

1870-015 Chancery Causes: James Johnson, Comt of Levi Hart vs Stephen A. Eley

Isle of Wight County

Other SURNAMES: Crumpler,
Powell

Harts Counter:

n. 3 Bill

10

S. A. Eley

March 1869, filed,
cond. Ed. & injn.
ifc. v. 1869.

May Rules - Sec. 1. inj. a
Ed. & decree nisi.

June Rules - Bill taken
for confid. & det. for hearing.

Oct. 1869 - Cond.

May 1870. Dismissed

and that such other & further relief may
be granted in the premises as to the Court
may seem meet & may consist with the
equity of the case, & your complainant
will ever pray &c'

Hayden p q,
Isle of Wight County to wit;

This day personally
appeared before me Hardy Chapman a-
Justice of the Peace in the County aforesaid
James Johnson plaintiff in the annexed
bill, & made oath that the statements
made in the said bill, so far as made of
his own knowledge are true, & so far as
made upon knowledge or information
derived from others, he believes them to be
true. Given under my hand this 12th day
of February 1869

Hardy Chapman J.D.

-ant to have the bond & agreement aforesaid
cancelled & the contract for the sale of the
timber rescinded & to have restitution of the
value of the timber already cut & removed
by the said Eley from the land of the said
Levi Hart & to restrain the said Eley from
the further cutting of said timber & the
removal & sale of that already cut & unsold.
In tender consideration whereof & for as
much as your complainant is without
remedy at law, & can only be relieved by
the aid of this Honorable Court where matters
of this sort are cognizable to this end, your
complainant prays that the said S. A.
Eley may be made a party defendant to
this bill & be required to answer the same
& that the said bond & agreement may be
cancelled, that the said S. A. Eley may be
required to refund the value of the timber
already sold by him as aforesaid & that the
said S. A. Eley may be restrained by injunction
from further cutting & removing of any timber
from the land of said Levi Hart or selling
any already removed or causing the same
to be cut removed or sold & that a Receiver
may be appointed to take charge of & sell all
or any timber cut by the said S. A. Eley from the
land of said Levi Hart whether still remaining
on said land or removed therefrom & unsold -

Exhibit

B

40000 feet of pine timber from the land of the said Levi Hart, at \$1.75 per thousand feet the proceeds of said sale to be applied when the timber should be cut to the payment of the bond aforesaid. The said agreement marked B is herewith filed & proved to be taken as a part of this bill. That said Eley has already in pursuance of said fraudulent agreement cut & removed a part of the timber pretended to be sold by said agreement & is now cutting & removing said timber.

That said Eley well knew when selling to said Hart the said horse the worthlessness of the horse & the imbecility of said Hart & the gross fraud that he the said Eley was practicing upon the said Hart. That in consequence of the said larceny of the said Hart he has already wasted his whole personal estate & that the cutting of said timber will ruin the little homestead, which is the only property now left for the support of the said Levi Hart & his family.

Your complainant is informed & so charges, that in consequence of the fraud practiced by the said Eley upon the said Levi Hart in the fraudulent sale of the horse aforesaid & the subsequent pretended purchase of timber to secure the payment of the purchase money of said horse, entitles your complainant

Exhibit
A

To the Honorable Richard H. Parker Judge of the
Circuit Court of ~~Massachusetts~~ ^{the County of}
Isle of Wight in Chancery sitting; Humbly complaining
sheweth to the Court your Complainant James Johnson
Committee of Levi Hart a person of unsound
mind. That at the January term 1868 your
complainant was appointed by the County Court
of Isle of Wight, Committee of said Levi Hart &
qualified therein as such as will appear by the
annexed certificate of such order & qualification
marked A herewith filed & prayed to be
taken as part of this bill. That the said
Levi Hart was for sometime previous to your
complainant's qualification as Committee of
unsound mind & entirely incapable of
managing his own affairs. That one Stephen
A. Gley on or about the day 1867
well knowing the mental infirmity of said
Levi Hart & taking the advantage thereof
fraudulently sold him a worthless horse for
the sum of \$150.00 which the said Levi Hart
agreed to pay to the said Gley. That said Gley
obtained partial payment of the said sum of
\$150.00 reducing the same to \$123.00, for which
sum the said Gley on the 14th day of March 1868
took the bond of the said Levi Hart & on the
same day the said Gley & the said Levi Hart
entered into an agreement under seal by which
the said Gley purchased of the said Hart

To The Clerk of the
Circuit Court of Sale of Wight County

An Injunction is awarded
according to the prayer of the plaintiff's
bill, to take effect after he executes
a bond with sufficient security, or
some person in his behalf shall do
the same, in the penalty of one hundred
dollars, payable to the Court of Virginia
conditioned to pay all costs which may
be awarded against him, and all damages
which he may incur in case the Injuncⁿ
be dissolved: And the Sheriff of Sale of
Wight County is hereby appointed
a receiver to take into his possession
the timber ^{cut} upon the land in the bill
mentioned by the defendant remaining
unsold, & sell the same at public auction
upon a credit of ninety days, taking
bond or bonds with sufficient security
for the purchase money & return the
same to court, subject to the order
of the court

