

1849-004

Chancery Causes: Exum L. Eley & George W. Eley vs Irvin W. Duck, William B. Council
Isle of Wight County & William H. Eley

other SURNames: Ballard,
[Exum L. Eley & Brother]

Eley
v Duck

I have awarded an
Injⁿ in this case
altho' it will be seen
that the Bill does not
make Duck a def.^t
in the usual manner,
and altho' if shown,
it is clear I think
that Council ought
also to have been
made a def.^t

R.H.B.

Exmo L. Eley & Wro:
v
Against Bill of injⁿ
Irwin W. Duck & B:

November, 16th 1848 Bond
executed & p^a issued

Dec. 1848 p^a ex^o.

July. 1849 set for hearing.

May term - 1849
dismissed.

The said William H. Ely to the said William G. Council, and how the said original which is sworn by said deed of trust, & was and the said deed fraudulently made, and intended to bar your claims from the recovery of their claim against said William H. Ely — that your honor will set aside the said deed of trust, as founded in fraud & deceit and unlawfully made, and that you will injure the said John W. Duck and all other persons from selling or otherwise disposing of the said property mentioned in the trust deed aforesaid, until the matter can be fully heard & adjusted according to right and justice, and that your honor will make any other order in the premises consistent with justice &c.

Signes

Ernest S. Ely & Bro.

Judge of said County to wit

This day Ernest S. Ely and George W. Ely made oath (to the best of their knowledge and belief) before me to the truth of the allegations in the foregoing Bill — sworn under my hand as a Justice of the Peace this
of November 1848

John W. Duck @

Upon the complaint or any one of them ~~executing~~ executing a bond, in the clerk's office of the Circuit Superior Court of Law and Chancery, and before the clerk of the said court, with sufficient security, payable to the def. Duck, conditioned to pay all such costs and damages as may be awarded against the complaint or either of them upon the execution of the injunction hereby ordered, (which said bond is to be in the penalty of five hundred dollars) Let an injunction issue to restrain the defendant, and others concerned, from making sale or otherwise disposing of the property, or any part thereof, referred to in the deed of trust filed as an exhibit with this Bill, until the further order of the court.

Rich. H. Baker

To the Clerk of said Court
Circuit Sup. Court:

Nov. 8. '48

To the Honorable Rich^d. H. Bates Judge of the Circuit Superior
Court of law and Chancery for the County of Isle of Wight—
Humbly complaining shew unto your honor, your orators Edmund
S. Ely and George W. Ely, That William H. Ely of said County
in the month of September 1848 executed a deed of Trust, to one
Edwin S. Ballard Trustee, to secure a debt due from the said William
H. Ely to your Orators Edmund S. Ely ^{& George W. Ely} ~~and~~ late merchants and
partners trading under the firm and style of Edmund S. Ely
& Brother, that your Orators directed a sale of the property so conveyed
in Trust for the payment of said debt. That the said William
H. Ely applied to your honor, and obtained an injunction, to
to the said sale until the further order of this Court. That the
said William H. Ely afterwards to wit on the 8th day of September
1848 made another deed of Trust to one Irvin W. Duck
for the benefit of one William G. Bunnice, in which deed
is conveyed a large portion of the property both real and
personal mentioned in the deed to secure the debt due to your
Orators and the sale of which has been informed. But notwithstanding
the Order of your honor in relation to said property
the said Irvin W. Duck Trustee as aforesaid (by virtue of said
deed of Trust ^{a copy of} which is herewith filed marked A, and prays to be taken
as a part of this Bill) has advertised the said property both real
and personal mentioned in said deed to be sold on the 16th day
of November 1848. A sale of which will result to the great
injury and damage of your Orators. That the said deed of Trust
from the said William H. Ely to Irvin W. Duck for the benefit
of the said William G. Bunnice was designed by the said William
H. Ely to cheat & defraud your Orators, and as a bar to the recovery
of the amount justly due them by bond and secured by a prior
deed, the sale under which has been informed. In consideration
whereof, and in as much as your Orators are without remedy at
law, they pray the interposition of your honor, that the said Irvin
W. Duck, William G. Bunnice and William H. Ely be made
defendants hereto, and be compelled upon their oath, to answer
the allegations herein contained fully and unreservedly. That they
set out clearly and distinctly, the amount due and owing from

The object of this subpoena is to restrain the
Defendant from W. Duob and all others
connected from selling or otherwise disposing
of the property mentioned in the deed of
trust filed by the plaintiffs as an exhibit
in their bill.

