From what I know of the land I should think \$2500. a fair valuation for it. There is only 60 acres of it arable land. the remainder is low ground, poor flaps. there is no timber on the land it has all been cut off. but don't know when.

Q: Do you know whether or not after the purchase of this land in Sept. 1889 by Mrs. Whitehead, she had control of the same

A. and her husband only acted there as agent. I sold him goods as agent. I paid claim since Jno Whitehead's death for balance on buggy in Norwalk which he had contracted as agent.

Then the defendants filed paper marked "L"

Q. Plaintiff accepts to the above answer & paper filed therewith marked "L" for reasons appearing on their face.

Q. Did you have the management of Mrs Whitehead's farm during the time when John Whitehead was sick in his last illness & his wife had to attend to him?

A. Yes sir:- and all bills were charged to him as agent for his wife & the bills paid out of the crop.

Q. Has she paid you any sum for her husband's if so how much?

A. She paid me \$444.³⁹ for him. I think it was in the ~~fall~~ 1889 or the next Spring.

Q. I know that about the time Mrs Whitehead sold her land that John Whitehead paid me some money I think about \$300. which he said was derived from the sale of his wife's land.

Excepted to by plaintiffs Counsel -

Cross Examination by Plaintiff Counsel -

Q: After Mr. Whitehead made deed conveying all of his property to his wife, would it have been business like in you had other merchants to credit him except a agent as you have stated in your direct examination?

A: I don't think it would have been business like at all.

Q: Are your personal relations with Mr. J. O. Jones pleasant?

A: Nothing to the contrary that I know of.

And further this Dependent says not.
Geo. E. Pelli

It is agreed between Counsel that the following statement may be entered or filed in these depositions as evidence of the amount paid to John Whitehead for his wife, by William Shaud Cairns.

"\$608⁶³ which money was derived from sale of his brother Jas. B. Drury's land & was paid to ^{him} Whitehead ^{by Mrs. Whitehead or Dr.} for sale of same a follow \$181⁵⁸ pd Febry 11. 1887 & the residue on March 5th 1888. & it was my understanding that the money was to be paid on his Whitehead debts - what he did with it I don't know."

William Shaud

Virginia:

Southampton County. to wit:

J. B. F. McLeamore, Commissioner in Chancery
of the Circuit Court for the County and State
aforesaid. do hereby certify that the foregoing
depositions of R. W. Joyner and others, were
this day taken, subscribed and sworn to, be-
fore me, pursuant to notice herewith filed.
Given under my hand this 7th day of Oct:
1892.

B. F. McLeamore,
Comm^r in Chancery

Comm^r's fee \$5.⁰⁰

James. for J^c
at ^{my} Depositions
Whitehead & al:
1892 Oct. 7th filed.

(17)

The deposition of J. F. Smith and others taken by Geo. W. Lawrence a justice of the peace for Southampton Co Va at the office of W. B. Shanks Son in Boulevard Va on the 4th day of May 1892 between the hour of 10 o'clock a.m. and sunset to be read as evidence in behalf of Anna F. Whitehead in a certain suit in chancery now pending in the circuit court of said county between J. B. Jones Pl for ^{the} ~~the~~ against John Whitehead and Anna F. Whitehead defendants pursuant to notice duly given
Present McLawrence & Holland
attorneys for plaintiff

Shanks Son
attorneys for defendant

18 miles

L

The witness S. B. Drury being duly sworn depose as follows

a

What is your age, residence and occupation, and do you know the parties to this suit
I am forty years old. reside in this county. am a farmer & know the parties to this suit. am a brother of the defendant Anna F. Whitehead. but have no interest in the property

which is the subject of this controversy

Q

Will you state about when Anna F. Perry married John Whitehead and with whom she lived prior to that time and what board she paid

A

She married him about June 1886. She lived with her father and mother till she was about 21 years old. She paid no board. After that time she came to live with me. She lived at my house from that time (1882) till the time of her marriage. I charged her no board.

Q

Did she at that time own any real estate. If so was it rented out, and rent paid to you for her and by you paid to her. Also state the amount of it.

A

Yes she owned in 1882 625 acres and at the time of her marriage she owned nearly 900 acres. Yes the land was rented out and I received the rents for the years 1883-4-5 amounting to \$450⁰⁰ and paid it to her. The rent for the year. The rent for the

year 1886 amounting to \$150⁰⁰ was paid by the tenants to her husband John Whitehead

Q Was her land rented out prior to the time you took charge of it? about what did it rent for and was the rent paid to her

A Yes the land was rented out from the time of her father's death in 1871 and money paid to her guardian for her. I rented it from him for two years and paid at the rate of \$112⁵⁰ per year.

Question and answer objected to because guardian account of V.T. Denny is the best evidence of the amounts received by him for his ward. Objection made by plaintiff's counsel

Q Do you know the land bought by Mrs Anna F. Whitehead from John Whitehead

A Yes I have been over it and know it.

Q What in your opinion would be a fair valuation of this tract of land at the time of the

purchase thereof by Mrs Anna F. Whitehead from John Whitehead

a I think she paid every dollar it was worth - paid a good deal more than I would have paid for it. I would not pay so much today ^{for it} as she gave for it

Q Was the house finished at the time she bought the place

a No sir.

Q Was there much timber on the place when she bought it? + Is or is not most of the land river low ground

a Most of the timber was cut off at the time of her purchase. Yes the most of the land is river low grounds and subject to overflow and thus rendered almost valueless. These horses will cultivate easily the land every year

Q Do you know the land which she owned and sold to Mrs

Hattie S. Musgrove + value of it

a I do. I lived on it know it well consider it was far more valuable at the time of the sale of it ^{to} Mrs Musgrove than that she bought of John Whitehead. I consider the lumber on it alone worth as much as the farm she bought - Mrs Musgrove having already sold \$2000⁰⁰ worth of lumber off it and still has lumber on it worth at the lowest \$500⁰⁰.

"Question and answer objected to by plaintiffs counsel because irrelevant and having no tendency to show from what source she received the money to pay for the Whitehead farm.

Q Will you state what amount she has paid for her husband John Whitehead and to whom

a I herewith file the following receipt namely - a receipt for \$414 $\frac{39}{100}$ paid by her to Peck and Myrick and ^{on} account of all accounts and demands

of John Whitehead up to date. Some
dated April 3rd 1890. a bond drawn
demanded to R.W. Joyner for \$213.⁰⁰
dated June 25. 1889. & paid by her
to him Oct 12th 1889

Cross examination
by Plaintiff's counsel)

3 How much land did Anna F. Drewing buy
from B.F. McQuinn commissioner and
price

Q She bought about 250 acres and
paid between \$700.⁰⁰ & \$800.⁰⁰

Question and answer objected to by
defendants counsel as recorded
and is best evidence of fact

2 You have stated in your exam-
ination in chief that Mrs Whitehead
lived with you during and your
mother during the years 1883-
1884-1885-1886 till her mar-
riage and during that time
you paid her about \$450.⁰⁰.
Did she not live in that de-
gree of style which would have
necessitated the expenditure of

The money received by her in defraying her expenses of travelling. Dressing &c

a I don't think she did. she was very economical, wore good neat clothes her travelling ^{expense} were not much. as

she travelled very little - except when her friends carried her around in their conveyances - & then didn't charge her

2 During these years was there not repairs on her property & money spent on the farm

a When I rented the place I got it at a reduced rate on account of buildings which I put on it, and which I had charge of the renting it out for her I only had a well dug (cost \$4.00) and fencing to the amount of \$10.00

2 Was she not married during 1886 and therefore had to purchase her wedding out-fit

a yes

2 Do you or not know that Mrs. Wheeler borrowed money amounting to ~~between~~ \$600 + \$800.00 from R. W. Joyner to pay for land purchased from B. F. McLeasure Court

a I do not know it

2

You stated in your examination in chief that you were acquainted with the farm; what opportunities have you of knowing it and do you know where all the land lies?

a

I have seen all the upland & most of the swamp-land - seen the open land in cultivation. Know the land is in this county adjoining the lands of Mrs K. R. Sebell. J. J. Woodford, formed my estimate of it from my inspection of it and crops growing on it and value of similar lands there adjoining

2

Do you know whether or not Mrs Whitehead paid one dollar or \$5000 - to John Whitehead for the real and personal property conveyed by him to her

a

I did not see her pay him. I believe she paid it for I know she had the means to pay it. she had unimproved real estate worth more than that which she sold for \$2500 besides other means

2

You stated in your examination that ^{you knew} she had the money with which to buy this property

Q please state how you know it and how much she had
 A The record of the sale of her land to Mrs Musgrave and amount she received from Court Shands and McLenore. The rents from her land as I have already stated are the reasons why I know she had the means

Q Do you know how much she had in all?

A The records as above stated will show how ~~how~~ much she received from sale of her land & from Court Shands & McLenore. I have stated I paid her some \$450 rent I collected for her, she received other amounts from rent as the exact amount I don't know. The rents were paid yearly.

