1898-011 Chancery Causes: George E. Newby vs Benjamin P. Chapman et al

Isle of Wight County

other surnames: Hayden, Thomas, Tynes

D. E. Everett P. E.

Jas. Elmsley
US Dist Clerk.

Ben. P. Schoppman
et als

1st April rules 1898
Bill restabilito filed summons issued
dcem nisi vs. defts.

2° April rules 1898.
Bill taken for confessed
and cause set for hearing

Oct. 24/98 Final

Virginia.

In he Circuit Court of Isle of Wight county.

George E. Newby, Complainant

Against

Ben. P. Chapman, Florence O. Chapman, ~~C.H. Hayden~~ Cornelius A Chapman, trustee, and Serena Tynes, and Ben P Chapman, trustee, defendants.

To the Honorable Robert R. Prentis, Judge of the Circuit Court of the County of Isle of Wight, Virginia.

Humbly complaining represents and shows unto your Honor, your complainant, George E. Newby, the following case:

That your complainant, George E. Newby owned and possessed in fee simple a certain tract of land, situated and ly-ing in the county of Isle of Wight, Virginia, bounded and described as follows:-

Commencing at the corner of G. R. Atkinson's land as devised him by his father, thence South fourteen degrees East to a marked pine, along the line of Col Thomas to a marked pine at the head of a ravine, thence down the ravine of the said Thomas', Tynes', and Miss Mary Whitfield's land, thence up another ravine North East along said Tynes' land to a marked tree on the road, thence on said road on said Tynes' line to an old marked red oak, commencing on said Tynes' and Jordan's land, thence along a line of marked trees between said Tynes' and George R. Atkinson and Jordan to the beginning.

And your complainant further says that he was indebted to a certain C. B. Hayden in the sum of $130.00 and he gave his bonds and secured the same said bonds, two for $65.00 each, dated the 21st. day of January, 1890, and payable respectively eighteen months and two year after date to the said C. B. Hayden, by giving to R. S. Thomas, trustee, on the 21st. day of January, 1890, on said land a deed of trust in which his wife united, a copy of which said deed of trust is here with filed and marked "Exhibit A. " and prayed to be made a part of this bill. And your complainant says that the said bonds executed by your complainant and made payable to the said C. B. Hayden, were assigned and transferred by the said C. B. Hayden to one Ben P. Chapman after your complainant had paid C. B. Hayden $35.00 for which amount the said C. B. Hayden gave your complainant cred - it for on the back of the bond, payable eighteen months after date.

That after it was assigned to the said Ben P. Chapman your com-

plainant has made payments, from time to time, until the bonds were paid in full, and that your complainant has the receipts for these payments give him by the assignee, B. P. Chapman, and that he will produce them at the proper time as evidence.

And your complainant says further that on the 20th. day of August, 1894, he gave a deed of trust on the said land, your complainant's wife uniting in said deed of trust, to C. H. Chapman, trustee, to secure a certain note, payable twelve months after date to B. P. Chapman for the sum of $249.50, a copy of which said deed of trust is herewith filed and marked "Exhibit B" and prayed to be made a part of this bill. And that after your complainant made this last deed of trust, on the 20th. day of August, 1894, the first deed of trust was released by the said B. P. Chapman, assignee of the said C. B. Hayden, that while the said B. P. Chapman released the first deed of trust, dated the 21st . day of January, 1890, he, the said Chapman, through mistake, or through fraud added and included in the said note of $249.50 the amount of the old bonds which was paid in full and your complainant holds the receipts showing that the old bonds have been paid. And your complainant says not only was this amount of the old bonds included in the note of $249.50, but other sums were through mistake or fraud added in the note of $249.50. Your complainant says that he did not know the nature of the transaction at the time the deed was made and that he afterwards discovered that there was a mistake, and your complainant being an ignorant colored man and little experienced in the transactions of business, and that the said B. P. Chapman knowing this to be so took the advantage of him and defrauded him in the whole transaction, and and that your complainant further says that at the time the last deed of trust was given to the said B. P. Chapman secure the said B. P. Chapman for the sum of $249.50 the said B. P. Chapman owed your complainant instead of your complainant owing him, the said B. P. Chapman.

Your complainant further says that since the execution of the last deed of trust, the one in which C. H. Chapman is named trustee, dated the 20th. day of August, 1894, your complainant has made payments, from time to time, on the said note of $249.50, thus reducing the said note to a very small amount, and that the said B. P. Chapman collected and received these amounts knowing at the time that your complainant did not owe him any thing.

