

1897-22

Southampton County Chancery

Purcell, J. Q. vs

Allman, N. J.

"To Comply with"
Agreement

Person. J.R.

Bill in Equity.

Albany, N.Y.

1897. 2nd March. Rules for

L. A. Gay to be

J. C. PARKER

ATTORNEY-AT-LAW

May St., Franklin, Va.

for sale at public auction on the 3rd day of March 1884, at Courtland, the county seat of the said county, Virginia.

Your complainant, J.R. Person, a resident of the said county, humbly complaining, sheweth unto the court that on the 3rd day of March 1884, and prior thereto, your complainant was seized and possessed of several tracts or parcels of real estate, lying, situate and being in Southampton County, Virginia, and among the said tracts was the one on which he resided, containing seven hundred acres, more or less, and bounded by the lands of Littleton Ivey's estate, A.J. Harrison, David Turner, W.B. Persons and others and by the Meherrin River. That being so seized and possessed of the said realty, your complainant, together with his wife (who has since died), on the said 3rd day of March 1884 made conveyance of the said realty, including the tract on which he resided as above described, to John E. Prince, Trustee, for the purpose and to secure the payment of a bond therein described, for the sum of five thousand dollars (\$5000.) given by your complainant to J.B. Prince, a copy of which deed is herewith filed, marked Exhibit "A" and prayed to be read as a part of this bill. That afterwards the said John E. Prince, Trustee, died, and at the August term 1884 of the County Court of Southampton County, the said John E. Prince then being dead, the said court substituted W.J. Sebrell as trustee in the said deed, all of which will more fully appear from a copy of the said order of the said court herewith filed, marked Exhibit "B" and prayed to be read as a part of this bill. That afterwards, the bond secured by the said deed of trust being and remaining still unpaid, the said W.J. Sebrell, substituted trustee as aforesaid, at the request of J.B. Prince, the said holder of the said bond, advertised the tract of land on which your complainant resided, above described,

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for sale at public auction on the 21st day of January 1895 (that being Courtday), at Courtland, the county seat of the said county, in order to satisfy the said trust and in accordance with the terms and provisions of the said deed, all of which will more fully appear from a copy of the said advertisement herewith filed, marked Exhibit "C" and prayed to be read as a part of this bill.

Your complainant charges and avers that at that time and at all times since, the said tract of land was and is worth the sum of six thousand dollars, but not being able to pay the bond due to J.B. Prince your complainant could see no way to avoid a sale of the said property and went to Courtland on the day advertised for the sale fully expecting to see the said property sold. After arriving at Courtland on the said day advertised for the said sale, your complainant was approached by one N.T. Allman, a resident of Southampton County, the defendant in this cause, with reference to the said sale, the said Allman having always professed the warmest friendship for your complainant. The said Allman at the said time, took your complainant some distance off from any other person for a private conversation about the said approaching sale, and told your complainant that he was very sorry that complainant offered to advance on the same, still he gladly would, before the said date, repay him, Allman, the said sum of \$3500., that he, Allman, would convey the said property back to your complainant, and whether complainant repaid him or not he would pay your complainant, one-half of the money derived by him, Allman, from the sale of lowground (oak, ash, hickory, etc) timber on the place, the pine timber having already been sold; provided however, that if complainant did thus repay said money and take conveyance of the said property back to himself, complainant, that he, Allman, was not to be required to move off of the said place until he, Allman, had had sufficient time to look out for and to