Q

Where did she did get the means to pay for the land bought of for her sister Miss Beattie Drewry which formed part of the land sold ^{by her} to Mrs Beattie Musgrave

A

Partly from her inheritance therein

I don't know whether she paid for
(balance) out of her rent money
or other means

or examination
by defendant's counsel

2

Do you not know and believe that
at the time she purchased this
real and personal property from
John Whitehead that she had the present
means of paying for the same

a

I know the facts and reasons which
I have before stated I do

and further this deponent says
not

signed 

20 miles

The witness J. W. Smith being duly
sworn deposes as follows

2

What is your age residence and oc-
cupation and do you know the
parties to this suit

a

I am thirty three years old. reside

in Southampton so I am a farmer by occupation & know the parties to this suit

Q Did you ever rent any land belonging to Anna J. Whitehead. if so when and amount of rent you paid her

A Yes sir I rented some of her land in 1888 and paid her \$150. Two other tenants rented another part of her land and paid her \$55. This was her maiden land

Q Do you know the land which she bought of John Whitehead if so what do you think was a fair price for it at the time she bought it from him?

A Yes sir I have lived on it and know every foot of it. I think that at the time she bought it \$2000⁰⁰ was a big price for it

Q At the time she bought it was not most of the timber cut off the land. also is not most of the land river low ground & of ten overflowed thereby ^{removed} of little value?

A Yes nearly all the timber was cut

off. house not finished - scarcely
a one horse arch of cleared upland;
cleared low grounds rendered useless
on account of freshets. I wouldn't
pay more than \$150.⁰⁰ per year
rent for the farm. a good crop made
on the low grounds (cleared lands) last
year, first one been able to make
there in four years.

Q Do you know the land which Mrs
Anna F. Whitehead sold Mrs Harrie S.
Muscrope and what was the value
of it? Would you give it for the tract
she bought of John Whitehead?

A I do and I would not give it
for two of such places as she
bought of John Whitehead

Cross examination by
Plaintiffs Counsel

Q Do you know the amount of land
in the John Whitehead tract

A I do not

Q Do you know the value of the
buildings that were upon the tract
at the time Mrs Anna F. Whitehead
bought the tract?

- Q I do not. The buildings were then unfinished.
- Q Do you know how much money Mrs Anna F. Whitehead had at the time she made the purchase?
- A I do not
- Q Do you know whether she ever paid him any money or not
- A I do not

The examination

by defendants counsel

- Q Do you or do you not know that Mrs Anna F. Whitehead had been receiving rent from the land which she sold Mrs Balle & Musgrave and that she sold the same for \$2500

- A I know she had been receiving the rent and profits therefrom and Mr Musgrave told me his wife paid \$2500 for it. I don't know exactly and received from rents or objected to by plaintiffs counsel because the above answer is not evidence but is hearsay evidence)

and further this deponent sayeth not
Signed J. W. X^{his} Smith
mark

The witness Richard Ellis being
duly sworn deposes as follows

Q What is your age residence and
occupation and do you know the
parties to this suit

A I am thirty eight years old. reside
in Southampton Co Va. am a farmer
by occupation & know the parties
to this suit

Q Did you ever rent any land be-
longing to Mrs Anna F. Whitehead. if
so when and amount of rent
you paid

A Yes sir I rented a part of her
maiden land for years 1883-4-5-6
7 paid therefor the sum of \$511⁰⁰
about \$283⁰⁰ of this amount was
paid to S.B. Drury for her. The bal-
ance I paid to her husband
for her. The balance of the land
was rented out to other tenants
who paid their rents (the
exact amounts I do not know)
I saw the other tenants pay \$53⁰⁰
rent for year 1886

To Mrs Denny and her husband Parker

2 Do you know the land which she bought of John Whitehead. if so what do you think was a fair price for it at the time she bought it?

a I have been on the farm once or twice but have travelled on the road by it many times. Think \$2000⁰⁰ was a fair price for it at the time she bought it. have never been all over the farm. Don't know the number of acres in the farm I know that the most of the land is river low grounds. and have been there when the freshets from the river was over them, & crops all destroyed

2 Do you know the land which she sold Mrs Hattie S. Musgrave. if so would you give it for the tract she bought of John Whitehead

a I do ^{and} I don't suppose I would

and further this deponent sojeth
not

signed Richard ^{his} Ellis
mark

Virginia

Southampton County to wit
I Geo. W. Lawrence a Justice of the
peace in and for the said county
do hereby certify that the pre-
going depositions of S. B. Downy
J. W. Smith and Richard Ellis were
duly taken and subscribed and
sworn to before me by the said
parties at the time and place and
for the purposes mentioned in
the caption thereof. Given under
my hand this 4th day of May 1892
and the further taking of the
depositions in this cause is
sue for Oct 4. 1892.

Geo. W. Lawrence J.P.

James G. Jr.

vs.

} Notice.

Whitehead Jr.

We acknowledge legal
service of this notice
Holland & Moore J.G.
Shanda to him J.C.

To Anna F. Whitehead, Adm^x of John Whitehead, dec^d. and
Anna F. Whitehead.

You are hereby notified, that on the 7th day of October, in the
year 1862, at the office of B. F. McLEMORE, in the village of Jerusalem, Southampton county,
Va., between the hours of 9th A. M. and 6th P. M. of that day, I shall proceed to take the
depositions of R. N. Musgrave and others, to be read as evidence
in my behalf in a certain Chancery suit depending in the
Circuit Court for Southampton county, wherein I am Plaintiff and you
are Defendant; and if, from any cause, the taking of the said depositions be not
commenced, or, if commenced, be not concluded on that day, the taking thereof will be adjourned
from day to day, at the same place and between the same hours, until the same shall be completed.

Your obedient servant,

J. C. James, Esq.

1894. July 24 filed
T.M. No. 166.

The deposition of V. F. Drewry & others taken
 this 19th day of July 1894 before Geo. W.
 Lawrence a Justice of the peace for South-
 ampton Co Va to be read as evidence in
 behalf of Anna F. Squire (formerly Anna F.
 Whitehead) re in a certain chancery suit
 pending in the Circuit of said County
 under the style of J. C. Jones vs for
 re vs Whitehead & wife

Present W. D. Holland & R. R. Powers attys for Plffs
 " J. B. Prince & Shandsdon " " Defs

The witness V. F. Drewry being duly sworn
 deposes as follows

Q What is your age & occupation and
 do you know the parties to this suit

A am 42 years old. reside in this county
 am a farmer by occupation am brother
 of Anna F. Squire and know parties to
 this suit and have been examined
 before as a witness in this case

Q Now Drewry this is a suit brought by
 J. C. Jones' a man now, against Peter
 S. Squire and Anna S. his wife or
 it now stands moved, to set aside

2 deeds of bargain & sale made by John
Whitehead in his lifetime to Anna F.
Whitehead his wife. now Anna F.
Iguire wife of Peter F. Iguire, one of
those deeds made on Sept 3rd 1889
which conveys the real estate of said
John Whitehead to his said wife Anna
F. Whitehead & the other dated April
2 1890, conveying certain person-
al property to same party. These deeds
are sought to be set aside upon
the ground that they are fraudu-
lent, without consideration and
made with intent to hinder-
delay and defraud his creditors.
Will you please state or whether
you know of any agreement
between John Whitehead and his
wife Anna F. Whitehead that if she
would sell her farm and allow
him to use the proceeds from
the sale thereof towards the payment
of his debts that he would pay
her therefor by the sale to her of
his farm.

a
a

There was ~~and~~ an agreement. They

Anna F. Whitehead and her husband John Whitehead come to my house just before she (Anna) sold her farm to Mrs Musgrove, and asked me if I would go with John Whitehead up to Mr Ruben Musgroves and show him the line around her said land. She told me she was trying to sell it to Mrs Musgrove and I asked her why she was going to sell it? and advised her not to do it. She said she wanted to sell that place and get the money for it and pay it to John Whitehead and he would make her a deed for his place her reasons for wanting to sell, there were no buildings ~~so~~ dwelling on her farm and her husband did not like to live in that section. Said her husband had a deed of trust on his place and he would owe of this money pay the same. her husband was present and said such was the understanding & that he wished to pay off said deed. and his other debts out of the \$2500. and ~~give~~ the purchase price for her said farm

make his wife a deed for his said
place

2

The deed from John & Anna F. Whitehead
to Mrs Hattie Musgrave is dated
June 20th 1887 and acknowledged
before Wm H. Drewy a J.P. and the
deed from John Whitehead to Anna
F. Whitehead conveying his tract
of land to her is dated Sept
3rd 1887 and acknowledged
before Geo. E. Beaton J.P. do you
know why that difference of time
was between the execution of
these two deeds?

a

I do not know

2

Do you know whether the purchase
money from sale of Mrs Whitehead's
farm to Mrs Musgrave ~~was~~
~~paid~~ to paid to John Whitehead
or his exors in pursuance of
the agreement or you have stored
it

a

I did not see it paid, but he in-
formed me he got it and told
me that he paid Richard Joyner
the deed of trust on his place

paid J.C. Jones about \$746⁸⁹ (see receipt filed with Mrs Whitehead's answer) I am not certain about any other debts that he said he had paid

2

Did he say then anything about his going to make his wife a deed for his said place

a

I do not recollect now whether he said he had made it or was going to make it. Upon reflection I now recall he said he had made the deed. but do not recollect whether it had been recorded or not

2

Do you know anything that caused him to make the deed dated April 2nd 1890 conveying personal property to his wife?

a

No Sir

cross examination

2

You say you paid the money to J.C. Jones - or were you present when Mrs Whitehead paid the money to J.C. Jones

a

That was John Whitehead himself told me he had paid it. Mr John Whitehead

or his wife give me the receipt and
I brought it here

2

at the time that Mr Whitehead told
you he had paid Jones & Co had
the deed from Mr Whitehead & his
wife been made or recorded or
~~recorded~~

a

I do not know but think the
deed had been made but don't
know whether it had been recorded
or not. I reckon the deed was
not made until after the deed
of trust Jones had on the land had
been paid

