

1909-031 Chancery Causes: J. M. Cones vs Willis A. Spivey, executor of Ellendera Spivey
Dee of Wright County + B. L. Roberts, trustee

"Exhibit B"

TRUSTEE'S SALE OF VALUABLE REAL ESTATE in Isle of Wight
County, Virginia.

By virtue of a deed of trust executed by J. M. Cones and Rebecca Cones his wife, to me, the undersigned, as Trustee, dated the 2nd day of January, 1908 and recorded on the 3rd day of January, 1908, in Deed Book No. 74, Page 560, in the Clerk's Office of Isle of Wight County Virginia, default having been made in the payment of the debt therein secured, and upon request of the beneficiary therein named, I shall offer for sale at public auction, to the highest bidder, in

Front of the Bank of Windsor, in Windsor, Virginia on
~~Saturday~~ ^{Monday} August the ~~8th~~ ^{10th}, 1908 at 11 o'clock A. M.

All that certain tract of land situate in Windsor Magisterial District, in the County of Isle of Wight and State of Virginia containing ninety acres, more or less and is bounded by the lands of C. E. Spivey, T. J. Carr, I. E. Spivey's Estate, Ann Redd's Estate, A. A. Redd and E. A. Watkins and the County Road leading from Windsor to Mt. Carmen Church.

It being the tract of land conveyed to the said J. M. Cones by Willie A. Spivey and wife, which deed is duly recorded in the Clerk's Office of the Circuit Court of Isle of Wight County.

TERMS OF SALE under the said deed of trust: "For cash and out of the proceeds of sale pay first the cost of sale, including a commission of five per cent. of gross amount to the trustee and pay the fees for drawing and recording this deed, if then unpaid, and then pay off said bond with all accrued interest and legal charges, and pay the balance, if any, as the law directs.

Benj. L. Roberts, Trustee.

Windsor, Va., July 26th 1908.

Elender Spivey's Will,

I, Elender Spivey, of Isle of Wight County, Virginia, being of sound mind and memory but in feeble health do make this instrument as and for my last will and testament, hereby revoking all other wills by me at any time made.

I nominate and appoint my son, Willis A. Spivey, the executor of my estate and direct that the court permit him to qualify without requiring a surety on his official bond.

I give and bequeath to my son, Charles E. Spivey, all debt or debts he may owe me at the time of my death and particularly any debt for unpaid rent for the whole or any part of a year on that certain farm in Isle of Wight County upon which the said Charles E. Spivey now resides.

I give to my daughter, Zipporah Hines, if she is alive at the time of my death, the sum of Fifty (\$50.00) Dollars, but if the said Zipporah Hines should not outlive me it is my will that her estate shall receive nothing under this will.

I give and devise to my daughter Ella L. Stevenson, the wife of George Stevenson, the sum of One Hundred (\$100.00) Dollars.

I give to my daughter, Mahalia V. Rountree, the wife of K. R. Rountree, the sum of One Hundred (\$100.00) Dollars.

I give, devise and bequeath unto my son, Willis A. Spivey, all the rest and residue of my estate real and personal and mixed of every kind whatsoever in fee simple absolute.

In witness whereof I have hereunto set my hand and seal this 4th. day of May 1906.

By John S. Vaughan,

her
Elender x Spivey, (SEAL)
mark

Signed, published and declared by Elender Spivey, as and for her last will, in the presence of us, who, in her presence and at her request, and in the presence of one another have hereunto signed our names as witnesses thereto.

John S. Vaughan,

Timothy J. Carr,

Clerk's Office of the Circuit Court of Isle of Wight County,
March 4th. 1907.

A paper purporting to be the last will and testament of Elender Spivey, deceased, was this day produced before the Clerk of this Court by Willis A. Spivey, the executor therein named, and proved by the oaths of J. S. Vaughan and Timothy J. Carr, the subscribing witnesses thereto, and ordered to be recorded as the true last will and testament of the said Elender Spivey, deceased.

Teste, A. S. Johnson, Clerk.

A copy, Teste,

Johnson C.C.

Fee for copy 50¢

I know all Men by these Presents, That we J M Cones, principal, and
Rebecca Cones, surety
are held and firmly bound unto the Commonwealth of Virginia, in the sum of Two Hundred
dollars, to the payment whereof, well and truly to be made to
the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors
and administrators, jointly and severally, firmly by these presents. And we hereby waive the benefit of our
exemptions as to this obligation, and also of any claim, or right to discharge any liability to the Common-
wealth arising under this bond, or by virtue of said office, post or trust, with coupons detached from bonds
of this State. Sealed with our seals, and dated this 8th day of August,
one thousand ~~eight~~ ^{nine} hundred and eight.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas the above bound J M Cones

on this bill in chancery against Willie A. Spivey, in his own
right, and as executor of Ellender Spivey deceased

addressed to the Judge of the Circuit Court of the County of Isle of Wright
has obtained from the said Judge an injunction to injoin and restrain

the defndnat, B. L. Roberts, trustee, from making sale on the 10th.
day of August, 1908, as advertised, of the property conveyed to him
as trustee by deed of trust from J. M. Cones, and fully described in
complainant's Bill, and being same property now or formerly belonging
to the estate of Ellender Spivey, deceased, or at any other time with-
in thirty days from the date of this order.