ant's place was going to be sold and your complainant turned out of his home. That he, Allman, was himself looking for a place, as he had about sold his own, and would like very much to have complainant's farm which was advertised for sale. He then proposed to your complainant that as he was desirous of assisting your complainant to prevent a sacrifice of his home, and as he, the said Allman, would furthermore like very much to have the said place if it had to be sold from complainant, that therefore, in consideration of his friendship for complainant and his desire to aid complainant, and in further consideration of the possibility of his, Allman's, finally getting the place under the arrangement he was about to propose, he would pay thirty-five hundred dollars to complainant on the said farm (which he stated was all he could pay though he ^{said} ~~he~~ knew that it was worth a good deal more than that), and thus prevent the said property from being put up at auction, if complainant and J.B. Prince would join in conveying the said farm to him, Allman, and that in consideration of this being done, that he, Allman, would agree and bind himself, and did then and there agree and bind himself, as a part and parcel of his agreement with complainant, that if your complainant could raise the said sum of \$3500. before January 1st 1896, and would, before the said date, repay him, Allman, the said sum of \$3500., that he, Allman, would convey the said property back to your complainant, and whether complainant repaid him or not he would pay your complainant, one-half of the money derived by him, Allman, from the sale of lowground (oak, ash, hickory, etc) timber on the place, the pine timber having already been sold; provided however, that if complainant did thus repay said money and take conveyance of the said property back to himself, complainant, that he, Allman, was not to be required to move off of the said place until he, Allman, had had sufficient time to look out for and to

~~to look out for and to~~ secure some other suitable home to which to go. This proposition from Allman your complainant looked upon as a friendly offer on the part of the said Allman to aid your complainant by lending him money with which to prevent a sale and possible sacrifice of his property, and that the proposed conveyance to him, the said All^{man}, was intended not as an absolute sale to him, but simply as a conveyance to secure to him the money, \$3500., advanced to pay J.B. Prince, but with a possible advantage to be derived from the transaction by the said Allman in that if your complainant failed to raise the money and have the said property conveyed back to him as agreed, that it would then be the property of the said Allman without his having to bid for the same in the open market against competitive bidders, and that that possible advantage, together with the friendship which he felt or professed to feel, for your complainant, was the consideration ^{which} caused him to make to your complainant the said proposition and make the said agreement with your complainant. Though your complainant had no idea but that the property advertised would sell that day under the hammer for ~~more~~ more than the \$3500 which Allman offered to advance on the same, still he gladly accepted the propositions made by the said Allman as the best way for him to prevent a sale of his farm, and he and the said Allman then and there agreed together in accordance with ^{and in} the terms of ^{made by said Allman to your complainant as above set forth} the said proposition. After the said agreement was made, the said J.B. Prince agreed to the plan we had agreed on, stopped the sale of the said land, and afterwards, to-wit, on the 2nd day of February 1895, your complainant, together with J.B. Prince as beneficiary under the said deed of trust, in pursuance of the aforesaid agreement between the said Allman and your complainant and in part

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said Leigh, as agent for your complainant, then and there requested performance of, and in compliance with, the said agreement, united and demanded of the said Allman that he receive the said sum in conveying to the said Allman the said tract of land on which of ~~which~~ \$3500. as he had agreed to do and to make conveyance your complainant resided, hereinbefore described, for the stated of the said land to your complainant as he had further agreed to consideration of thirty-five hundred dollars, as will more fully appear by a copy of the said deed of conveyance herewith filed, with. That the said Leigh, as agent for your complainant, then and there further notified the said Allman ^{and Leigh said after said conveyance to him} marked Exhibit "D" and prayed to be read as a part of this bill. That the said Allman ^{in the Spring} ~~in the~~ of 1895 took possession of the said land in pursuance of, and as a part performance of, the said agreement between himself and your complainant. That at the time the said agreement was made with the said money for that purpose, upon the conveyance of the said land back Allman and the said conveyance was made to him as aforesaid in part performance of the said agreement, that a portion of the timber on the said land had been sold with a limited time stated in which the purchaser was to cut and remove the said timber money and make said conveyance as aforesaid; to this notification, request and demand, the said Allman again refused to do as 1895 and the said timber reverted back to the said land, and the said timber, together with other timber on the place, was sold by the said Allman, for the sum, as your complainant is informed, of ^{other claim line} but put the said Leigh off by saying that he did not want the money; that he had no where to put it; that he did not know complainant, through and by his friend and agent, one William Leigh, of Southampton County, Virginia, notified the said Allman that your complainant was ready to pay the said Allman back the \$3500. which he had advanced for your complainant, and to take a conveyance of the said farm back to your complainant in accordance with, and in order to complete the performance of, the said agreement above set forth, made between your complainant and the said Allman in January 1895, which had, as above set forth, been partially performed by the conveying of the said land to the said Allman by your complainant and J.B. Prince as aforesaid, and the