That your complainant made frequent requests to the said B. P. Chapman for a settlement and a statement of the account, but your complainant received no information on the matter from the said B. P. Chapman, your complainant has always been ready and anxious to settle with the said B. P. Chapman and have the said deed of trust on his land properly released.

And your complainant further says that after he had asked for a statement of the amount claimed to be due by the said B. P. Chapman, and its being refused by the said B. P. Chapman, his land was advertised for sale on the 3rd . day of October, 1896, and sold on that day for $300.00 cash to Mrs. Florence O. Chapman, wife of the said B. P. Chapman, and that the said C. H. Chapman, trustee, made a deed for said land to the said Florence O. Chapman, dated the 3rd. day of October, 1896, a copy of which is herewith filed marked "Exhibit C." and prayed to be made a part of this bill: and that your complainant further says that he believes that the said Mrs. Florence O. Chapman and B. P. Chapman colluded and conspired together in order to deprive your complainant of his land, and your complainant further believes that the said Florence O. Chapman did not pay any amount or consideration for the said land, but it was paid by the said B. P. Chapman and the purpose of her buying it was to disconnect him , the said B P. Chapman with the fraud practiced in the transaction as much as possible and that the said deed can be set aside without affecting or prejudicing in any way the interests of the said Florence O. Chapman as she did not pay any thing for the said land, but it was paid for by the said B. P. Chapman and the deed was made in her name only to shield him in his fraud.

Your complainant says further that on the 19th. day of February, 1897, the said FlorenceO. Chapman sold the said land to Serena Tynes, and the deed conveying the same was duly recorded in the Clerk's Office of the County Court of Isle of Wight county; that on the same day the said Serena Tynes made a deed of trust conveying the said land to B.P. Chapman trustee, to secure the said Florence O. Chapman for the purchase price of the said land; that the said land was conveyed to the said Serena Tynes after the said Geoge E. Newby had threaten to sue the said Florence O. Chapman and B. P. Chapman for the said land, and that the sale would never have been made for such a small amount when the land was worth double the

amount it was sold to the said Serena Tynes for, if they the said B. P. Chapman, Florence O. Chapman had not feared suit and losing the said land. Your complainant believes that the said Serena Tynes knew at the time the deed was made to her by the said Florence O. Chapman of the fraud being practiced on the said George E. Newby. That is was only a pretended deed and only made to cloud the title and complicate the matter if suit should be instituted against them the said Florence O. Chapman and B. P. Chapman, and the said Serena Tynes knowingly and willinging assis ted the said Florence O. Chapman and B. P. Chapman in defrauding your complainant. And your complainant further believes that no part of the purchase price of the said land has been paid to the said Florence O. Chapman or to any one for her, that it was not intended to be paid and that your complainant's land can be returned to him without injury to any one.

And your complainant further charges that the said land was not sufficiently advertised and the purpose of this was to make the said land sell very low so that the said Chapman could purchase the same without paying out any money for the property and that the said sale was irregular and void, that the land sold for half value, no one making a bid for the said property but the said B. P. Chapman for his wife, Florence O. Chapman, that if the sale had been advertised as contemplated by law the land would have sold for double the amount it was purchased for at said sale. And your complainant not only charges that the whole transaction was fraudulent and was done only to deprive your complainant of his land and fraudulently get the title to said land to himself without any cost on his part, but he further says that the trustee C. H. Chapman, has never rendered any account whatever of the transaction to the commissioner of accounts of this county, nor has the same been recorded, nor has the sale been confirmed.

And your complainant further says that since the sale of the said property, he has often asked the said B. P. Chapman to allow him to see the said notes and bond secured by the said deeds of trust and his counsel has tried to secure them in order that he might see what credits there were on them. Your complainant has been and is still anxious to know how the matter stands and that he has always been ready to settle with

the said B. P. Chapman, and the only reason the matter has not been settled is because your complainant could not secure from the said B. P. Chapman a statement of the transaction, for your complainant believes that he was defrauded by the said B. P. Chapman.

Now, therefore 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, your complainant prays that the said Ben. P. Chapman, Florence O. Chapman, Cornelius H. Chapman, trustee, Serena Tynes, Ben P Chapman trustee, be made parties defendants to this bill and be required to answer the same; that proper process may issue; that all proper accounts may be taken; that the said Ben. P. Chapman render an account showing the exact amount your complainant has paid on the said debts; that the said trustee, Cornelius H. Chapman may be required to render an account as trustee; that the said deed made by the said trustee, Cornelius H. Chapman to the said Florence O. Chapman be declared null and void and set aside, and the sale be declared null and void and your complainant's land be returned to him; that such further and general relief may be granted your complainant as the nature of his case may require and to equity may seem meet and proper.