until the future order of the said court; and whereas it is provided, by the order of the said Judge awarding
the said injunction, that the plaintiff shall not have the benefit thereof until J M Cones,

or some one for him, shall enter into a bond, with good security, in the clerk's office of the said
court, payable to the Commonwealth of Virginia, in the penalty of Two Hundred

dollars, and conditioned to pay all such costs as may be awarded against the
said plaintiff, and all such damages as shall be incurred in case the said injunction be dissolved. Now,

therefore, if the said J M Cones shall pay all such costs as
may be awarded against him, and all such damages as shall be incurred in case the said injunc-
tion be dissolved, then this obligation to be void, otherwise to remain in full force and virtue.

Executed in the presence of

A S Johnson, clk. } J M Cones 
Rebecca Cones 
mark 

In the Clerk's Office of the Circuit Court of the County of Isle of Wright

This day personally appeared before me A S Johnson, Clerk
of the Circuit Court of the County of Isle of Wright

, and made oath
that his estate, after the payment of all his just debts, and those for which he is bound as
security for others and expect to have to pay, is worth the sum of Two Hundred
dollars, over and above all exemptions allowed by law.

Given under my hand this 8th day of August, 1908.

A S Johnson Clerk.
A Copy Teste [Signature] cc.

4

Form No. 306.

J. M. Connel

265 {

INJUNCTION BOND.

Willis A. Sperry et al

~~Commonwealth~~

Copy

Filed August 8th 1908

J. M. Cones

Plaintiff

v In Chancery

Willis H. Spruig and B. L. Roberts

Defendants

This cause came on this day & be
again heard in the papers formerly read
and on statement of counsel for plaintiff
that the matters in this suit have been
settled, and was argued by counsel,

On consideration whereof, the Court
doth adjudge, order and decree that this
cause be stricken from the docket at the
cost of said plaintiff.

Writ Tax	1.50
Chancery	548.
Shrift	100
	(7.98)

850
648
1.82

5
J. M. Conner
v. In Chancery

Willis N. Spruey et al.

Final Decree

C. O. B. No. 6, page 609.

1909

Apr. 9.

Entered.

D. D. W.

In the Circuit Court of Isle of Wight County;
J.M.Cones, complainant.

*In Vacation,
Aug. 8. 1908*

vs

Willis A. Spivey, in his own right and as executor of Ellender Spivey, deceased, and B.L. Roberts, trustee. Defendants.

On motion of the complainant, by counsel, and for good cause shown an injunction is awarded him to enjoin and restrain the defendant B.L. Roberts, trustee, from making sale on the 10th day of August, 1908, as advertised, of the property conveyed to him as trustee by deed of trust from J.M. Cones, and fully described in complainants bill, and being same property now or formerly belonging to the estate of Ellender Spivey, deceased, *or at any other time within 30 days from the date of this order.*

But the plaintiff is not to have the benefit of this order until he, or some one for him, shall enter into bond before the Clerk of this court, with sufficient security, in the penalty of \$200⁰⁰, payable to the defendants, and conditioned to pay all such costs as may be awarded against the complainant, and all such damages as may be incurred, in case this injunction shall be dissolved.

To the Clerk of the Circuit
Court of Isle of Wight County.

*Jesse F. West, Judge
3rd Judicial Circuit
of Va.*

Virginia: Clerk's Office of the Circuit Court of the County of Isle of Wight August 8th. 1908. The foregoing injunction order was received and entered of record.

Teste,

[Signature]
C.C.

2

Comes

r.

Spencer et al.

CORB No 6, § 567

Enter this order
in the chancery
order Book

g. J. W.
Aug 8. 1908.

The Commonwealth of Virginia,

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

WE COMMAND YOU that you summon *Willis A. Spivey*, in
his own right, and as Executor of *Ellenora*
Spivey, deceased, and *B. L. Roberts, Trustee*

to appear at the Clerk's office of the *Chancery* Court of the *County of Isle of Wight*
at the rules to be held for the said Court, on the *3rd* Monday in *August* 190*8*,
to answer a bill in chancery, exhibited against *them* in our said court for
by J. M. Cines

And have then there this writ. Witness *Nathaniel F. Young*, Clerk of our said court, at
the court-house, the *8th* day of *August* 190*8*, and in the 12*33rd*
year of the Commonwealth.

Nathaniel F. Young
D. L. Roberts

John A. Jones

To the Hon.B.D.White, Judge of the Circuit Court of the County of Isle of Wight:-

Your complainant, J.M.Cones, respectfully complaining, shows unto the court the following case:-

That he is a resident of the county of Isle of Wight, and that the defendants hereinafter named are also residents of said county.

That Ellender Spivey died sometime in the year 1907, and that soon afterwards her last will and testament was duly admitted to probate in the Circuit Court of the County of Isle of Wight. A copy of same is filed herewith, marked "Exhibit A" and asked to be read as a part hereof. That said will was admitted to probate by ex-parte proceedings.