(6)

said Leigh, as agent for your complainant, then and there requested and demanded of the said Allman that he receive the said sum of ~~the said~~ \$5500. as he had agreed to do and to make conveyance of the said land to your complainant as he had further agreed to do, which request and demand the said Allman refused to comply with. That the said Leigh, as agent for your complainant, then and there further notified the said Allman that your Complainant was ready, then or at any other time, to pay the said Allman the said \$5500. through and by his said friend and agent, the said Leigh, who had kindly consented to loan your complainant the money for that purpose, upon the conveyance of the said land back to your complainant by the said Allman as had been agreed upon between the said Allman and your complainant as aforesaid and requested and demanded that the said Allman should receive said money and make said conveyance as aforesaid; to this notification, request and demand, the said Allman again refused to do as requested and demanded, though he did not deny the said agreement, nor did he say that he would never comply with the said agreement, but put the said Leigh off by saying that he did not want the money; that he had no where to put it; that he did not know what to do with it; and that he had not had time to look out for another place to go to; thus, as your complainant conceives, admitting, by plain inference, the agreement above set forth, between himself and your complainant, but refusing to comply with the said agreement. That since that time the said Allman has always refused and at all times refused, to comply with the said agreement and refused to accept from your complainant, or his agent, the said sum of \$5500. and to make conveyance of the said land to your complainant according to the said agreement, and still refuses to do

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there might be, and probably would be, other bidders who would either, to the great detriment, annoyance and loss of your complainant. That the said Allman has further ^{failed} refused to pay your complainant the purchase price received by him from the sale ^{fine} of timber from the said land, as he agreed to do, or to pay any part thereof, and the whole of the same is still due to your complainant, the same being the sum, as your Complainant is informed, of \$.

Your complainant says that when the said Allman offered to pay the said Allman for \$3500. Your complainant says that there was, and did pay, the said \$3500. on the land ~~to the said J.B. Prince~~ only one agreement between him and Allman, and that that agreement was in terms as aforesaid, and that ~~the said Allman~~ was simply lending your complainant that much money according to their agreement, and that the conveyance of the said land to the said Allman by your complainant and J.B. Prince, was simply a conveyance in the nature of a mortgage to secure to the said Allman the money he had loaned, and your complainant asks the court to so construe said payment and conveyance and to compel the said Allman to receive the said money from your complainant and make conveyance to him of the said land. Your complainant says that the conveyance of the said land to the said Allman was made only on account of and in pursuance of the said agreement between him and complainant as above set forth, and in part with his part, the remainder, of the said agreement already partly performance thereof. That your complainant would never have made such conveyance to the said Allman as he did but for, and in pursuance of, the said agreement; that the said conveyance was never intended to be an absolute ~~and~~ and unconditional sale, for your complainant would have had all to lose and nothing to gain by such a transaction, for he knew full well that if sold at public auction as advertised, that as much as \$3500. would be bid therefor (by the said Allman if by no one else), and that