And youh complainant will ever pray, By George E Newby

J. E. Eure his counsel.

Virginia,
County of Nansemond, to-wit:

This 29th day of March 1898 George E. Newby appeared in person before me a notary public, in and for the county and state aforesaid, and made oath that the matters in the foregoing bill stated as of his own knowledge are true.

Given under my hand this 29th. day of March, 1898.

J. A. Berryo
Notary Public

Form No. 300½.

George E. Newby

vs. { SUBPOENA IN CHANCERY.

Ben. P. Chapman et al

J. E. Everett *p. q.*

To 1st April *Rules.*

Circuit *Court.*

1898

Expend my endeavors to the
Lord's advance the Glory
Pleasure, Edification
Grace Strength & Comfort
Love & Peace of the Church
Success, Glory & Welfare

Everett Waddey Co., Stationers and Printers, Richmond, Va. } Form No. 300½.

The Commonwealth of Virginia,

To the Sheriff of the County of Isle of Wight Greeting:

WE COMMAND YOU, That you summon Ben P Chapman Florence O. Chapman, Cornelius D. Chapman trustee, Serena Tynes and Ben P. Chapman trustee

to appear at the Clerk's office of the Circuit Court of the County of Isle of Wight at the rules to be held for the said court on the First Monday in April 1898, to answer a bill in chancery exhibited against them in our said court by George E. Newby

And have then there this writ. Witness, A. J. Young, Clerk of our said Court, at the court-house, the 31st day of March 1898, and in the 122 year of the Commonwealth.

A. J. Young C.C.

Newby
vs. Chapman et al

Bill of Costs

Atty's fee Plaintiff	10.00
Clerk fees	8.90
Sheriff "	2.50

NEWBY AND OTHERS

VS

CHAPMAN AND OTHERS.

Rough Decree, Octo.24-1898.

To be entered.

Robt. D. Memis

We consent to this decree.

B. P. Chapman exec'dx
by R. E. Boykin Att'y
Geo Ellenby
by I. E. Everett his Atty

Entered

Newby and others,	)	
VS.	)	In the Circuit Court of the
B. P. Chapman, Florence O. Chapman, Cornelius H. Chapman, Trustee, Serena Tymes and Ben P. Chapman, Trustee.	)	Couhty of Isle of Wight.

This cause came on this day to be heard and it appearing to the Court from the memorandum of compromise marked "X" filed in this cause as a part of the record herein that the said George E. Newby and B. P. Chapman have compromised their disputes and differences as in said memorandum specifically mentioned, by consent of parties the Court doth adgudge order and decree that the said compromise be rendered firm stable and binding between the parties, and nothing further remaining to be done herein it is ordered that this suit be stricken from the docket, the Defendant B. P. Chapman paying the costs except the attorney's taxed fee.

Serena Tyner

Florence Oblinger

6. Mech. Lis Pendens

Lee E. Newby

March 3, at 1898

Abstract Record.

Deed Book 263

Page 504

Memorandum of Lis Pendens.

Be it remembered that the undersigned Geo E. Newby has instituted suit in the Circuit Court of the county of Isle of Wight, Virginia , against Serena Tynes, Florence O. Chapman, B. P. Chapman, C. H. Chapman, trustee, and others

The object of the said suit is to obtain from the said court a decree rendering void the deed made by C. H. Chapman, trustee, to Florence O. Chapman transferring the land as below described and also declaring void the deed made by Florence O. Chapman to Sarena Tynes conveying the same said land.

The following is a discription of the said property:

" Commencing at the corner of G. R. Atkinson's land as Described him by his father, thence South fourteen degrees East to a marked pine, along the line of Col. Thomas to a marked pine at the head of a ravine thence down the ravine to the corner of the said Thomas', Tynes, and Miss Mary Whitefield's land, thence up another ravine North-east along said Tynes' land to a marked tree on the road, thence along said road on said Tynes' line to an old marked red oak, commencing on said Tynes' and Jordan's land, thence along a line of marked trees between said Tynes, Geo. R. Atkinson and Jordan to the beginning.

Witness the following signatures this 8th. day of March, 1898.

Geo. E. Newby
By his Counsel,
S. E. Ennett.

NEWBY

VS

CHAPMAN.

Memo of Compromise.

"X"

Memorandum of compromise of the suit of George E. Newby against B. P. Chapman, now depending in the Circuit Court of the County of Isle of Wight.