2

2

"You say you reckon" what did Mr
Whitehead say about it at the time
of the conversation in which he
told you that Jones & Co were paid
one of the money from sale of land
to Mrs Musgrave

a

He spoke of both deeds & said Capt
Beaman had fixed them. that is
all I recollect he said about those
deeds. he was sick in bed at
the time

2

In your evidence here now on

1
examination in chief how many talks
with John Whitehead do you em-
brace and a blude to

a Two that, I recollect. one when he come
to my house about the time, and the
other when I was at his house
when he was sick in bed. He was
sick for several years. Those are all
I recollect took place before the suit
was brought and then others were had

2
2 When did Musgrave pay for the land
brought?

a I do not know when he paid for
it. I recollect about a check being
passed and some payment being made
to Jones

2 Did Musgrave before or after she got
a deed

a I don't suppose she paid till she
got a deed

2 Did Jones give a receipt before
or after he got the money

a I suppose he gave the receipt after
he got the money

2 The deed bears date June 20, 1889

The receipt June 18, 1889

a Will you please explain how

how Mr Whitehead paid Jones out
of the Musgrove money before he got
it himself?

a Some note or paper was paid to Jones then
I do not know how. before Mrs Mus-
grove paid all the money & got a deed
I suppose Mr Musgrove can explain
that

2. Your recollection about the trans-
action is not clear and distinct
is it?

a I recollect what I have said about
this matter, but don't recollect
about this payment & the exact way
it occurred

2 You know well and clearly that
Jones got $\$745^{\frac{87}{100}}$ of the Whitehead
money do you not

a That is what Mr Whitehead
told me

2 Will you name any other fact
or circumstance which you
recollect clearly and well

a Yes sir. I recollect he told me
he paid Richard Joyner. I think he told
me paid Mr F.E. Parke something

- Q Did he tell you anything about any other money he owed James?
A No Sir.
- Q How was the \$745⁸⁷ due to James secured?
A I don't think he had any security at all if so he didn't tell me.
- Q Do you know anything about these transactions except what you have heard Mr & Mrs Whitehead say?
A Yes I know what I heard Mr Musgrove say about buying the place. I also seen the receipt in J. C. Jones own hand writing. & Jones (Richard) also told me John Whitehead did pay him off the deed of trust.
- Q Did you know all these things including what Mr & Mrs Whitehead said on the 4th day of May 1872 when you were here giving evidence in this case and did ~~not~~ you not then and there solemnly swear that your evidence should be the truth the whole truth and nothing but the truth?

a

of course, Whitehead died before then
I did take the oath

2

Did you not frequently talk with
your sister's counsel. bring
them a receipt and other papers
before you testified the first time

a

a

I don't recollect whether I brought
the papers before that day or not
after I brought the papers I don't
think I had any more talk with
them until I was summoned down
here

2

Do you mean to say that you brought
a receipt down here which is filed
with the answer. which answer is
dated April 5 1871 and that you
were afterwards summoned as a wit-
~~ness~~ and that you came and
testified but never did tell
your own sister's counsel all
the facts bearing upon the
case as known to you and
as you have since testified to

a

I answered such questions as I was
asked I never was in such a case

1
as this before, on the day I testified
one side seemed to be trying to prove
she didn't have any money to pay
for said property & other side that
she did, and no such question
as above was asked me

2
my question does not allude to
to what you testified that day
please ask the justice to read it
and give me a more responsive
answer.

a
I come and told them what I knew
about the case and answered
such questions as were asked me

2
at

2
at that time did you tell them
anything about the contract or
agreement on the part of John
Whitehead to make a deed to his wife
for land

a
I don't recollect whether I told
them or not, at that ^{time} John
Whitehead was living and I didn't
take much interest in the case
until after John Whitehead died
I came employed counsel John
Whitehead then being sick and
having requested me to do so.

2

at the time of the conversions of the sick bed side and at your own house on the time ~~and~~ viewing visit did you ever expect to be called on to testify as to what was said between John Whitehead and his wife and you?

a

No Sir

2

at the time you were employing counsel for John Whitehead & at his request and telling them what you knew about it did you not expect to be called upon to repeat it or some part of it, in the shape of testimony?

a

No Sir. I didn't think I would have ^{the time} anything to do with it, I knew nothing about a chancery suit and nothing was said about sale of land that day. I thought the records would show that he had sold her land and got the money and that her husband had sold his land and got the money, and that the records would show all that

and further this deponent says not

E. B. Drury

The witness V. I. Drury being duly sworn deposes as follows

2 What is your age, occupation, place of residence and do you know the parties to this suit

Q am 44 years old. Farmer. by occupation reside in Douthampton Co. brother of Anna F. Squire (formerly Whitehead) and know the parties to this suit.

2 Do you know anything of an agreement between John Whitehead and Anna F. Whitehead about sale of his land and of his land to her. if so state it

A just before the sale John of Anna's F. Whitehead's land John Whitehead and her came to my house and asked me to go with them to Musgrove's at her place and show them the land and she told me she was going to sell her land to Musgrove and asked me what I thought about it. and I asked her what she would sell it for and John Whitehead said Musgrove would give him \$2500- for the place and that would clear off all his debts

and he would make Anna a deed for his place, then John Whitehead went out of the room and I asked Anna how did she know John could her a clear deed; and she said she didn't know, but she had written or was going to write and get a copy of John Whitehead's father's will. I told her she might have a left such a will that ^{John Whitehead} he couldn't give a clear title and so she had better examine into it before she sold as she intended. I went and showed her the line as requested I afterwards saw Anna and she said the will was such that title was alright. nothing on his property but deed to Richard Joyner and she had sold as agreed

Cross examination

- 1
- 2 What was mortgage to pay for the land sold for
A \$2500.⁰⁰
- 2 How much was Mrs Whitehead to pay for Mr Whitehead's land

a I don't know ~~but~~ I understood
2 That he was to sell her place & get the
money for it and in considera-
tion thereof make her a deed for
his place

2 you understood then that John
Whitehead would pay his wife
what he owed her by making
her a deed for his land

a I don't know how much he
owed her

2 Can you undertake to say
that there was an agreement
between John Whitehead and his
wife by which he was to sell her
a tract of land without knowing
anything about the sum of money
or other thing or things which
should constitute the considera-
tion; in other words can you
know that an agreement has
been made for the sale of a
piece of property without knowing
the price

a I know there was an agreement
that he should sell his place
and get the money therefor and
in consideration thereof make her

a dead for his ^{and I inferred that} place ^{and that}
#25 or was what she asked
~~to get~~ for his place

2

When did John Whitehead die?

a

I don't recollect. I think it was
in 1890 or 1891

2

Could you recollect the year?

a

No Sir

2

Do you claim to be able to recollect
a conversation with a man
who married your sister and
who was alive in June 1889
and then could recollect in what
year that man died?

a

Yes Sir I can recollect the con-
versation not the year of his
death

and further this deponent says not
J. T. Drury

The witness Dr. John W. Drury being
duly sworn deposes as follows

2

What is your reg. occupation
& where do you reside and do you
know the parties to this suit

1
a I am 43 years old. Am a physician
live in North Carolina and know
the parties to this suit and am brother
to Mrs Anna. F. Squire

2 Will you state if you know anything
about sale of Mrs Squire's land and
sale of John Whitehead's land and
if any there was any agreement
about it and if so what it was?

a I heard Mrs. Whitehead that he and my
sister were going to exchange lands
she was to give him up her land and
he was to make her deed to his land
I know nothing of the price. I heard
after it was done. Both were
present together when this con-
version took place

2 Do you know why this exchange was
talked of

a I do not. except her land was
so far from him

Cross Examination

2 Do you know why you have
never been examined as a witness
in this case before

a

No sir

2

How long have you known of this
suit

a

I don't know definitely by the date
I heard of it

2

Was it three years ago or one
year ago

a

It has been within three years

2

More than one year?

a

I don't remember the date of the suit

2

More than than two years?

a

Some answers just above

2

Then you swear that you cannot
tell whether you heard of this suit
one, two or three years ago

a

It has been within the three years I
don't remember

2

When did Mr John Whitehead die?

a

I think it was in 1891

2

2

Was you his physician?

a

No at the time of his death

1
2 From whom did you hear of this suit?
Q I don't remember the first one I heard
speak of it.

2 When did you first learn that
you would be wanted as witness?

Q Since last May Term 1894 of circuit
court.

2 Who told you?

Q Mr Ogden.

2 How did he know you knew anything
about it?

Q He telegraphed to me and wrote to me
asking if I knew anything about it.
2 What was your reply?

Q Just what I've told in the depo-
sition about this exchanging places.

2 Had you never spoken about that
before?

Q No no one except I think when
they were talking about exchang-
ing places.

2 Can you come anywhere near the
date when the talk about ex-
changing places took place?

Q I think it was in 1888.