there might be, and probably would be, other bidders who would pay more for the place, and hence, but for the agreement aforesaid with the said Allman, to be allowed to pay back the \$5500. advanced and take back the place as agreed between them, your complainant would not have made the said conveyance, but would have taken the chances and had the land exposed for sale at public auction, well knowing that by doing so he could not be possibly put in a worse position than he would be if he sold it unconditionally to the said Allman for \$5500. Your complainant says that there was only one agreement between him and Allman, and that that agreement was in terms as aforesaid, and that ~~notwithstanding~~ the conveyance by complainant and J.B. Prince to the said Allman, and the conveyance back to your complainant by the said Allman, when your complainant should have complied with certain conditions, was all one and part of the ^{same} said agreement, and but for said entire agreement the said conveyance to Allman would never have been made; that the payment by Allman of the \$5500. ~~and the~~ and the conveyance of the said land by the said J.B. Prince and your complainant to the said Allman, was done in pursuance of the said agreement and in part performance thereof, and now it is very bad faith on the part of the said Allman to refuse and fail to comply with his part, the remainder, of the said agreement already partly performed; and hence it is meet and proper that the jurisdiction of this court should be invoked and exercised to protect your complainant in his desire and request that the remainder of the said agreement be fully performed, and the said Allman compelled to complete the contract already partly performed, by receiving the said sum of \$5500., making conveyance of the said land back to you complainant, and by paying your complainant for the timber sold ^{on behalf of the said} _^ _^

(10)
 from the said land. Your complainant says that he was ready and
 general relief may be granted as in the premises say he right,
 willing and anxious in the fall of 1895 to perform his part of
 and to equity may seem just and meet.
 the remainder of the said agreement by paying the said \$3500. to
 And your complainant will ever pray, etc.

the said Allman and recieving from him ~~the said sum of \$3500.~~

~~the said sum of \$3500.~~ conveyance of the said land, and offered to so
 comply with his part thereof ; that he has at all times since
 then been ready, willing and anxious to perform his part of the un-
 performed portion of the agreement, having complied with a por-
 tion of said agreement, and that he is now ready willing, and anx-
 ious to perform his part of the said agreement, already partly
 performed, and ~~offers~~ proffers to the said Allman the said sum
 \$3500. upon the conveyance by the said Allman of the said land
 back to your complainant.

In tender consideration whereof, and forasmuch as your complain-
 ant is remediless in the premises save in a court of equity
 where alone such matter are cognizable, your complainant ^{prays} that the
 said N.T. Allman may be made a defendant to this bill, but an an-
 swer to the said bill under oath is hereby expressly waived : ~~that~~
 that the said N.T. Allman be required to render an account of the
 amount derived by him from the sale of timber from the said land, ^{and from what kind of timber}
 and that a decree may be entered requiring him to pay the said
 sum to your complainant ; that he be required to account to your
 complainant for the rents and profits derived from the said land
 since the year 1895 ; that he be required to recieve from your
 complainant the said sum of \$3500. according to the said agreement,
 and in further accordance with the said agreement to make a val-
 id and sufficient conveyance to your complainant of the said
 land in this bill mentioned and described. That all proper orders
 and decrees may be entered ; and that all such other, further and

general releif may be granted as in the premises may be right,
and to equity may seem just and meet.

And your complainant will ever pray, etc.

J. R. Person

This day personally offered before me in
my County J. R. Person, whose name is
signed to the above writing, and made
oath that the statements contained in
the said paper or for as made from
his own knowledge of ^{truth} and so
for as made from ^{information} ~~the knowledge~~
of others he believes them to be
true.

Given under my hand this 19th
day of April 1897

B. F. McLemore

Clerk in Chancery Sec. Ct.

Southampton Co.

Person.

vs. { Notice to
Take depositions
Allman.

Executed, Sept. 4, 1857
by delivering a copy
of this notice to A. B.
Allman.

R. D. McDonald
for J. H. Williams
Sept

mine

Sept 3

This must be served at once towards
next day

of the 10th of Sept. 1857. In a certain suit in which
some the respondents of J. H. McDonald, J. H. Johnson, J. H. Johnson and
some of them A. B. and others. I shall proceed to
1857, at the office of J. H. Johnson, in Guilford, Va., between the
You are hereby notified that on the 10th day of September
to R. H. Johnson.

To Mr.N.T.Allman.