Rich. H. Baker

Feb. 17th 1869.

ability of having for the horse a free aid from himself. This Respondent says that there is no just reason why he should be longer restrained from cutting the Balance of said timber (and paying his debt, and may that said Imposition may be dissolved (and that his costs may be paid him by said Johnson, out of his own estate, for this unnecessary & as your Respondent believes, purposely annoying suit, (and having answered to

J. A. Eley

Newfoundland County to wit

I, John R. Kilby a Notary Public in and for said County, do certify that Stephen A. Eley, personally appeared before me on this day & made oath that the foregoing answer contains the truth to the best of his knowledge and belief. Given under my hand this 14th day of October 1869.

John R. Kilby N.P.

Warts Comer
m

Eley

Answer to
J. A. Eley

had shortly before then paid \$100. in specie for the said horse. That the said Hart did make a partial payment for said horse & did on the 17th day of March 1868 execute his Bond for \$123. the Balance due in the presence of two respectable men, to wit: Chas. B. Crumpler & James E. Ponce - That the price for said horse was \$150. of which the said Hart paid \$9. & gave a Bond for \$141 with the same James Johnson, who now brings this suit, as security That the said Hart & this respondent did enter into an agreement relative to some lumber. That the said Hart in order to pay the said \$141. contracted with your Respondent to sell him (your Respondent) 70,000 feet of lumber, at \$1.75 per ~~hundred~~^{thousand}, a price full, fair & adequate, and of which said Johnson was fully aware, and ^{to which contract to the said Johnson} was perfectly willing to see perfected and himself relieved from the securityship as aforesaid; and at which time no complaint was uttered by said Johnson, that the said Hart was of unsound mind & incapable of contracting.

That under and by virtue of said Contract your Respondent proceeded to cut the timber to pay off said debt & cut & removed 30,000 feet of lumber, which at \$1.75 per thousand is equal to \$52.50 to be credited on

said Bond; This Respondent denies that the cutting of said timber would ruin the homestead of said Hart, but on the contrary was a wise & judicious arrangement. He, the said Hart, has the need of a horse to carry on his farming operations & to make a crop, to go to mill & for many other purposes, & by the sale of a part of his timber, which produced him no income which he was otherwise unable to convert into money, he was enabled to supply himself with a horse for the purpose, aforesaid.

Your Respondent denies that the said Hart is incapable of attending to his own business, denies that any fraud was practiced on him, denies that the said horse was unlawfully, denies that the sale of timber to pay for the horse was injudicious, or that any fraud or deception was in any manner practiced on said Hart.

Your Respondent says that it is strange that the said Johnson did not consider said Hart incapable of contracting when he became his security, as aforesaid, or when he got himself relieved by a sale of said timber and only seemed to find it out after the said Hart had become to be a man of middle years and he the said Johnson, had shifted the responsi-

To the Hon: E. P. Pitts, Judge of the Circuit Court of Isle of Wight County.

The answer of Stephen A. Eley, to a Bill in chancery exhibited in the said Court against him by James Johnson Committee of Levi Hart a person of unsound mind.

This Respondent says that he believes it is true that said James Johnson was by the County Court of Isle of Wight County in Jan'y 1869, appointed Committee of said Levi Hart, but he says that it was on an ex parte proceeding, and without proper or just ground, as your Respondent believes.

This Respondent denies that the said Levi Hart was for sometime previous to the appointment of said Committee of unsound mind and entirely incapable of managing his own affairs, but on the contrary he the said Levi Hart is now some 35 years old and has a wife & one child and has all his life been managing his own affairs, and that at the time such Committee was appointed he was just as capable of managing his own affairs as he has ever been. This Respondent denies that he took advantage of said Hart in the sale of the horse referred to, but on the contrary says that the horse was well worth the price asked for him, to wit: \$150, that your Respondent

The object of this suit is to restrain the defendant
 S. A. Cleary from further cutting and removing of
 any timber from the land of said John Host-
 or selling any already removed or causing
 the same to be cut, removed or sold
 until the further order of the court.

Teste J. P. Youngell

Host's counter:

3 Shrim. to
 J. and P. Bell

S. A. Cleary

To April 1869
 Very truly
 Yrs

Injunction bond executed
 Teste J. P. Youngell

Recorded by delivering a true copy
 of the return on march
 15th 1869
 W. B. Youngell
 for S. A. Cleary atty

The Commonwealth of Virginia,

TO THE SHERIFF OF ISLE OF WIGHT COUNTY, Greeting:

We command you to summon *Stephen A. Eley*

to appear at the Clerk's Office of the *Circuit* Court of Isle of Wight County, at Rules
to be holden for the said Court, on the first Monday in *April* next, to answer

*the Bill of injunction of James Johnson
Committee of said Court*

a plea of *_____* for \$ *_____* Damages, \$ *_____* And have then

there this writ. Witness, N. P. YOUNG, Clerk of our said County County Court, at the Court-
house, the *6th* day of *March* 18 *69*, in the *9^{3^d}* year of
the Commonwealth.