2 In what part of N.C. do you live?

a In Northampton Co N.C. about 21 miles
from The Whitehead's residence, an adjoining
county to Southampton Co Va

and further this deponent doeth not
J. W. Denny

The witness R. N. Musgrave being first
duly sworn deposes and says as follows

2 Where do you reside. what is your age
& occupation and do you know
the parties to this suit

a I reside in Portsmouth Va, am in
the lumber business, & know the
parties to this suit & am 32 years
old and have been examined before in this suit
2 as a witness. am no relation to the
parties to this suit

2 Do you know anything about an
agreement between John Whitehead
and Anna F. Whitehead about a
sale of her land and a sale
of his land and if so state it

a I didn't hear her say anything

about the agreement. he told me that he was in debt and that he had tried to pay out and couldn't and he was going to sell his farm up there which would pay him out of debt and give her his place. Mrs Whitehead was not present at this conversation, but she was present afterwards when ^{about} some conversation took place and my house when the deed was fixed up I sneaked the deed from John Whitehead & wife for her land to my wife and my father then remarked to John Whitehead that he ought to make a deed for his place that it was due her as he was going to use this money to pay off his own indebtedness. he agreed that he would do that. in fact had stated several times before that he would do that

2

So whom did you pay the money ~~and~~ for the sale of this tract of land and how much was it?

a

The whole amount was \$2500-

a portion of about \$1900. or \$2000-
was paid by my father's check
on Norfolk National Bank pay-
able to the order of John Whitehead
The balance was paid by a
bond which he agreed to
take as cash and which he
afterwards collected

2

Do you know whether J. B. James
knew anything of this transaction
and whether he received any of
this money on account of a
debt due him by John Whitehead

a

He come to me here one Court-
day and asked me when I was
going to settle with John White-
head for Anna's place. That
the reason he asked was that
John owed him and had prom-
ised to pay him as soon as I
settled with him. I don't know
whether James got any of the money
he come to me a second time here
Court-day and asked me about the
same and I told him I had not
yet settled with John Whitehead

on notes

2

a Receipt filed with the answer of Anna
J. Whitehead dated June 18 1889
signed by J. B. James this is for a note
received of John Whitehead endorsed
by Musgrove & wife for \$745 ⁸⁷. Tell
what you know about that note

a

I know what the answer paid in ~~advance~~
to note as part of the purchase
money and that he hesitated some
time before he would take the
note. The note was endorsed by
J. S. Musgrove and his wife and
was for about the amount stated
in that receipt and he took the note
to one of his creditors before the
deed was made to see if he would
accept it and he come up with
the deed that day and said
the party had agreed to accept
the note. I had overlooked that
fact until just now I recalled
the fact that ~~he had agreed~~
~~with an creditor to pay him the~~
~~note~~ J. B. James had agreed to
accept the note so so much
cash. John Whitehead come to my
bothers some time before the deed

was made and got the note, Dow
Jones & he agreed to take it. Then
the deed was made as above said

2

and further this deponent saith not
R. N. Musgrave.

Virginia.

Southampton County. To-wit:

I E. M. Lawrence a Justice of the Peace for the county and State aforesaid do hereby certify that the foregoing depositions of S. B. Drewry and others were duly taken sworn to and subscribed before me at the time and place and for the purpose therein mentioned.

Given under my hand
this 19th day of July 1894.

E. M. Lawrence J. P.

Justice fee for Six Hours }
Service \$4.50⁺ }

Squire Scufie

to. } Notice.

James Adams

1894. July. 19

To Mr. William Shiff and corner J. B. James and

You are hereby notified that on the 19th day of July, in the year 1897, at the office of I. B. Paine ~~B. F. McLEMORE~~, in the village of Courtland, Southampton county, Va., between the hours of 6 A. M. and 6 P. M. of that day, ~~we~~ shall proceed to take the depositions of V. J. Downey and others

----- and others, to be read as evidence in ~~my~~ ^{our} behalf in a certain Suit in Equity depending in the Circuit Court for Southampton county, wherein ~~I am~~ ^{we are} defendant and you are plffs; and if, from any cause, the taking of the said depositions be not commenced, or, if commenced, be not concluded on that day, the taking thereof will be adjourned from day to day, at the same place and between the same hours, until the same shall be completed.

Your obedient servant,^s

Peter Squire and
Anna F. Squire
by Counsel.

Service acknowledged

Robert T. Munis.

for Margaret E. Whitehead

McLennan & Holland for complainants.

Received Dec 31st / 890

Seven & ⁸⁸/₁₀₀ Dollars
on within note balance
due on Lumber

J. B. James Mgr

Albany

To the B. F. McLeure & Co.

390
2340
11700
390
507

Exhibit "C"

\$ 396 ³⁶/₁₀₀

On January 1st 1891 I promise to pay unto

J. B. James & Co his Heirs, Executors, Administrators or Assigns,
the just and full sum of Three hundred & ninety six DOLLARS and 36 CENTS.

current money of the United States, for value received, with interest from date; for the payment of
which, I bind my self, Heirs, Executors and Administrators firmly by these presents;
and hereby waive the benefit of my Homestead Exemption as to this debt, obligation or contract.

As witness my hand and seal this first day of June, in the
year of our Lord one thousand eight hundred and ninety.

Geo Whitehead [SEAL.]

WITNESS.....

..... [SEAL.]

A. Carey Teste B. F. McLenore C. C.

Whitehead no

Lo { Day 1318

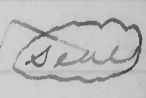
Whitehead A2

copy

Exhibit "B"

This Deed made the 3rd day of September 1889, between John Whitehead of the one part and Anna F Whitehead of the other part, Witnesseth, that in consideration of the sum of Two thousand five hundred dollars the receipt of which is hereby acknowledged the said John Whitehead doth grant unto the said Anna F Whitehead all of a certain tract of land viz: That part of the Whitehead tract given him by his father said to contain seven hundred and seven acres more or less and bounded as follows, commencing at the County road at an ash tree not far from his dwelling house & running South it is bounded on the East from that line by the land of Katie B Sevell to an ash gate post, thence West through the low grounds it is bounded by the lands of Mrs Caroline R. Pope, thence North until it strikes a stream called Pawells Branch, thence up Pawells Branch to the County road bridge over said stream thence East along the County road to the Jackson field, then leaving the County road to the North again to the lands of J. J. Woodard then South by East to the said County

road by the land of Mrs. V.O. Beaton to
the place of commencement.

With me the following signatures & seals
Jno. Whitehead 

State of Virginia

Southampton County To wit:

I George E. Beaton a Justice of the peace
in and for the County aforesaid State of
Virginia do certify that John Whitehead
whose name is signed to the within
instrument of writing bearing date Sept
3rd 1889 has acknowledged the same
before me in my County aforesaid.

Given under my hand this the 3rd day
of Sept 1889.

George E. Beaton J.P.

Southampton County - In the Clerk's
Office September 5-1889.

The foregoing Deed bargain & sale from Jno
Whitehead to Anna F. Whitehead was
this day received and with the certificate
annexed admitted to record.

Teste B. F. McLenore C. C.

Copy

Teste J. M. Howard S. C.
" "

Whitehead

To { Box Sale

Whitehead

acufy

Exhibit "G"

Know all men by these presents that I
John Whitehead of the County of South -
ampton State of Virginia for and in
consideration of the sum of Eight hundred
and fifty dollars good and lawful money
to me in hand well and truly paid at
and before the sealing and delivery hereof
by Anna F. Whitehead the receipt where-
of is hereby acknowledged have granted
conveyed sold assigned transferred and
set over and by these presents do fully
and absolutely grant convey sell
assign transfer and set over unto the
said Anna F. Whitehead, seven miles
cows four steers five calves. Three
yearlings, 2 Bulls 9 sows sixteen pigs
eight shoats one black mule, one
maize colored mule one bay mule one
brown mare four plows & gear to each
one, Wagon two horse carts two log
carts one buggy car, one ten horse
power engine, one saw mill complete
one gin one cotton press one corn
mill thirteen sheep one buggy & harness
one road cart one farm bell one
harrow one corn sheller. To have and
to hold the said property above named
for her own proper use and benefit as
her own property goods and chattels

from hence forth forever - And I the said
John Whitehead at the time of the sealing
and delivery hereof have in myself
good right full power, to sell the
above named property.

Witness the following signatures and seals
this 2nd day of April 1890.

John Whitehead Seal

Southampton County to wit:

I George E. Beaton a Justice of the Peace
in and for the County aforesaid State of
Virginia do certify that John Whitehead
whose name is signed to the within
instrument of writing bearing date
April 2-1890. have acknowledged the
same before me in my County aforesaid.
Given under my hand this 2nd day of
April 1890.

George E. Beaton J.P.

Southampton County - In the Clerk's
Office April 3-1890.

The foregoing Bill of Sale from John
Whitehead to A. F. Whitehead was this day
received and with certificate annexed
admitted to record.

Teste B. F. McLenore Clk

A Copy

Teste J. M. Hawart W.C.

Received Feby 11th 1887 of Whands
Special Commr in the chancery case of
Peebles re against Drewry re one hundred
and eighty one $\frac{38}{100}$ dollars as part
payment of the amount coming to me
from the sale of my brother Joseph
Drewry's land

Witness Anna F. Whitehead
Mrs H. R. Sebell }

a copy

Teste: B. F. McLemore c.c.

Received March 5th 1888 of Whands
Special Commr in the chancery suit
of Peebles re against Drewry re the
sum of \$427. $\frac{25}{100}$ as payment in full
of the amount due me from the
sale of my brother Joseph Drewry's
land

Witness } Anna F. Whitehead
 }

a copy

Teste: B. F. McLemore c.c.