You are hereby notified that on the 8th day of September 1897, at the office of J.L.McLemore, in Courtland, Va., between the hours of nine A.M. and ^{eight} ~~seven~~ P.M. of that day, I shall proceed to take the depositions of J.J.Woodward, J.D.Pretlow, J.E.Drewry and others, to be read in my behalf in a certain suit in chancery depending in the Circuit Court for the County of Southampton, 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, or from time to time, at the same place, and between the same hours, until the same shall be completed.

Yours most respectfully,

J.R.Person, by

J.R. Person.....his attorney.

Parsons J. R.

vs. } Statement of Rules.

Allman R. J.

C

J.R. Parsons, Plaintiff

vs.

W. J. Newman, Defendant

1897. 22nd. February process Sep 15 1st. Apr. Rules.

1897 1st. April Rules process returned executed.

Bill and exhibits not filed.

1897. 2nd. April Rules. Bill and exhibits filed.

Decree nisi vs. defendant

1897. 1st. May Rules. Bill taken for confessed
and cause set for hearing.

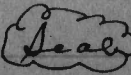
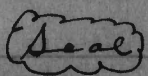
J.R. Farrow & J.B. Prime

To { copy of D. B. D.

N. J. Heenan

Ex. "D"

This Deed made Feby. 2. 1895 between J.R. Person
of one part and N.T. Allman of the other part
Witnesseth: That in consideration of the sum of
Three thousand five hundred dollars, receipt of
which is acknowledged the said J.R. Person
grants & Conveys with general Warranty unto
the said N.T. Allman that certain tract of land
in Southampton County Va. upon which the said
J.R. Person now resides, containing 700 acres,
more or less, and bounded by Maherrin River,
the lands of Littleton Dwy's Estate, A.J. Harrison,
David Turner & W.D. Person - And J.B. Prince
who holds a deed of trust on this farm, by
signing, sealing and acknowledging this
deed, hereby consents to this sale and
releases the lien of said trust deed as far
as this tract of land is concerned.
Witness the following Signatures & seals.

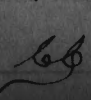
Junius R. Person. 
J.B. Prince 

Virginia:

In the Clerk's Office of the County Court for South-
ampton County: Feby, 4th, 1895.

This Deed was presented, acknowledged in this
Office by said Junius R. Person & J.B. Prince to be
their act & deed & admitted to record.

Teste: B. F. McLeamore C. C.

Acopy. Teste: B. F. McLeamore 

J. R. Foran wife

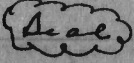
I. } Copy. Day Book.

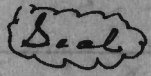
J. B. Prince Ex. "A."

This Deed Made this 31st day of March, 1884,
between J. R. Person, and Anne E. Person, his wife
of one part, and John E. Primer trustee, of the
second part, Witnesseth: That in consideration of
five dollars, the said parties of the first part do
grant & convey with general warranty unto the
said trustee the following real estate to wit:
a tract of land upon which the said J. R. Person,
now lives containing 700 acres more or less bounded
by the lands of Peter Persons, Littleton Iveys Estate, A. J.
Harrison & David Turner and the Mahoning River -
and one other tract of land containing 150 acres
more or less bounded by the lands of Allen James,
J. A. Sledge deed, Turner & Co. & others, also the Water
Grist mill with one acre thereto attached with all
its rights and appurtenances in any way thereto
belonging now owned by said J. R. Person, and
known as Persons Mill & pond and all of the chattel
property of every description and kind now owned
by the said J. R. Person and all that may be
acquired hereafter by him in view of any now
owned whether by trading Swapping, exchanging
by increase of that now on hand or that may occur by
exchanging that now on hand for any other, and
also the products that may arise or be produced
from the use and consumption of any chattels
now on hand: In trust however to secure the
payment of a bond of even date with this deed