The said B. P. Chapman, without in any manner admitting the charges and allegations in the bill in said suit contained, but denying the same and protesting that the same are not true, agrees to pay to the said George E. Newby the sum of Fifty Dollars ($50)., and to pay the costs of the said suit so depending as aforesaid, except the attorneys taxed fee, which counsel for George E. Newby has agreed to remit, in full compromise and settlement of the disputes and differences growing out of the matters and things in said bill alleged, and in full satisfaction and discharge of any and all claims of the said George E. Newby upon the land conveyed by the said George E. Newby by his deed bearing date August 20th, 1894, to C. H. Chapman, Trustee, to secure to B. P. Chapman the debt in said deed mentioned, a copy of which deed is filed with the Complainants Bill. The said George E. Newby in consideration of the sum of Fifty Dollars ($50), to him in hand paid, the receipt whereof is hereby acknowledged, and the further agreement of the said B. P. Chapman to pay the costs of the said suit, except the attorney's taxed fee as aforesaid, has agreed to compromise, and does hereby compromise all disputes and differences growing out of the matters and things in said bill alleged, and doth release the said land in the said deed of trust mentioned from any and all claims of every kind, nature, and description whatsoever of him the said George E. Newby, and doth ratify and confirm the sale of said land by the said Trustee in said deed in pursuance of the terms thereof.

October 20th, 1898.

Geo. E. Newby by
S. E. Everett his atty.

B. P. Chapman by
R. E. Boykin his atty

Jas. E Newby
Vs
Jas Clay.
B.P. Chapman et als

"Exhibit A."

Filed March 30th 1898

This Deed of Trust made and entered in to the 21st. day of January, A.D. 1890, between Geo. E. Newby and Joanna Newby, his wife, of the one part and R. S. Thomas, chosen trustee of the other part, all of the county of Isle of Wight in the State of Virginia,

Witness that the said Geo. E. Newby and Joanna Newby, his wife, do hereby grant, assign, and set aside to the said R. S. Thomas chosen trustee all their right title and interest in and to the following real estate to-wit: that certain piece or parcel of land lying and being in said county and state containing by estimation thirty acres, be the same more or less, that was conveyed to said Geore Newby by deed from John Tynes bearing date the 10th. day of January, 1890, recorded in the office of the Clerk of the county court of said county on-day of January, 1890, in deed book -- ---page bounded and described as follows commencing at the corner of a ditch on the road side on the corner of G. R. Atkinson's land as devised him by his father, thence South fifty degrees east to a marked pine along the line of Col. Thomas, thence South forty six degrees east along said Thomas line to a marked pine at the head of a ravine, thence down the ravine to the corner of said Thomas and Tynes and Miss Mary Whitfield land, thence up another ravine northeast along said Tynes land to a marked tree on the road, thence North-east along the road on said Tynes line to an old marked red oak cornering on said Tynes and Jordans land, thence along a line of marked trees between said Jordan and said Tynes and said G. R. Atkinson to the beginning.

In trust to secure to C. B. Hayden the payment of the sum of hundred and thirty dollars, evidenced by two bonds executed by George E. Newby for Sixty five dollars each, bearing date the 21st. day of January, 1890, payable respectively eightteen months and two years after date to said C. B. Hayden.

Witness the following signatures and seals. Joanna her mark Newby Seal.
Geo. E. Newby Seal.

Virginia, Isle of Wight County, to-wit: I, K. K. Chapman, a notary Public for the county aforesaid in the state of Virginia, do hereby certify that George E. Newby and Joanna Newby, his wife, whose names are signed to the writing above bearing date the 21st. day of January, 1890, have acknowledged the same before me in my county aforesaid.

Given under my hand this 10th. day of January, 1890.

K. K. Chapman, Notary Public.

In the Clerk's Office of the County Court of Isle of Wight County the 10th. day of February, 1890, this deed was received and with certificate hereon admitted to record.

Teste N. P. Young, Clk.

A Copy

Teste

N. P. Young Clk.

Geo. E. Newby
vs
Jas Chapman
B.P. Chapman et ale

"Exhibit B."

Filed March 30th 1898

This deed of trust made and entered into the 20th. day of August, 1894, between George E. Newby and Joanna Newby, his wife, of the one part and C. H. Chapman trustee of the other part, all in the county of Isle of Wight, State of Virginia.