\$139. $\frac{33}{100}$

Rec'd Oct 25th 1886 of B. F. McLemore
spect commissioner in the chancery suit
of Drewry others vs Drewry's Exrs one
hundred and thirty nine & $\frac{33}{100}$ dollars
as my distributive share from the sale

of Bettie M. Davenport's land

Anna F. Whitehead

a copy

Taste: B. F. McLenore 66

Exhibit no I

This Deed made this 30th day of June
eighteen hundred and eighty nine, between
John Whitehead and his wife Anna F.
Whitehead of the first part and Hattie S.
Mugravel of the second part, Witnesseth:
That the party of the first part, in con-
sideration of the sum of Twenty five hundred
dollars, the receipt of which is hereby ac-
knowledge, have sold and hereby do grant
and convey with general warranty, all their
interest in the lands of the late James
Dreury, consisting of that portion bequeathed
Anna F. Dreury, by her father, and also that
portion of land likewise bequeathed Bettie
M. Dreury and which was bought of the
surviving heirs of said Bettie M. Dreury,
the whole containing 87 1/2 acres, to be
the same more or less and bounded by
the lands of F. P. Pope, R. J. Leobk Jas D.
Westbrook, W. H. Dreury and the public
road leading to Dreuryville.
Witness the following signatures
and seals.

John Whitehead (seal)
Anna F. Whitehead (seal)

(Over)

State of Virginia

Southampton County to wit:

Personally appeared before me
W. H. Drury a Justice of the County
aforesaid, John Whitehead & Anna F.
Whitehead whose names are signed the
within writing bearing date June 20th 1889
& acknowledged the same in the County
aforesaid.

Given under my hand this the 20th day
of June 1889

W. H. Drury J. P.

Southampton County - In the Clerk's
Office June 25-1889

The foregoing Deed from John & Anna F.
Whitehead to Hattie J. Muggard was
this day received, and with the certificate
annexed admitted to record.

Teste B. F. McLenore C. C.

Attest

Teste J. M. Howard D. C.

Exhibit No 2

James for &c.
v. $\frac{3}{4}$ Bill sale

Whitehead et al

H.Q. Duncan to
A.P. James.

NO. 90 WATER STREET AND 41 COMMERCE STREET.

111 600

Norfolk, Va., July 8th 1889

In consideration of the sum
of Four hundred dollars, receipt
of which is hereby acknowledged,
I have this day sold to Mrs
A. P. James of Branchville Va
all book aces, all open aces,
notes, Bonds, Montages, Merchandise,
of J. B. James & Co & all book aces
notes Bonds Montages & Merchandise
of W. Dorman Foster for James & Co

W. Dorman Foster
for J. B. James & Co

①②

OVER

Virginia }
Corporation of the City of Norfolk }

I, J. P. Moore, a Notary Public for the city aforesaid in the State of Virginia, do Certify that H. L. Loman, whose name is signed to the writing above bearing date the 8th day of February 1842, has acknowledged the same before me, in my city aforesaid.

Given under my hand this 14th day of
December A.D. 1894.

A. Moore
Notary Public

1774
C. 1. 2
per defunctum

Exhibit No 4

June 8th 1889

Received of John Whitehead

Note Endorsed By Dollars

Mrs J. A. & wife for

Seven hundred and fifty five 87

to his cr. J. J. Adams & Co



\$ 745 ⁸⁷/₁₀₀

Erg hebt
(K)

Over demand I over and promised
to pay to C. M. Jager, the just and
full sum of two hundred &
thirteen dollars, for value received.
I do here by waive the benefit of
my homestead exemption as
to this debt.

Jno Whitehead
Anna F. Whitehead

June 25- 1889.

(8)

June 2nd 1889

Received of John Whitehead

Eleven hundred Dollars
to be in note



\$1100
26 June

R. H. Lyman
Cash

1

this day

This is to Certify that I have
appointed my husband
John Whitehead my Agent
to Conduct and Carry on
the Saw Mill & Lumber business
and all the farming
Operations, on the farm
where I now reside.

Given under my hand
this 3rd day of April
1890.

Anna F. Whitehead,

Southampton Co to wit:

I George E
Beaton a Justice of the Peace
in and for the County aforesaid
State of Virginia, do Certify

that Anna F. Whitehead,
whose name, is signed to the
within instrument of writing
bearing date, April 1890
have acknowledged the same
before me in my County
aforesaid. Given under
my hand this 3rd day
of April 1890.

Geo E Beaton
L. P.

(E.C.)

James for &c

75

(1) Whitehead et al.

Last acct. of F. I. Dewey given of Anna

F. Dewey -

(2) Deed of trust from Anna F. Whitehead &c to J. C. Jones
 trustee to secure Richard W. Jayner for \$621⁰⁰
 Deed Trust from Jno Whitehead for being paid same

(3) Deed of B & S from Anna F. Whitehead to ~~Richard S~~ ^{Katherine S}
 Musgrave - dated June 30th 1889.

It is agreed that the Clerk may file ^{copies of} the
 above records in this Court to be read as
 evidence for plaintiffs

~~Shand~~
 William R. Hollenbeck,
 Shand Donfed.

Anna F Drewry a Minor

1881		In acf with V.P. Drewry acting Guardian			
Jan	1	To bal. due acting Guardian as per last acf.	107	44	
Oct	1	" cash paid ward	15	00	
		" " " "	8	30	
		" amo. paid for shoes	2	00	
Nov.	14	By rent received from Bob Jackson			7 00
		To Com ^r on \$7. 5%	35		
1882					
Apr	1	By amo. received from T.D. Drewry Ex ^r of Jas Drewry decd on acf of Special legacy			142 72
		To Com ^r on \$142.72 5%	7	13	
		" Com ^r 's fee for this acf & copy retained	2	50	
		" Clerk's fee " recording this acf "	1	25	
		Balance		2 75	
1882			149.72	149.72	
Apr.	1	By bal. due ward brok. down			5 75

Respectfully Submitted

W. J. Sebrall

Com^r in Chancery

Received Apr. 1st 1882 of V.P. Drewry my Guardian Five & 75/100 dollars in full satisfaction of all dues to me from said V.P. Drewry as Guardian^{2d} also as Ex^r of the Est. of James. Drewry deceased

Anna F Drewry

The Commissioner would state specially that since the last a/c the ward has arrived at the age of twenty one years, and as will be seen from the subjoined receipt the Guardian has paid her in full the amo: due as per above a/c

Respectfully Submitted

W. J. Sibrell

Comr in Chancery

Southampton County: In the Clerk's Office on the 17th day of December 1884.

This account of V. J. Drewry as Guardian for Anna F. Drewry with receipt thereto annexed was this day returned and filed for exceptions and at a Court held on the 21st day of Jan'y 1884, said account having lain one month and upward in the Clerk's Office and no exceptions being filed thereto, it was examined confirmed and ordered to be recorded.

Teste J. B. Prince C. C.

A Copy:

Teste:

W

her note for

Received of Mrs Anna H. Whitehead
Four hundred and ~~fourteen~~³⁹₁₀₀ dollars, in
full of all accounts and
demands, of John Whitehead
up to date.

Peter V. Myrick

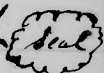
April 3rd 1890.

See paper (receipt) under
this marked

X

414. $\frac{39}{100}$

X

On demand, I owe and promise
to pay to Peter & Myself or order
the Sum Four Hundred and ~~four~~ ^{thirty} $\frac{39}{100}$
dollars, for value received, and I
hereby waive my homestead Exemption
as to this obligation, Given
under my hand ^{and seal} this 3rd ~~rd~~
day of April 1890.
Anna F. Hitchcock 

Test—
Geo E Beaton



= See on other side the
receipt

Paid
Peter Myrick

Wm. H. H. H.
1745

This Deed made this 25th day of October 1886, be-
tween Anna F. Whitehead of the County of Southampton,
State of Virginia, of the one part, ^{and} Joshua C. James
Trustee, of the said County and State of the other
part, Witnesseth: That the said Anna F. Whitehead
doth grant unto the said Joshua C. James
Trustee, the following property, to wit: One tract
of land, containing two hundred ^{and} forty six acres,
more or less, and bounded and described as fol-
lows: On the North by the lands of F. F. Pope ^{2nd}
County road, on the South by the lands of R.
J. Cobb on the East by the lands of B. F. Fox &
F. F. Pope - and on the West by the lands of the
said Anna F. Whitehead. In trust to secure to
Richard W. Joyner of the said County and
State also, of a certain bond executed by the
said Anna F. Whitehead, bearing date on the
25th day of October 1886, and being for the pay-
ment of six hundred and twenty one dollars,
due on the 25th day of October 1887. And it is
covenanted and agreed between the parties afore-
said, that in case of a sale, the same shall
be made after first advertising the time and
place ^{and} terms thereof for sixty days, in said Coun-
ty, and upon the following terms, to wit: for cash
as to so much of the proceeds as may be necessary
to defray the expenses of executing this trust, and
to discharge the amount of money, Principal ^{and}

interest, then payable upon the said bond. And if there be any residue of said purchase money, the same shall be paid over to the said Anna F. Whitehead. The said Anna F. Whitehead covenants to pay all taxes upon the said property conveyed, so long as she shall hold the same.

Witness the following signatures.

Anna F. Whitehead (seal)
J. L. James (seal)

State of Virginia,

Southampton County; to wit:

I, George E. Beaton, a Justice of the Peace for the County aforesaid, in the State of Virginia, do certify that Anna F. Whitehead & Joshua L. James, Trustees whose names are signed to the writing above, bearing date on the 25th day of October 1886, have acknowledged the same before me in my County aforesaid.

George E. Beaton J.P.

