

1875-017
Nansemond Co. (Suffolk)

Chancery Causes: James J. Lewis vs John Sinclair etc

Kilby, Harris

The Commonwealth of Virginia,

To the Sheriff of Nansemond County---Greeting:
YOU ARE HEREBY COMMANDED TO SUMMON

R. Kelly (Trustee,)

John Sinclair and John

to appear at the Clerk's Office of our Circuit Court, for the County of Nansemond, on the
first Monday in May next, 1868, being rule day, to answer a bill in
chancery, exhibited against them by

James J. Lewis

and unless they shall answer the said bill by the next rule day
thereafter, the Court will take said bill for confessed, and decree accordingly.

And have then and there this writ. Witness, PETER B. PRENTIS, Clerk of our said Court, at his
Office, this 27th day of April 1868, and in the 92nd year of
the Commonwealth.

Peter B. Prentis Clerk.

The Sheriff will, in his return, note the day on which this process is executed on each Defendant.

At a Circuit Court, held for Nansemond County the 21st day of April 1868.
James J. Lewis Complainant

against In Chancery

John Sinclair and John R. Kelly (Trustee). Defendants

On the Motion of the plaintiff, who hath filed his Bill and made oath thereto according to law, it is ordered that the defendant John Sinclair be enjoined from cutting any more wood or lumber from the land in the Bill mentioned, and that he also be enjoined from selling or removing the wood already cut and now remaining on the said land until the further order of the Court. And it is further ordered that William Eley Sheriff of the County, take and receive the wood so cut and sell the same on a credit of four months, taking bond with sufficient security for the proceeds of the said sale, less the expenses of said sale, and return the bond to the Court. But the effect of this injunction is to be suspended until the said plaintiff shall enter into bond with one or more sufficient securities, payable to the Commonwealth of Virginia in the Clerk's Office of this Court, in the penalty of Five Hundred Dollars conditioned to pay all such costs and damages as may be awarded against him, in case this injunction be dissolved.

A Copy.

Teste,

Peter B. Prentiss, Clerk

1868. April 30th. Executed, by delivering a copy of this Process, to John Sinclair and John R. Kelly, Trustee, each - also by attaching, taking & receiving 300 or 400 cords of wood & 2000 or 3000 Shingles, which goods, according to the foregoing order of Court, and where I am duly directed for benefit

W. H. Phelps
J. J. Kelly Esq. Chff

37
James J. Lewis
vs John Sinclair and
John R. Kelly, Trustee
To May Rule 1868

Peter B. Prentiss, page 37.
Clerk

Know all men by these Presents, That We James J Lewis and
Henry D. Cooper are held and firmly
bound unto the Commonwealth of Virginia, in the sum of Five Hundred
Dollars: to the payment where of, well and truly to be made to the said Common-
wealth 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
sealed with our seals, and dated this 27th day of April One thousand
eight hundred and sixty eight.

The Condition of the above Obligation is such, that where as the above
bound James J. Lewis, on his Wile in Chancery against John Sinclair
and John R. Kelly (Trustees) addressed to the Judge of the Circuit Court of Nansemond
County, has obtained from the said Judge an Injunction, to enjoin and restrain
The defendant John Sinclair, from cutting any more wood or timber from the
Lands in the bill mentioned and also to enjoin him from selling or removing
the wood already cut and now remaining on the said Lands until the further
order of the said Court: And where as, it is provided by the order of the said Judge
awarding the said injunction, that the Plaintiff, shall not have the benefit thereof
until the said James J. Lewis, shall enter into a Bond with one or more suffi-
cient Securities, in the Clerk's Office of said Court, payable to the Commonwealth
of Virginia, in the penalty of Five Hundred Dollars, and Conditions 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 James J. Lewis, 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, or else to remain in full force
and value.

Executed in presence of
P. A. Riddick Jr

James J. Lewis
Henry D. Cooper

Seal

Seal

In the Clerk's Office of Nansemond County, Circuit Court, The 27th day of April 1868.
This day James J. Lewis and Henry D. Cooper signed and acknowledged the foregoing bond.
and the said Henry D. Cooper, the security thereto, made oath before me, Clerk of the said Court,
that his Estate, after the payment of all his just debts and such liabilities as he has incurred
for others, is worth the sum of Five Hundred Dollars.

Given under my hand this 27th day of April 1868.

Peter B. Prentiss. Clerk

James J. Lewis
To J. Injunction Bond
Commonwealth.

1868
April 27th Executed & Filed

2 Lewis

17.