George L. Bidgood, Richmond, Va.

N. P. Young

Harts Comee

is.

Eley on the motion of the defendant
Stephen A. Eley, by John R. Kelly, his
attorney, leave is given him to file
his answer, which is accordingly filed
and the cause is continued

No 15-
Harts Corner
n.

Eley

1869
Oct. 18 Order

To be entered.

E. P. Pitts

Hart's Cause

m.

Eley.

It being suggested to the Court that since the Institution of this suit the said James Johnson, has been removed by order of the County Court of Lee & Wright County, from his office as Committee of said Sen. & Hart. It is therefore ordered that this cause be dismissed.

Starts' Corner

in

Eley

1870

May Court Decree

Geo. B. to W. Jr.

Entered

No 1

1/1

At a County Court for the County of Isleswright, held
at the Court house, On Monday the 4th day of January 1869.
On the motion of the wife Levi Hart, and it appearing
to the Court that the said Hart. is a man of unsound
mind and incapable of Managing his own affairs,
James Johnson is Appointed Committee for said
Levi Hart, and therefore the said James Johnson
entered into and Acknowledged bond in penalty of Six
hundred, with Conditions according to law, with J^r.
D. Edwards and John H Beaton his securities
a copy. Test,

A. D. Youngblood.

Line

Received of Levy Heart 1 Tree 22 in Butt, 17 in Top & 32 ft long. 1
Tree 20 in Butt 16 in Top 28 feet long, 1 Tree 22 in Butt 16 in Top 48 ft long
1 Tree 19 in Butt 14 in Top 40 feet long 1 Tree 23 in Butt 20 in Top 45 ft
long, 1 Tree 19 in Butt 14 in Top 24 feet long 1 Tree 19 in Butt 14 in Top 40 ft long
1 Tree 18 in Butt 16 in Top 24 feet long at \$1.75 per thousand &c S. at. E. long

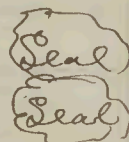
I enclose a statement of my account of 9 trees the
first one named is a Lime tree which I promise to pay
\$1.75 per thousand according to contract for the quantity of a date
the said Lime trees owned of S. A. Fly

Long Hair

11 P,

Articles of Agreement Made & entered into this Seventeenth
day of March Eighteen Hundred and Sixty Eight between
Seri Hart of Isle of Wight County State of Virginia,
of the first part and Stephen A. Eley of Isle of
Wight County State of Virginia of the Second part
as follows to wit: The said Seri Hart agrees
to sell to the said Stephen A. Eley Seventy thousand
feet pine timber (merchable) as it stands on
his land lying in Isle of Wight County for the con-
sideration of one dollar and seventy five cents
per thousand feet to be paid when ever
the timber is cut. And the amount of money
thus arising from the sale of this timber is to be
applied to the liquidation of a debt due by the
said Seri Hart to the said Stephen A. Eley of
the amount of one hundred and twenty ~~three~~
dollars, due by bond signed this 17th day of
March 1868, and payable the first day of January
1869. And the said parties here by bind them-
selves, their heirs &c., admors, &c for the per-
formance of all and every part of the above
agreement; as witness their hands and seals day
and year first above written

Signed Sealed & delivered in the presence of -
Chas. Plummer
Jas. Brownlee
Seri Hart
Stephen A. Eley



Johnson Acct of Hart
vs. 3 Sign. bond
S.A. Eley

March 6th 1869
Exp. Filed.

Know all men by these presents, that we
James Johnson, ^{commonly known as} and John L. Edwards as a deed
and jointly bound unto the Commonwealth
of Virginia in the sum of one hundred
dollars to the payment thereof well and
truly to be made to the said Commonwealth
of Virginia, our heirs, assigns and assigns,
our heirs, assigns and assigns, jointly and
severally, jointly by these presents, sealed
with our seals, dated this 6th day of March,
1869. The consideration of this obligation is
such that whereas, the said James Johnson as
committees of said tract so conveyed an
imposition restraining Stephen A. Day from
further cutting or removing of any timber from
the land of said tract as cutting and
already conveyed or conveyed to the said to be
cut, sold or conveyed until the further order
of the court. Now if the said James Johnson
committees of said tract should shall well
and truly pay the cost, which may be assessed
against him, and all damages which may
incure in case the said imposition shall be
disolved, then this obligation is to be paid
else to remain in full force.

James Johnson
John L. Edwards

Witness
my hand

Signed & acknowledged before me
J. P. Henry Clerk.