Southampton County: In the Clerk's Office Nov. 6th 1886
The foregoing Deed of Trust from Anna F. Whitehead to R. H. Jones's Trustees, was this day received and with the certificate annexed admitted to record

Teste: J. B. Prince C. C.

A Copy:

Teste:

B. F. McLeod C. C.

This Deed made this 6th day of April 1885. between
John Whitehead of the first part, and J. B. James
Trustee, of the second part, and R. W. Joyner of
the third part, all of Southampton County, State of
Virginia. Witnesseth: That the said John White-
head of the first part, doth grant unto the said
J. B. James (Trustee) of the second part the homestead
of the late John Whitehead Sr. dec'd containing
707 seven hundred and seven acres be the same
more, or less, bounded by the lands of Wm D.
Sebrall & wife, B. E. Pope's Est J. J. Woodard & others.
In Trust however, to secure to the said R. W. Joyner
the party of the third part, the the payment of
seven hundred Dollars as specified in a certain
note bearing even date with this deed of trust and
payable eighteen months after date,
As witness my hand and seal this 6th day of April
AD 1885.

John Whitehead 

Va.

Southampton County, to wit:

I, W. R. Hark, a Justice of the County afore-
said, do certify that John Whitehead whose
name is signed to the within writing, bearing
date April 6th 1885 and signed & acknowledged
the same in my presence, in my County aforesaid.
As witness my hand this 6th day of April 1885

W. R. Hark J.P.

Southampton County: In the Clerk's Office April 20th
1882.

This Deed was this day presented in said
office and with the certificate annexed admitted
to record.

Teste: J. B. Prince. C. C.

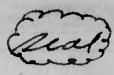
A copy,

Teste: B. F. McLeone C. C.

Page 361

B-8486

This Deed made this 20th day of June, eighteen hundred and eighty nine, between John Whitehead and his wife Anna F. Whitehead of the first part, and Hattie S. Murgrave of the second part. Witnesseth: that the party of the first part, in consideration of the sum of Twenty-five hundred dollars, the receipt of which is hereby acknowledge, have sold, and hereby do grant and convey with general warranty, all their interests in the lands of the late James Drewry, consisting of that portion bequeathed Anna F. Drewry by her father, and also that portion of land likewise bequeathed Bettie M. Drewry, and which was bought of the surviving heirs of said Bettie M. Drewry, the whole containing 871 acres, to be the same more or less, and bounded by the lands of A. P. Pope, R. F. Cobb, Jas. D. Westbrook, W. H. Drewry and the public road leading to Drewryville. Witness the following signatures and seals.

John Whitehead 
Anna F. Whitehead 

State of Virginia;

Southampton County: to wit:

Personally appeared before me W. H. Drewry a Justice of the County aforesaid, John Whitehead and Anna F. Whitehead, whose names are signed

the within writing bearing date June 20th 1889 &
acknowledged the same in the County aforesaid
Given under my hand this the 20th day of
June 1889.

W. A. Drury J. P.

Southampton County: In the Clerk's Office June, 20th 1889
The foregoing Deed from Jno & Anna F Whitehead to
Hattie S. Murgrave was this day received and
with the certificate annexed admitted to record.

Teste:

B. F. McLenore C. C. &
Asphy - Teste: B. F. McLenore C. C.

440 9594

POSTAL CARD - ONE CENT.

United States ^{OF} America.

THIS SIDE IS FOR THE ADDRESS ONLY.



Mr. J. L. McLenore,
Camptland,
Va

Dear Jim:

Yours to hand enclosing check
as stated. Thanks. I don't
suppose that there is the
slightest possibility of ever
getting anything else of this
claim, is there? Whitehead's
Est. was worth nothing, was
it?

Yours truly,
Franklin A. J. O. Parker
4/5/96

SUFFOLK, VA.,

April 24, 1896.

James L. McLenore Esq.,
Courtland, Va.,

Dear Sir:—

I acknowledge receipt
of your favor of April 22nd.
inclosing check for \$350. in
settlement of the amount due
to Miss Margaret E. Whitehead,
under the compromise made
in the chancery case of
James v. Whitehead, for
which accept my thanks.

Very truly yours,
Robert R. Prentis.

171.
James for ye.
Stat: Rules
Whithead ye.

1 mch

J. L. James. late merchant, trading
and doing business under the
firm name and style of J. L. James
& Co. who sues for the benefit of
St. G. Donnan. his Trustee.

Self

against
John Whitehead and Anna. F.
Whitehead.

Defts.

1891. Feb. 9. Process ip^d to 1st Mich Rules.

" 1st Mich Rules: Process Executed. Bill & Ex:
filed. decree nisi.

" 2^d " " Bill taken for Confession
and Cause set for hear-
ing.

Jan 21 for H.
" 23 Stat. Coets.
Whithead

Sum: 20-20-28-18-100-35-15-15-1.00-15-15-
 15-15-15-15-15-15- Salary / Copier 3.60-40-20-

Exc: 1125

Sandhampton	Leik	10.21	paid B.7.m.
Greenville	"	2.12	paid. sum up
Shipp		1.00	
Lat. J.		16.50	paid f.m.
Comm. B.7.m.		7.50	paid B.7.m.
" G.W. Lawrence		4.50	

1.500
 2.50

41.83

402. / 4.50

1771

Jan 10

3 Shut of Cuts

Whitman Ave

J. de Jans & Co

No 3 Station of Cuts
in Greenock Cii: 45

John Whitehead & Co

Clk.

£2.12

Tact

E. L. Turner Clk

1896 April 21. Paid the above
of J. de Jans & Co. all year
long.

E. L. Turner Clk

J. C. James & Co

vs 3

Whitehead & Wife

Note of Shanderson
for the defendants

Oct. 9, 1893

Brecher & McKim Jr

84 92 -

James for re

vs 3

Whitehead & wife

Plaintiff of defendants

Comme

On the 3rd of September 1889 John Whitehead sold and delivered to his wife, Anna F. Whitehead a farm lying in Southampton County for the sum of \$2500 and on the 2nd of April 1890 he sold and delivered to her a lot of cows, hogs, mules and one horse for the sum of \$850. The two deeds were admitted to record soon after they were executed. Mrs Anna F. Whitehead took possession of this real and personal ^{estate} which she bought and by a public notice notified to by a justice of the Peace (paper filed marked L) appointed her husband her agent. On the 10th of April 1891 Joshua James filed his bill against Whitehead and wife setting forth a debt due him before the making of these deeds, asking the court to set them aside on the ground of fraud, that they were made for the purpose of settling without any consideration whatever and a fraud on the rights of creditors whose debts were due before the deeds were made.

See Deposition of
J. E. Peck

Page 1

The defendants both answer and both deny all fraud, the husband

ansured deposing all France saying his wife paid him full value for the property sold, that he placed her in possession of the property sold and that the money he received was applied to the payment of his debts, that he had for a long time been an invalid and was then dependant on her for his comfort and support and soon after died

The wife Anne T. Whitehead answered saying she paid full value for the property purchased of her husband and that she has the means of paying, that she sold her maiden lands for the sum of \$2500 to Mrs Ruben Musgrave for money that she had received from Commissioners Shanks and McLunon \$747.96 and that ^{at} divers times both before and after marriage she had received both before and after marriage she

had received rents amounting to the sum of \$1833⁰⁰ and she proves these facts by the testimony of witnesses whose depositions are filed in the cause

So it appears from the testimony in the cause independent of her answer Mr Whitehead and of that of her husband John Whitehead - that her money arising from all sources the sum of \$4200⁷⁶ and that she paid John Whitehead

+ See Deposition of R. N. Musgrave and receipts filed

See Depositions of S. B. Drewry, Richard Ellis, J. H. Smith

page 2

for the real and personal estate purchased of him the sum of \$3350 leaving him still the sum of ~~\$850~~ ⁹⁶.

The learned counsel for the plaintiffs have made this sale made by the husband to the wife as a settlement by the husband on the wife which is not the fact in this case it was an absolute sale for value.

The general principle of law in cases where a suit is instituted to set aside a deed on the ground ^{of fraud} the party alleging fraud must prove it but in cases like this where a creditor attacks a deed made by a husband to his wife on the ground of fraud she must show affirmatively that the deed was a bona fide one.

In the case of Yates vs Law 84 Virginia 120 the court of appeals cited with approbation the case of Seitz vs Mitchell 94 U. S. "that in case of the purchase by the wife of property from the husband after marriage the burden of proof is on her to prove distinctly that she paid for the property with funds not furnished by the husband, that there is such a community of interest between the husband and wife that these deeds are frequently recited to

for the purpose of withdrawing his property from the reach of his creditors and procuring it for his own use and hold forth such temptations to fraud that they require close scrutiny and there is a presumption against her which she must overcome by proofs

First did Anna F. Whitbread the wife pay to her husband the value of this real and personal estate. There is no question by the plaintiff that she paid full value for the personal estate viz the sum of \$8.50

Now about the value of the land she bought the plaintiff introduced four witnesses, Ellis, Vick, Smith and Grizzard three of them thought the land worth \$4000 one four or five thousand dollars

Some witnesses were introduced by Mrs Whitbread viz of them valued the land at \$2000 and ~~one~~ of them \$2500 so seven out of the eleven witnesses introduced said she paid full value and viz said she paid \$500 too much Mr Jefferson Woodard one of the county supervisors and a large land holder in the neighborhood and one of the commissioners who divided the lands among Whitbread

page 4

See Depositions of
J. J. Woodard
J. E. Peete
S. B. Drury
J. W. Smith
Richard Ellis
B. R. Boyard

Goodwin who know the land well

have been all over it. Day only 60 acres of Grable land, residue low grounds & marshes without timber & rendered worthless by being constantly overflowed. So she gave \$2500 for this land subject to her owers held therein. but was

4
not pay full value for the land
she did pay
for a moment
Do no one come
husband is now dead.

himself since ^{the} land was worth \$2000 his testimony is entitled to more weight than any of the witnesses examined on that point

Now did she pay her husband this money Robert Musgrave paid John Whitehead for her the sum \$2300, she paid Peter & Myrick for her husband \$414.39^{cts}, she paid Joshua James for husband \$74.68^{cts} she paid R. W. Poyner \$213 in all \$3870.25^{cts}

So it is shown from all the testimony in this cause, that Anna F. Whitehead bought the property in controversy from her husband at a fair valuation and that she paid him the full price agreed on.