St. Clair, &c

The Bill of the Complainant having been regularly taken for copy at the Registry as to the Bill Geo R Kelly trustee, this cause came on this day to be heard upon the Bill, the answer of the Defendant John St. Clair this day filed by leave of the Court, general replication to the said answer and exhibits filed, and was argued by Counsel, On Consideration whereof the Court both judge order and decree that one of the Commissioners of this Court do later the following accounts to wit,

1st An account of the plaintiff's Demand.

2nd An account of the wood and staves cut and made on the land in the Bill and preceding mentioned, showing what disposition has been made of the same.

3. An account of the fee-simple and annual value of the land and premises in the Bill and preceding mentioned.

Which accounts the said Commissioner is directed to state & settle and to the Court report, together with any matter specially stated & demanded for hearing.

by himself, or which may be assigned by
either party to be so stated

Livy

or

Secrecy

Michael

April Term 1869.

To be entered

E. J. Little

April Term '69

Entered

Lewis

11
25

Sinclair vs. Sal:

On motion of the Plaintiff who hath filed his Bill and made oath thereto according to law, it is ordered, that the defendant, John Sinclair, be enjoined from cutting any more wood or timber from the land in the Bill mentioned, and that he also be enjoined from selling or removing the wood already cut and now remaining on the said land until the further order of the Court.

And it is further ordered, that William Ely, Sheriff of the County, take and receive the wood so cut and sell the same on a credit of four months, taking bond with sufficient security for the proceeds of the said sale, left the appearance of said sale, and return the bond to the Court.

But the effect of this injunction is to be suspended until the said Plaintiff shall enter into bond with one or more sufficient securities, payable to the Commonwealth of Virginia, in the Clerk's Office of this Court, in the penalty of Five Hundred Dollars, conditioned to pay all such costs and damages as may be awarded against him, in case this injunction be dissolved.

James J. Lewis

$\frac{11}{21}$ { Decur
Apl: Fresno 1868

John Sinclair Ltd

Entered

I, John Sinclair, in consideration of the sum of Five Hundred and eighty-five dollars, do sell unto Harriet Harris and to her heirs and assigns forever, the following chattel estate, to wit: four Cows and calves, one Spring wagon, one yoke of Oxen and one cart, Two sows and ten pigs, and all my household and kitchen furniture, & one horse cart: one Devon bull (young)

Given under my hand & seal this 21st: Jan'y: 1868.

John Sinclair 

I, Harriet Harris, the owner of the above named property, have lent the same to Mr. Jno: Sinclair, subject to my orders at all times.

Given under my hand and seal, Jan'y: 21st 1868.

Harriet Harris 

Nansemond County, to wit:

I, Cornelius Hall, a Justice of the Peace in and for said County, in the State of Virginia, do certify that John Sinclair and Harriet Harris, whose names are signed to the foregoing writings, dated the 21st: day of January 1868, have each, acknowledged the same to be their act and deed.

Given under my hand January 23rd: 1868.

Cornelius Hall. J.P.

In the Clerk's Office of Nansemond County Court, the 24th: day of January 1868.

This Bill of Sale with the memorandum ^{thereof} appended, was received, and with the certificate written thereon admitted to record (the requisite stamp of \$1.00, having

been affixed and cancelled)

Teste,

Peter B. Prentiss. Clerk

A. Copy:

Teste,

Peter B. Prentiss. Clerk.

Xnd

John S. S. S. S.

To Copy Bill of Sale to

Harriet Harris

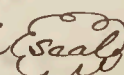
24th Feb 1861

This Deed made this 5th day of September
One Thousand Eight hundred and sixty six, be-
tween John Sinclair of the one part and John
R. Kilby Chosen Trustee of the other part, witnesseth
That the said John Sinclair doth grant with
general warranty unto the said John R. Kilby
Trustee as aforesaid the following real Estate, to
wit: a tract of Land in Banetts Neck,
Nausemond County, containing by Estimation
Two hundred and Seventy Eight acres, more or
less, and adjoining the Lands of John H. B.
Vesey's estate, Mrs. Amos Moore, and a creek
the dividing line between this Land & the Land
of Tindale and others Together with all
and singular the appurtenances belonging thereto.
In Trust to secure the credit part of the purchase
money for said Land which was this day pur-
chased by said John Sinclair of said James J.
Lewis & wife (it being designed that this Deed of
Trust shall be a simultaneous act with the Deed
of Bargain & Sale) and which debt is due
as follows: One Thousand dollars due 1st
January 1868, with interest from the 1st day
of January 1867: one other thousand dollars,
due the 1st of January 1869, with like interest:
One other Thousand dollars due the 1st of
~~and one other Thousand due the 1st of~~ January, 1870, with like interest,
due by
four several Bonds dated this 5th day of Sep-
tember, 1866, and payable as above and with