Witness, the the said George E. Newby & Joanna Newby, his wife, do hereby grant, assign and set aside to the said C. H. Chapman, trustee all their right title and interest in and to the following real estate towit; that certain piece or parcel of land lying and being in the said county and state and containing by estimation thirty acres, more or less, ~~xxxxxxxxxxxxxxxxxxxx~~ that was conveyed to the said Geo. E. Newby by deed from John Tynes bearing date the 10th. day of January, 1890, recorded in the Clerk's office of the county court of said county on the — day — 1890, Deed Book ____ page- - -- bounded in said deed as follows, commencing at the corner of G. R. Atkinson land as described him by his father, thence south fifty degrees east to a marked pine, along the line of Col. Thomas, thence south fourteen degreen east along said Thomas line to a marked pine at the head of a ravine, thence down the ravine to the corner of the said Thomas and Tynes and Miss Mary Whitfield land, thence up another ravine north east along said Tynes land to a marked tree on the road, thence north east along the road on said Tynes line to an old marked red oak commencing on said Tynes and Jordans land, thence along a line of marked trees betwwen said Jordan and said Tynes and Geo. R. Atkinson to the beginning.

In trust to secure to B. P. Chapman, merchant in the town of Smitfield the payment of the sum of two hundred and forty nine dollars and fifty cents as evidenced by one note due and payable in twelve months from date.

Witness the following signatures and seals, this — of August, 1894.

Geo. E. Newby Seal.
Joanna her mark Newby Seal.

Virginia, Isle of Wight County to-wit:

I, A. S. Barrett, a Notary Public, for the county of Isle of Wight State of Virginia, do certify that George E. Newby and Joanna Newby, his wife, whose names are signed to this writing above bearing date the 20th. diy of August, 1894, have acknowledged the same before me in my county aforesaid.

Given under my hand and seal this 20th. day of August, 1894.

A. S. Barrett, Notary Public.

In the Clerk's office of the County Court of Isle of Wight county the 20th. day of August, 1894 , this deed was received and ~~admitted~~ with the certificate hereon admitted to record .

Teste N. P.Young, Clk.

A Copy Teste.

N. P. Young c.c.

C. H. Chapman, trustee.

To: Deed of B. 83.

F. A. Chapman.

"Exhibit C"

Filed March 30th 1898

WHEREAS, George E. Newby and Joanna Newby, his wife, upon the twentieth day of August, 1894, grant and conveyed to me, the undersigned trustee, all that certain tract of land in the county of Isle of Wigit, and state of Virginia, containing by estimation about thirty acres, be the same more or less, described herein after mentioned, to secure to B.P .Chapman, thm sum of Two Hundred and forty nine 50/100 Dollars, due by bond dated twentieth day of August, 1894, and payable on demand with interest from date, and on the said bond with deed of trust securing same, and, whereas, the said George E. Newby made default in the payment of the same, and the said B. P. Chapman ordered and described sale to be made of the land as aforesaid.

And whereas, I, C. H. Chapman, the undersigned the trustee in the said deed did duly advertise the time, terms and place of sale by handy bills posted in three or more public places, in the said county, and did make sale of the said land in front of the store-door of B. P. Chapman, at public auction, on the third day of Oct., 1896, to Florence O. Chapman for the sum of three hundred dollars, that being the highest bid; and whereas the said Florence O. Chapman have made payment of the same.

NOW, THEREFORE, this deed made this third day of Oct. ,1896, between C. H. Chapman trustee as aforesaid of the one part and Florence O. Chapman of the other part, Witnesseth, that the said C. H. Chapman, trustee, as aforesaid in the consideration of the sum of three hundred dollars cash in hand paid the receipt of which is hereby acknowledged, doth grant with special warranty, unto the said Florence O. Chapman all that certain piece or parcel of land, lying and being in the said county and state aforesaid.

The said land adjoins the land of Geo. R. Atkinson and others.

Witness my hand and seal this third day of Oct., one thousand eight hundred and ninety six.

C. H. Chapman, ~~krustkex~~ Seal.

County of Isle of Wight: ~~Dx~~

I, M. F. Jordan, a justice of the peace for the county of aforesaid in the State of Virginia, do certify that C. H. Chapman whose name is signed to the writing hereto annexed, bearing date the 3rd of October, 1896, has acknowledged the same before me in my county aforesaid.

Given under my hand this 17th. day of October, 1896. M.F.Jordan, J. P.

In the Clerk's office of the County Court of Isle of Wight County, October 19th 1896, this deed was received and with the certificate annexed admitted to record. Teste: N. F. Young, Clerk: By Sam'l H. Edwards,Deputy.

A Copy, Teste: ~~N. F. Young, Clerk: By~~

N. F. Young Cl.

~~Deputy.~~