This was settlement made ^{by} the husband on the wife in consideration of her relinquishing any right in his estate, nor is it any settlement made by the husband on the wife out of his own estate for her maintenance and support but it is an absolute sale made by the husband to his wife for value received she paying down to him at the time she made the deeds the value of ^{same} property and taking possession of the same. The only difference being this, that when the creditor attacks the deed on the ground of fraud

* was debt made by others than husband and wife

page 5.
#

5

The wife must prove she has paid the purchase money. In other words the courts on the grounds of public policy sometimes with more severity all transactions between husband and wife than others.

There are many great and radical changes in the law in the last twenty years of the rights of the husband in the property of the wife as the law sometime was the husband by marriage acquired all the personal estate of the wife which she had in possession and he could reduce such as she did not have in her possession upon his making a proper settlement but that is now all changed the changes commenced in 1874 to 1875 - By chapter 319 of the acts of 1874 to 75 - The wife's property was not liable for the husband's debts before marriage nor was he liable for her debts. This act was amended by Chapter 518 of the acts of 1875 to 76 by which act the property acquired by the wife after marriage was exempt from the husband's debts.

The acts of 1876 to 77 chapter 329 gave all her property to her free from her husband's control to continue her sole and absolute property with power to

with ~~for~~ ~~contract~~ in relation ~~thinks~~ as if she were a free sole her husband being required to join her in order to relinquish his right to custody and if the husband refused she could by bill in chancery compel him to unite with her in the sale of her separate estate if the court should be of the opinion the interests of the married woman would be promoted thereby and now by Chapter 245 acts of 1877 & 78 the husband has nothing but custody in his wife's estate if he survives her and then was living issue born.

It does not matter what may be our opinions as to the wisdom of these great changes of the law husband and wife all we can say is "*Ita Lex scripta est*" and whatever we may say or think about it the fact now stands out in bold relief that the husband and wife are no longer one that a woman by marriage ^{is} not merged in her husband but that marriage is a partnership dissolved by the death of either.

Is not the thing which the learned counsel on the other side propose to do monstrous, leave married women by the laws of Virginia no rights, are you to take the property which a married ^{woman} has acquired by the sale of her own estate and apply it

8

to the payment of the debts of an insolvent
husband, could not John Whitehead sell this
land to his wife, is there any law to
forbid it, could not Anna F. Whitehead
sell her lands her husband joining in
the deed to relinquish ~~her~~ and
apply this money to purchase other lands;
is there any law to forbid ^{it} could she
not purchase her husband's land at a
fair price, and pay him the money for
it, is there any law to forbid it, none
whatsoever, All the law requires in
transactions between husband and wife
where the rights of creditors are
concerned is that the transaction should be
fair and above board that she should
pay a fair price as any ^{one} else should do
and after the husband received the money
she should not be compelled to see to
the application of it, We notice further that the
firm of J. C. James & Co have filed a petition
to make parties plaintiffs and to pay the
sum of \$374.38⁰⁰ all we have to say about
this claim is that there is not one particle
of proof filed in the papers to show that
John Whitehead owes this debt to or
the claim of Barnes and Larue for
\$34.96⁰⁰ there is no proof whatever of any such
indebtedness on the part of Whitehead

Shames to Love for
defendants

James Loope
v. B. Brief
Whitehead of.

Fragment of
Stiff. Pencil

Mich 16. 1845

Brief of Plaintiffs Counsel.

James for &c.

vs. J. F. Chauncy.
Whitehead & al.

This is a suit brought under sections 2408-9. Code of Va. 1887 for the purpose of declaring a deed made from Jno. Whitehead to his wife Anna F. Whitehead on Sept. 3. 1889; and also a bill of Sale from said Whitehead to his wife executed on April 2nd 1890. null void and of no effect^{as} against his creditors, because as the plaintiffs aver and believe the said conveyances were made without consideration and with intent to hinder delay and defraud the creditors of said Jno. Whitehead.

We lay down the following as general principles and well established rules of law governing this class of cases:

1st.

Every post nuptial settlement, when the settler is indebted, is, as against his creditors, fraudulent and void. and every such settlement is presumed to be voluntary and the burden of repelling this presumption is upon those claiming under them.

2nd.

If a bill charges that such deeds are voluntary, and the defendants in their answer deny the charge, such answers are not evidence, nor does it shift the burden

of proof, but a valuable consideration moving from the wife must be proved.

84 Va. 810. 75 Va. 663

3rd

When a husband uses his wife's money either to purchase land, or to hold use and trade in business with it, and to contract debts upon the faith of his supposed title to the property. the presumption is that it is his, and the wife cannot in after years say it is hers to the exclusion and prejudice of creditors, 84 Va. 813. + cases cited.

6502 209
Hunt. vs. Crump 94 Va. 27

4th The proof required to set aside a deed as fraudulent must be sufficient to satisfy the conscience of the Chancellor. but it may be and generally is, circumstantial. 80 Va. 307. - 83 Va. 227. + 84 Va. 726.

That Geo. Whitehead was indebted to your complainants at the time of and for a long time before the making of these several conveyances to his wife - is abundantly proved by the evidence of A. P. Grizzard, and in fact is not denied by the defendants; that he was also indebted to sundry other parties in various amounts, seems also admitted - some of whom have filed petitions in this cause. We therefore take it as settled that

both of said conveyances from Geo. Whitehead to his wife; are presumed to be voluntary and the burden of proving the contrary ~~disolves~~ upon the defendants 80 Va. 810. 75 Va. 663

Now in order to sustain the supposed conveyances the defendants must prove by affirmative evidence independent of the answers, (for they are not evidence and can prove nothing 75 Va. 663) that the consideration as alleged in the deeds actually passed from the grantee Mrs. Whitehead to her husband at the time of the conveyance, or that at the time he received her money arising from the sale of her land there was an agreement entered into between them that he should convey to her the property in question or some property in consideration of the said money and such agreement if relating to land must be in writing. Perry vs. Ruby 81 Va. 317 - 30 Gratt. 744 + 84 Va. 813 The evidence in this case fails most signally to establish any such agreement - we fail to find in the evidence in the case one syllable of proof that Mrs. Whitehead ever paid her husband one dollar for the property conveyed to her either real or personal by her husband. The most that has been proved is that Mrs. Whitehead since her marriage has had some money at the most about \$31.00. out of which she paid off a deed of

Trust on her own land amounting to about \$700-
and sundry store bills amounting to something like
\$1000. in the absence of proof on this point
the law presumes the conveyance voluntary
and inferior to the rights of the creditors also.
to the evidence on this point your Honor's atten-
tion is especially directed.

The only evidence touching the payment
to Mr. Whitehead of money belonging to his wife
as set up by the defense is \$600. paid to Geo.
Whitehead by Wm. Shand Sp. Commissioner, part
paid Febry 10. 1887. & the residue March 5th 1888.
which, "It was my understanding" says Mr.
Shand. "was to be paid on his Whitehead's debts."
but what he did with it I do not know. Is this
sufficient to support a deed made 18 months after-
wards, with no proof whatever of a contract
having been made at the time the money was
paid to him, what he would, in consideration there-
of, settle his property or some part thereof upon
her? We would answer this question by
quoting from case of Beecher & al. vs. Wilson
Burns & Co. 84 Va. 816. in which Judge Fawcett
says, in a similar case, says: "Proof of such a
contract must be distinct full and conclusive to
support the settlement and there is not even
a claim or assertion any where in the record
that the alleged contract is in writing." Where

is the proof of any such contract in this case. either oral or in writing? He says further, referring to oral contracts:-----"But it cannot be construed into a binding contract in regard to land without an utter disregard of the letter & the policy of the Statute of Frauds"

Of the \$2500. mentioned by Mrs Whithead in her answer as a part of the money with which she made the several purchases from her husband, the evidence shows that between \$600. & \$700 of this amount was used to pay off a deed of Trust on her maiden land due to R. W. Joynes. making her receive only about \$1800. from Hattie S. Musgrave. as available funds from the sale of her land. And I would beg your Honor observe that this \$700 was borrowed by Mrs Whithead to enable her to purchase a part of the tract of land which she afterwards sold to Mrs Hattie S. Musgrave and had no connection with the property of her husband in any way. Now supposing that Mrs Whithead did not spend for any purpose whatever the money paid to her at different times by Shaver Comm. (which is certainly not probable) and that she employed no part of the \$1800. remaining from the sale of her land, and adding these amounts we have \$2408. to buy personally & real estate for which he acknowledges receipt

of \$3350. Where did the remaining \$950. come from?