That by her said will one Willis A. Spivey was appointed as the executor of her estate and allowed to qualify, as directed by said will, by giving bond without security.

That said decedent had little, if any, personal estate, and that no account of same has been filed by said executor, and no settlement with her creditors or legatees has been made.

That by her said will she directed that her debts should be paid, and after making small legacies to some of her other children, devised to said Willis A. Spivey the following described tract of land in said county, to wit:

All that certain tract of land in Windsor Magisterial District, in Isle of Wight County, Virginia, containing ninety acres more or less, and bounded by the lands of C.E. Spivey, T. J. Carr, I.E. Spivey's estate, N. Redd's estate, A.A. Redd and E.A. Watkins and the county road.

That in the early part of January, 1908, the said Willis A. Spivey conveyed said tract of land to your complainant, J.M. Cones, for the sum of eighteen hundred dollars, of which amount the sum of \$265 was paid in cash, and the balance thereof secured by a deed of trust on said property to B.L. Roberts, trustee.

2.

tee. That said cash amount was paid to said Willis A. Spivey upon his promise to make settlement of the debts due by the decedent's estate and to pay the legacies provided for in said will. None of said debts or legacies have, so your complainant has been informed, been paid.

That recently the said Willis A. Spivey has directed his said trustee to advertise said property for sale under the aforesaid deed of trust, and the said trustee has accordingly advertised same for sale on Monday, August 10th, 1908. A copy of said advertisement marked "Exhibit B" is herewith filed, and asked to be read as a part hereof.

That since the said property was advertised for sale your complainant has secured a purchaser for said property who was willing to pay the cash therefor, provided the said Willis A. Spivey would pay the debts of the said estate, the legacies ^{by said will} provided for ~~therein~~ and the other liens, if any, thereon, out of the said purchase money, but the said Spivey declined to do so.

Your complainant charges and alleges that the records of Isle of Wight County Circuit Court show unsatisfied judgments against said Willis A. Spivey and Ellender Spivey which may be liens on said property; and that said creditors of the said estate of Ellender Spivey claim that they have a lien on said property for the amounts of their respective debts; and that it is currently rumored that said other heirs of Ellender Spivey, deceased, are threatening to institute a suit to impeach her will.

Your complainant is advised and charges that a sale of said property by the said trustee ought not to be made until the liens thereon are definitely fixed and ascertained, nor until the cloud now on said title can be fully removed.

Your complainant further alleges and charges that if a sale is made of said property by said trustee, before said

3.

liens are ascertained and said cloud on the title properly removed, that said property will sell for an inadequate price, and that the creditors and legatees whose debts are still unpaid may be prejudiced, and that your complainant, who since his purchase of the property has made improvements thereon, unquestionably ^{will} be prejudiced.

Your complainant further alleges and charges that said Willis A. Spivey has no estate, except the debt due and owing by your complainant as aforesaid, and it is believed that if the property should be sold and the proceeds paid over to him by the trustee that it is probable that said debts and legacies will never be paid.

In tender consideration whereof and for as much as your complainant is remediless save in a court of equity where matters of this kind are alone and properly cognizable your complainant prays that the said Willis A. Spivey, ^{in his own right and as executor of Ellender Spivey} and B. L. Roberts, trustee may be made parties defendant to this bill and required to answer the same, but answers under oath are waived:

that said B. L. Roberts, trustee, may be enjoined and restrained from making sale of said property, as advertised by him, on the 10th day of August, 1908, and until the further order of this court; that an account may be taken by one of the commissioners of this court of the transactions of said Willis A. Spivey as Executor of said Ellender Spivey, deceased; that an account may be taken of the liens on said property of the said decedent, Ellender Spivey, and especially on the property described herein with the respective priorities of said liens; that proper inquiries may be made to ascertain the validity of the aforesaid will and all other proper inquiries necessary to ascertain and remove any cloud on your complainant's title to said property; that proper process issue; that all proper orders and decrees may be entered; ^{and} that all such other, farther and general relief may be granted your complainant as the nature of his case may require ^{or} to a court of equi-

ty may seem meet.

And your complainant will ever pray, &c.

E. E. Stallant *J. M. Cones*
Parke Deane T. G.

Virginia, Isle of Wight County, towit:

I *Parke Deane* a Notary Public
 in and for said county, in said State do certify that J.M.
 Cones this day personally appeared before me in my said
 County and made affidavit that the allegations of the afore
 said, so far as made of his own knowledge are true, and, so far
 as made upon information received from others, he believes
 to be true.

Given under my hand this the 8 day of August, 1908.

Parke Deane
~~*J. M. Cones*~~ N.P.
My Commission expires July 24, 1909.

J. M. Conus

vs {

Willis A. Spruay, et al

Pathe P. Pleaus, pgs.

Bill of Complaint

Filed August 8-1908

2nd Aug rules 1908

*Process returned executed
on all parties.
Deceit nisi.*

1st September rules 1908

*Defts still failing to ap-
pear. plead answers or de-
mur. Case taken for con-
fession and case set for
hearing*