interest as above, with power to the said Trustee, after default shall have been made in the payment of all of said sums, and when thereafter directed by the said James J. Lewis, his heirs Executors & admors, to sell the said Land at public or private sale, for cash or on such reasonable credit as the said Trustee may deem best for all parties, and out of the proceeds of sale pay all costs and charges attending the execution of this Trust, including a commission of five per cent to said Trustee on such sales, and then pay to said James J. Lewis, his heirs, Executors, admors or assigns, the said several sums of money, and all interest thereon, or such part thereof as may be then due and unpaid.

And the said John Sinclair covenants that he will execute all further assurances necessary.

Witness the following signature and seal.

John Sinclair 

Henric County, to wit:

I, John M. Bowling a Justice of the Peace in and for said County and State of Virginia, do certify that John Sinclair, a party to the foregoing writing bearing date

the 5th day of September, 1866, has personally
appeared before me in said County and acknowl-
edged the same to be his act and deed.

Given under my hand this 8th day of September
1866.

John M. Cowling J. P.

In the Clerk's Office of Vansuwend County
Court, the 10th day of September, 1866.

This Deed of Trust was received, and with
the Certificate thereon admitted to record,
(the requisite stamps of \$4.00 having been
affixed and cancelled).

Teste,

Peter B. Prentiss, Clerk

A Copy Teste,

Peter B. Prentiss, Clerk

John Sinclair
 To Copy Deed of Trust

John R. Kelly, Trustee
 for James H. Lewis

(*Exhibit*)

Levy,

vs,

Shickel.

and

For reasons appearing
to the Court it is ordered that this
cause be removed from the docket,
each party paying his own costs.

Lewis

or. 

or on

Shiclain &c

Oct 11. 1875

To be on hand.

Geo. B. Lord

Entered O.B. Vol. - p 286.

To the Honorable Edward P. Pettis, Judge of the
Circuit Court of Law & Chancery for the County of
Kansas in Chancery sitting

The Answer of John Sinclair to the Bill of
Complaint in said court exhibited by James I
Lewis against him & others -

This Defendant - saving reserving all right of
exception to the many errors and imperfections in
said bill contained, for answer thereto answering
says, that he admits to be true the general allega-
tion of said bill of the purchase by this defendant
of the complainant of the tract of land in
said bill mentioned on the terms therein
set forth & that on the date of the filing of said
bill no portion of the Bond for \$1000.00 falling due
on the 1st of January 1868 had been paid, but this
defendant denies the allegation of said bill that
this defendant had made no provision for the payment
of said bond; that as said complainant well knew
this defendant had made full and ample provision for
the payment of said Bond by cutting & getting ready for
market the pine wood in said bill mentioned amounting
to 330 cords worth delivered on board the Boat \$4.00 per
cord a sum more than sufficient to satisfy said Bond -
that complainant well knew the intention of this
defendant to apply the proceeds of sale of said wood to
the payment of the purchase bonds for said land when
the said complainant sued out said bill of injunc-
tion, & before the said complainant applied for the said

of injunction this defendant had informed said
complainant of such intention & as evidence of his good
faith in so applying said proceeds offered to put
the said wood on board a Boat ready for market -
& allow the said complainant to take charge of &
sell the same, receive the proceeds himself & apply
them less expenses of sale to the credit of said bonds -
& urged said complainant to do so - that said
complainant refused either to sell said wood
himself or allow this defendant to do so & apply the
proceeds to the payment of said purchase bonds -
but has interfered by his said bill of injunction & prevented
the sale of said wood by this defendant for that
purpose - that after obtaining said injunction & the
order of sale of said wood said complainant
voluntarily offered to buy in the wood at the sale, &
~~sell it for~~ ^{for} defendant's benefit, applying the
proceeds of sale less expenses of sale to the credit of
said bonds, this defendant putting the wood on
board the boat at his ^{said defendant's} expense - that this defendant -
agreed to said offer & accepted the same & was thereby
prevented from bidding for said wood himself
as were his friends from bidding for him as he or
they might otherwise have done to his benefit &
advantage as he intended to do unless his friends did
for him, who were there for that purpose - that said
complainant on the day of sale requested parties
present not to bid against him, as he intended to