But Mr Shaud tells you that the \$608. was paid to Mrs. Whitehead, a part in 1887 & the balance March 5th 1888. and that it was his (Mr. Shaud) understanding the money was to go to pay Mr. Whitehead's debts. It was paid to Mr. Whitehead & he receipted for it. We take it as sittled that this money in the absence of any proof that it was a loan from wife to husband, was a gift to him, & cannot be set up in Sept. 1889. to prove a valuable consideration. I base this assertion upon the strong emphatic language of Judge Fraughton in the leading case of Beecher v. Wilson Burns & Co. 84 Va. 813. also upon the grounds of public policy, and of common justice to creditors. In this case not even the answer of Mr. or Mrs. Whitehead set up any promise that the money going into the husband's hands should be repaid to her or that she would in any way hold her husband to account for the same as a loan; in the absence of which it would be against every known principle of the law governing this class of cases to sustain a conveyance founded upon such a consideration. How could the most astute and careful creditor protect himself if such conveyances are to be sustained?

7

The records show nothing against the husband. nothing is said of repaying the wife or that the money is borrowed from her; and he is permitted to use it according to the unconfining dictates of his will.

Although the answers of the husband and of the wife cannot be read as evidence for them, in this case, yet we think it well settled that the defendants will not be heard to allege as a consideration for the conveyance, matter entirely different from that set up in their sworn answers.

See Fink Brothers & Co. vs. Denny & Co. 70 Va. 663

As to the money claimed to have been paid to Mrs. Whitehead from year to year before her marriage, for the rent of her farm, thereby intending to show on the part of Mrs. Whitehead the ability to pay the several sums claimed for the property conveyed to her by her husband, suffice it to say that no such accumulated fund was relied on or even referred to in the answer of Mrs. Whitehead or her husband. and very naturally so, for it can hardly be doubted that the funds received by her from year to year for the rent of her farm, was consumed in her maintenance and support. if not, then why should she borrow money to pay for her sisters interest in the real estate purchased by her about the time she was married? Why not use the accumulated surplus

arising from the rent of her farm? The answer is plain she had none. She saved nothing while her property was in the hands of her guardian, and it is certainly not probable that her expenses of living diminished as she grew older.

It would seem from the evidence of R. W. Joyner & J. E. Fette that about the time of the sale to Musgrave of Mrs. Whitehead land, Geo. Whitehead paid sundry bills to parties around Brauchville. which he said was paid out of money arising from sale of his wife's land. which money was used by him in his business to pay off his debts and thereby to increase his credit and to aid him in holding himself out to the world as the possessor of a large estate. (for nothing was ever said about paying her back or that the money was a loan) ^{surely this would} makes the property his own, and a settlement made afterwards upon her with the amounts last above mentioned as a consideration, is as against his creditors voluntary void. Does not this case most strikingly illustrate the principle as enunciated in the often referred to case of Beecher vs. Wilson Burns 84 Va. 813. ? The Court there says. "The presumption is that when a wife's money comes into the hands of her husband & is used by him in his business as his own, & to purchase property, in his own name, and he uses it and trades with

the Drapery so bought & sold in his own name, & contract debts upon the faith & credit of his recorded legal title, it is his own property & she cannot after years have passed claim it as her own & thus enable her husband to consummate a fraud upon his creditors?" and these principles the Court says still hold, notwithstanding the married woman's law of 1877.

There is another circumstance in this case forgnant with suspicions against the bona fides of the conveyance here attacked, which is brought out by the evidence of A. P. Grizzard who says: referring to the note due to James. by Whithead - "The first note was dated Jan'y. 1st 1890 with interest from date & payable January 1. 1891. On June 6th 1890 Mr. Whithead came to the store & told me he preferred having the note dated June 1. 1890, instead of Jan'y. 1. 1890 (which was the date of the first note) I told him that I did not think it necessary to make the change as it would amount to the same, so far as interest was concerned, he replied that he preferred the date of the note should be changed to June 1st 1890 as it would suit him better. in order to satisfy Mr. W. I changed the date, or, in other words I drew a new note and dated it June 1. 1890. bearing interest from date &..." The Court will observe that defendant was informed that it would make

no difference so far as the interest is concerned. that it would not change the note. On the date (Jan'y. 1. 1890) which was before the Bill of sale was executed, was changed to June 1. 1890. after the Bill of sale was executed. it having been made on the 2nd day of April 1890. - What, could have prompted Mr. Whitehead to desire this change in the date of the note from Jan'y. 1. 1890. to June 1st 1890? Why should he be so persistent in his requests for the change after he had been informed that it would make no difference in the interest? There can be but one answer, Mr. Whitehead thought the writings would take precedence according to their dates, and he thought that by the change in the date of the note it would be inferior to the Bill of Sale.

Something has been said as to the value of the land sold Mrs. Whitehead, and while there is considerable contrariety of opinion as to its value, we think the allegation in the bill of complaint, that \$2500. is a grossly inadequate price, has been sustained by a preponderance of testimony, and especially by the evidence of Eck Vick who says that Mr. Whitehead but 2 or 3 weeks before his death offered to sell him the farm for \$5000. This evidence is objected to by defendants Counsel, but we take it is clearly admissible as a most

sentiment and pointed circumstance to show fraud in the conveyances here complained of. We think it also admissible as evidence against his own interest, for certainly if he has an interest it is allowed to receive his declaration against it: and if he has no interest then this evidence is admissible under the rulings of the Court in the case of

1. H. & M. 154.

In conclusion, we are forced to the conviction that there has not been so strong & conclusive a case of this nature passed upon by our Supreme Court: a case in which there has been so complete a failure on the part of the defense to sustain the conveyances sought to be set aside, as in this. Had we not introduced a witness, the Court with the evidence before it for the defense would have been compelled to declare the writings herein attacked fraudulent & void as against his creditors. for I would beg the Court remember that these instruments, are *prima facie* fraudulent & void, the burden of repelling which is on the defendants, who have introduced no evidence to do so. 75 Va. 663; 84 Va. 810
83 Va. 227

Holland & McQuinn p.p.
Robert R. Mentis p.p.

James Knoll.
v. ³ Reply to
Difolto. Brief.

Whitehead vs.

Replication, to defendants brief filed in
the Chancery papers of James Fox &c. vs. White-
head.

- 1st. It is Mrs. Whitehead proved that she pos-
sessed the means to make the purchase from her
husband, at the time, the deeds to her were made?
- 2nd. It is shown that she did actually
pay him the amount set forth in the said deed, as
a consideration for the said conveyance? Unless
she has shown this to the satisfaction of the Court,
the deed must be subordinated to the debt of your
complainant -

It is stated in defendants brief pgs 2 & 3, that
Mrs Whitehead had \$4200⁹⁶, that she paid Jno.
Whitehead for the real & personal estate purchased
from him the sum of \$3350. leaving her still the
sum of \$850⁹⁶. Does the widow in this cause
sustain this statement? Let us see! On May
5th 1891. in her answer to plaintiffs bill, sworn to
before Wm. Standa Comr. in Chancery - filed in the
papers. she says in substance, that she received
from Comr. Standa \$181.³⁸ on Feby. 11. 1887. \$427²⁵
on March 5th 1888, & from Comr. B.F.W. Leamore \$139.³³
acts. 25. 1886. Observe that she says, she received
these several sums all along from 1887. to 1888.
She also mentions having received \$2500. from Wm.
R. S. Musgrave, and counts that as apart of her
assets, in the face of the fact that the very property

* The more so, when it is remembered that her answer was filed at a time when she would naturally try to make her assets add-up as much as possible. Certainly she would not bring in as large an amount as \$800 or \$900, which according to Defendants brief is the surplus in her possession after paying for the property purchased.

sale to Mrs. McGregor was subject to a deed of trust due R. W. Joyner amounting to nearly \$700. (See deed of trust filed as Exhibit, also evidence R. W. Joyner) If Mrs. Whitehead had the means figured for her by learned counsel for the defense, isn't it a little strange that nothing was said of it in her answer? Isn't it also remarkable that with all of these funds in her possession she should borrow between six & seven hundred dollars from R. W. Joyner securing the same by deed of trust?

Where does she prove that she paid her husband any money for the property conveyed to her? Yet the Court of Appeals has said that Affirmation, evidence (not inference) must be introduced to show that the consideration actually passed as stated in the deed - 84 Va 816. see also quotation from case of Yates vs. Law. 86 Va. 120 cited with approval & at length by learned counsel for defense (p. 3. of this brief).

We think it well settled, that although Mrs. Whitehead might have shown that she had \$10,000 - at the time of the purchase by her, that in the absence of clear affirmative proof that the considerations actually passed, the deed must be set aside - 84 Va 816

Defendants counsel touches this point on page 5 of his brief in stating a proposition relative to the passing of a consideration from the wife to the husband. He says: - ... "but it is an absolute sale made by the husband to his wife for value received, she paying down to him at the time he made the deed the value of the property, taking possession of

of the same." This unquestionably states the requirements in such cases, and by his own requirements let his case be judged. There is no evidence showing that she paid him one dollar at the time he made the deeds, & failing in this important particular there is but one course consistent with the numerous decisions of the Court of appeals on this question & that is to set these deeds aside & subject the property to the payment of the plaintiff's debt.

Octo 30/93 *Defendants answer on last page of brief speaks of petition of J.B. James & Co. & exhibits same petition of Margaret E. Whitcomb.*

Respectfully Submitted.
J. L. McLeese of Counsel for Plaintiff.