Teste W. P. Goringe.

Carroll L. Clay & Bros.

vs: 3 Imp. Ops. in
ch.

J. W. Duob & Co.

To, Dec. 1888.

Wills p.p.

Executed

at true copy left at
the dwelling house of
Wm. H. Clay with his
wife Jos. & Mary H. H.

We acknowledge
the service of
nothing
here. W. Duob
Wm. J. Council

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of *Ide of Wight* County, Greeting:

You are hereby commanded to summon *John W. Decker William*
G. Bournell and William H. Eley

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for
Ide of Wight County, at the Rules to be holden for the said Court, on
the first Monday in *December* next, to answer a *complaint*
Bill in Chancery, exhibited against *them*
in the said Court, by *Esam L. Eley & George W. Eley*
merchants & partners under the firm &
style of Esam L. Eley & Brother

And unless the said Defendant shall answer the said Bill within two months thereafter,
the Court will take the same for confessed, and decree the matter thereof accordingly.
And this *they* shall in no wise omit, under the penalty of £ 100.

And have then there this Writ.

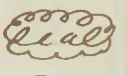
WITNESS, *N. P. Young* Clerk of our said
Court, at the Courthouse, the *16th* day of *November* 184*8*, and in the
7th year of our Foundation.

N. P. Young

(One Copy to be delivered each Defendant.)

(A) ✓

in manner and form following, that is to say, that the said William H. Ely his heirs, executors, administrators, the aforesaid tract or parcels of land and premises with their appurtenances together with the aforesaid slave and all the other personal property hereby conveyed unto the said Irvin W. Duke his heirs, executors, administrators, assigns forever, against all persons whatsoever, shall and will warrant and defend by these presents: upon trust nevertheless that the said Irvin W. Duke his heirs, executors, administrators, shall permit the said William H. Ely to remain in quiet and peaceable possession of the said tract or parcels of land and premises, with its appurtenances, together with the aforesaid slave and other personal property hereby conveyed, and take the profits thereof to his own use until default be made in the payment of the said sum of Twelve Hundred dollars either in the whole or in part and then upon this further trust that they or any two or either of them or the survivors of them or the heirs executors of such survivor shall and will as soon after the happening of such default of payment as they or any or either of them or the survivors of them or the heirs, executors or of such survivor may think proper or the the said Wm. G. Council his heirs, executors, administrators or assigns shall request, sell the said tract of lands and premises together with the aforesaid slave and the other personal property hereby conveyed or such part of the hereby granted premises as the trustee or his representative hereby authorized to act, shall think sufficient for the purpose, and shall think proper to sell to the highest bidder for ready money, at public auction after having fixed the time and place of sale at his own discretion and given ten days notice thereof at three or four of the most conspicuous places in the vicinity and also notified the same by advertisement to be set up at the door of the Courthouse of Isle of Wight County, on some court day previous to the day of sale - and out of the moneys arising from such sale, shall, after satisfying the charges thereof and all other expenses attending the premises, pay to the said Wm. G. Council his heirs, executors, administrators or assigns the said sum of Twelve hundred dollars with the Int. which may then lawfully have accrued, and the balance, if any, shall pay to the said Wm. H. Ely his heirs, executors, administrators or assigns. But if the said sum of Twelve hundred dollars shall be fully paid off and

discharged to the said Wm. G. Council his heirs, executors, administrators or assigns on or before the 25th day of Dec^r in the Year 1848 when the same is payable, so that no default of payment of the said sum of Twelve hundred dollars be made, then this indenture to be void, or else to remain in full force and virtue. In witness whereof the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written - Signed, sealed, and delivered in presence of
Thomas ^{his} English
Benjamin Whitehead
Jesse N. Branch
William H. Ely 
Irvin W. Duke 
Wm. G. Council 