to buy in said wood for this defendant's benefit -
that at said sale said complainant bid off all
the pine wood at \$1.00 per cord & the staves
at some small price not now remembered, but
not enough to pay the expenses of getting them -
said complainant being the only bidder, others
who came for that purpose having ^{been} restrained from
so doing by the request & promises aforesaid of said
complainant that but for said promises said wood
would have readily sold for 2 $\frac{1}{2}$ dollars per cord in the
woods - that in pursuance of said agreement this
defendant loaded two vessels with said wood
& hauled same on the third load when he was
to his surprise captaining & preemptively stopped
of said complainant & ordered to haul no more -
that said complainant has sold three vessel loads
of said wood; two of said vessel loads & part of
the third having been hauled by this defendant -

that since said sale by the complainant of the said
wood this defendant has applied to him for
a settlement under said agreement & to have
his Bonds credited in accordance therewith -
that said complainant refused said
settlement & refused to give this defendant
any satisfaction as to the same, saying he would
only allow this defendant such credit as the
law ~~compelled~~ ^{compelled} him to allow - this defendant
denies the allegation of said bill charging this
defendant with having sold Pine wood from

said land with having cut & sold all or nearly
all the oak timber from said land - This defendant
denies that he has sold any pine wood from
said land except an inconsiderable amount, less
than a cord - that he has cut & sold from said
farm of Oak timber about \$1000.00 worth of
Piles which with the exception of \$200.00 paid
for getting them to Market was applied for the
benefit of said complainant in paying off at his
request liens on a tract of land owned by said
Complainant - that the only other oak timber
cut from him was about staves
cut from him for the purpose of getting the means
of cutting said Piles & the Pine wood
aforesaid & the proceeds of said Staves & of
the oak wood hereinafter mentioned were
so applied - that the tops of the ~~trees~~ cut for
staves was used for fencing said land & the
logs cut into wood sold for the purpose
aforesaid - that in this manner some 57 -
cords of ~~pine~~^{oak} wood had been cut, of which
about 50 had been sold & seven remained
on hand at the time of the issuing of said injunction
this defendant denies the allegation of said bill
that the cutting of said timber & the manage-
ment of said land had so depreciated the
same that it was an insufficient security for
the unpaid purchase money - that the said
land is a full & ample security for said

purchase money - that by clearing said land, fencing it, ditching it & cultivating it, it is worth more now than at the date of its purchase, the improvements of said tract being more than compensated for the cutting of said wood & the accidental loss of fire of one of the kitchens on said place - that this defendant again denies that said land since the cutting of said wood is an insufficient security for the purchase money due thereon & alleges that it is ample security therefore should be if all the wood remaining uncut on said land (equal or more than equal in quantity to that which has been cut) were cut off from said land - this defendant denies the allegation of said bill that the motive of said complainant in suing out said injunction was to prevent the sale of said wood by this defendant - from the fear that the proceeds of said wood would not be applied to the payment of said bonds, that on the contrary said complainant knew that they would be so applied & that this defendant put it in the power of the said complainant to have them so applied by allowing him to sell said wood himself & receive the proceeds as hereinbefore set forth, being in fact the same offer by this defendant to the said complainant before said injunction, which the said complainant after said injunction

made this defendant which he accepted, but which said complainant now refuses to comply with - that this defendant alleges & believes to be true that the object of said complainant in obtaining said injunction was not to secure the payment of said bonds, but to prevent this defendant from paying them, it being the said complainant's plan to get the said place back with its improvements a free said for the unpaid purchase money with the loss to this defendant of said cash payment of two thousand dollars - said complainant has tried to induce this defendant to surrender the place on these terms & has frequently boasted that as ^{soon} the terms of the deed of Trust on the place given by this defendant to secure the purchase money would admit of it, that the said complainant would sell said land with this result to this defendant & therefore I speak of said place as his the said complainant's property - not the property of this defendant - that by suing out said injunction said complainant hoped to prevent this defendant from making the payments due respectively on the 1st of January 1868 & 1869 & said injunction has had that effect, for at the date of suing out the same as appears from said bill there was wood enough then cut