for five thousand dollars due by J. R. Person to
J. D. Prince, It is agreed by the parties hereto, that
no sale shall take place by virtue hereof for the
period of five years from the date hereof provided
the interest is paid on said bond once a year reckon-
ing from the date of this deed and provided further,
The said J. R. Person, or some one for him, shall pay
annually all taxes & charges on said property hereby
conveyed. Should default, be made in the payment of
interest as herein provided or in the payment of taxes
& charges as aforesaid, then upon verbal or written
notice from the said J. D. Prince his heirs Exors,
Afgns &c, to the trustee he shall advertise and sell
the above conveyed property or so much thereof as
may be necessary to satisfy this Deed after twenty
days public notice of time and place of sale upon
such terms as the said J. D. Prince his heirs
Exors, Afgns &c may desire and in such event
the trustee shall be entitled to the usual ~~fee~~
Commissions of five per cent on gross sales.

Witness the following signatures & seals.

Jennius R. Person 

Anna G. Person 

Southampton County,

State of Virginia to wit:

J. W. F. Sebrall a Notary Public for the County of
Southampton State of Virginia do certify that

Junius R. Person, whose name is signed to the writing above bearing date on the 31st. day of March 1884, has acknowledged the same before me in my County aforesaid, I furthermore certify that Ann E. Persons the wife of the said Junius R. Persons whose name are signed to the writing above, bearing date on the 31st. day of March 1884, personally appeared before me in my County aforesaid and being examined by me privately and apart from her husband and having the said writing fully explained to her she the said Ann E. Persons acknowledged the same before me and declared that she had willingly executed the same and did not wish to retract it.

Given under my hand this 5th. day of April 1884,

H. J. Sebrall N.J.

Southampton County, In the Clerk's Office, April 21st 1884. This Deed of Trust from J. R. Person wife to J. E. Prince trustee for the benefit of J. B. Prince, was this day received and together with the Certificate thereto annexed admitted to record.

Test: B. F. McNamee D.C.

Acopy.

Test: B. F. McNamee C.G.

Person

V.S. { Copy order appointing
W. J. Sabree substituting
Truster.

Heenan

Ext. "B"

Virginia:

In the County Court of Southampton County,
August Term 1894.

Whereas on the 31st. day of March 1884 -
Jennies R. Person executed a certain deed of Trust
to Jno. E. Prince, Trustee for the benefit of J. B. Prince
which said Trust deed is of record in The Clerk's
Office of Southampton County Court; And
Whereas the said John E. Prince, Trustee, as afore-
said - has departed this life, And it appearing to
The Court that due notice hereby has been served
upon the said Jennies R. Person; W. F. Sebrice is
hereby substituted Trustee to the aforesaid Deed of
Trust in place of the said John E. Prince deceased.

A copy,

Teste: B. F. McLemore

Pinson

vs. } Sum. In chq.

Allman

1897. 1st. April Rules
leis. let

to
Execution Feb. 24
1897 by delivering a
copy of this "Sum"
to H. W. Allman

W. Williams

Success, admitted
to 2nd Nat. Rules.
and deems this,

(1)

Parker & Prince, P. 9.

THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF SOUTHAMPTON COUNTY, GREETING:

WE COMMAND YOU TO SUMMON

N. J. Nelson

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 *April* *1897* next, to answer a Bill in Chancery exhibited against *him* in our said Court by

J. R. Person

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

Witness, L. A. GAY, Clerk of our said Court, at the Courthouse, this *22nd* day of

February, 189*7*, in the 12*th* year of the Commonwealth.

TESTE:

L. A. Gay, C. C.

Person

10. } 1st Dec 1897

Allman

To be entered.

Sept. 27th 1897.

Robert R. Smith

Ent. Page 157

J.R. Pearson

vs. } 1st decree.

A.T. Allman

This day this cause came on to
be heard upon the bill taken for
confessed & on motion of the
plaintiff the said cause is dis-
missed from the docket at the
cost of the plaintiff