In the Clerk's Office of Isle of Wight County Court, September 25th 1848 this deed of Trust from Ely to Duke for Council was proved by the oaths of the subscribing witnesses and admitted to record
Teste

N. P. Young 
A. Copey
Teste J. P. Wills D.C.

This Indenture made this 8th day of September in the year of our Lord one thousand eight hundred and forty eight, Between William H. Ely of the first part, Irvin W. Duck of the second part and William C. Bouncee of the third part: Whereas the said William H. Ely is justly indebted to the said William C. Bouncee in the sum of Twelve hundred dollars. To be paid on the 25th day of Decr. 1848, as by a bond bearing date on the 8th day of Sept^r in the year 1848 more fully appears, which debt with the legal interest thereon accruing, the said William H. Ely is willing and desirous to secure, Now this indenture witnesseth, that for and in consideration of the premises and for the further consideration of One dollar of lawful money of Virginia to the said William H. Ely in hand paid by the said Irvin W. Duck at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he the said W^m H. Ely hath given, granted, bargained, sold, aliened, infeoffed, released and confirmed, and by these presents doth give, grant, bargain, sell, alien, infeoff, release and confirm to the said Irvin W. Duck his heirs and assigns forever, all that tract or parcels of land lying and being in the County of Isle of Wight, in the state of Virginia, now by the name of the Vellins tract adj. Miers Ely's heirs & others; also the Elias Bowden tract containing 113 acres be the same more or less and adj. Martha Ely & others, also the Jos. Mountfort land containing 147 acres be the same more or less, adj. Elisha Gay and others, also my interest in the Water Grip mill now by the name of Ely's mill also the following slave, one boy George, and other personal property to wit: Thirty five bbls apple brandy, crop of corn & fodder, house hold and kitchen furniture, stock of hogs, sheep, cattle and horses and the increase of said stock, carriage, farming utensils, & carts and gear, with all and singular the appurtenances to the said tracts or parcels of land belonging or in any wise appertaining and all the estate, right and interest of the said W^m H. Ely, in and to the said granted or intended to be hereby granted tracts or parcels of land and premises. To have and to hold the said hereby granted or intended to be hereby granted tracts or parcels of land and premises, with its appurtenances, together with the aforesaid slave and all the other personal property hereby conveyed, unto the said Irvin W. Duck his heirs, executors, admors. & assigns forever to the only proper use and behoof of the said Irvin W. Duck his heirs executors, admors. & assigns forever. And the said William H. Ely for himself his heirs, executors, admors. doth hereby covenant, promise and agree to and with the said Irvin W. Duck his heirs, executors, admors. & assigns forever.

Ely & Bros:
3rd Inf^y Bond

Duck B. Lab:

Executed 16th Nov. 1888
+ sp. ipd -

Know all men by these presents, that we Euseb S. Ely and Nathan
Moulton are held firmly bound unto John W. Deeth
in the sum of five hundred dollars; To the
payment whereof well & truly to be made we bind
ourselves and our heirs, executors & administrators,
jointly & severally firmly by these presents, sealed
with our seals & dated this 16th day of November
1848. The condition of the above obligation is such
that, whereas the above bound Euseb S. Ely & George
W. Ely merchants & partners trading under the firm
& style of Euseb S. Ely & brother have obtained from
the Judges of the Circuit Superior Court of Law &
Chancery, constituted by law to be holden for the
County of Isl of Wight, an injunction to restrain
the Defendants John W. Deeth & all their heirs,
from making sale or otherwise disposing of the property
or any part thereof, referred to in the deed of trust
filed as an exhibit with the Pet. bill entitled
the further order of the Court. Now of the said
Euseb S. Ely shall well & truly pay & satisfy, all
such costs & damages as shall be awarded against
the complainants, or either of them, upon the
dissolution of the injunction, then the above
obligation to be void, otherwise to remain in full
force & virtue.

Signed & acknowledged &
the deently justified before
me.

A. P. Young Jr.

Euseb S. Ely *E.S.*
Nathan ^{his} Moulton *N.M.*
mark