to pay the bond then due, which said
complaint prevented from being so applied
by said injunction & his failure to comply
with the conditions aforesaid in which he
did in said wood & for which he was
offered after this defendant had put it
on the boat \$4.00 per cord, which he refused
asking for the same \$4.25 per cord -
that from the logs of the ~~timber~~ cut for
staves as aforesaid, this defendant could
have cut 3 or 400 cords of wood & applied
the proceeds of sale to said bonds as he
intended to do & would have done but
for said injunction & which logs in
consequence of said injunction are now
lying on the ground rotting & will be
lost to this defendant unless by the
dissolution of said injunction he is
allowed to cut them into wood -
~~that the staves cut at the date of said~~
~~injunction are still lying on the premises~~
~~rotting & rapidly deteriorating~~ - that but for
said injunction restraining this defendant
from the further cutting of timber on said
place, he would have cut before this a
sufficient quantity of pine wood & sold
the same & applied the proceeds to the
payment of the last named of said bonds,
as he intended to do & would have done

but for said injunction - that this defendant
denies the implied allegation of said bill
that the Bill of Sale from this defendant
to Harriet Harris is ~~fraudulent~~ & avers
that the same is bona fide made for a
full & valuable consideration of ~~the~~ debt
due her for Negro Hires Money
loaned this defendant - And having fully
answered the complainants bill,
this defendant prays hence to be dismiss-
ed with his costs in this behalf most
unreasonably expended. He will
ever pray -

Signed -

John Sinclair

Hammond County, to wit

I P B Prentiss a Commissioner
in Chancery certify that John Sinclair personally appeared
before me in said County & made oath to the truth
of the statements in his foregoing answer -

Given under my hand as Commissioner aforesaid

This 12th day of April 1869

Peter B. Prentiss, Comm'r in Chy
& Hamd Co: Co:

Leavis

Mr. J. B. Prentiss

Commissioner of

Hammond County

John Sinclair

1869. Apr. 19. 7. 31. 62
ack.

1 1

To the Hon^{able} District Atty. Baker Judge
of the Circuit Court of the County of
Harrison and humbly complaining Sherr-
iff unto you be it

your Order James J. Lewis
of said County, that on the 5th day of
September 1866, your Order sold and
Conveyed to one Geo: Sinclair, late of
the County of Elizabeth City, a tract
of land in Barwells neck, for the price
of six thousand dollars, of which the
said Geo Sinclair paid the sum of two
thousand, and executed his bond for
\$1,000 each, payable on the first days
of January 1868, 1869, 1870 and 1871
respectively, with interest from the 1st
day of January 1867, which are secured
by a deed of trust to Geo A Kelly
Master, bearing even date with the
said deed of bargain and sale,
and duly recorded, a copy of which
said deed of trust, is filed here with
as an exhibit marked "A", and is
prayed to be taken as part of this
bill: That the bond of \$1,000 which
fell due on the first of January last
as aforesaid is, still unpaid in whole
and in part, principal and interest, and
that the said Geo Sinclair although officer

applied to, has made no provision for
the payment of the same. That the said
Jno Sinclair took possession of the
said farm soon after its purchase, and
moved his family there, and proceeded
to cut both the wood and timber there-
from, in which he is still engaged,
having already cut off all, or nearly
all, the oak wood and timber, and
much of the pine, which he has
skipped and sold, with the exception of
a large lot of pine wood, amounting
to nearly a year or so can judge,
to three or four hundred cords, which
is still felled or cased in the wood,
but which will soon be removed if
the said Sinclair is not injured from
so doing. Your Order alleges that
the whole of the Oak timber, and
staves, now therefrom have been
removed and sold, and that the
said land has been thus so injured,
denuded, and depauperated in value
that he believes it would not now
sell for the ~~balance~~ balance to your
Order under the said deed of trust,
and he verily believes and there-
fore charges, that perhaps the said

1 1

Sinclair is arrested in his said opera-
-tions, by the intervention of the Court,
the said ~~trust~~ of land will be ren-
-dered worthless; By the terms of the
said deed of trust it is stipulated
that the said land may be sold, on and
after the 1st day of January 1871, if the
said debt are not paid, and not
before, and you are herein and
therefore charge, that under the present
management and use of the place,
by the said Sinclair, the place will then
be a wreck, and will not sell
for one half of the said debt:

You are also by applied to the said
Jas R. Kelly Master as above said, to
take some action in the premises, but
he declines to do so, because as he
says, the said deed of trust gives him
no authority in the premises, until the
last of said default has been paid
over.

You are also charged, that the said Jas
Sinclair, with the exception of his
interest in the said tract of land,
is wholly and entirely his own, and
that on the 21st day of January 1868,
he conveyed by deed of sale to
Harriet Harris, his sister in law,

the whole of his Chatter estate, except
what is exempt from levy and execu-
tion under the law, as well as the
by his bill of sale, he will be
warranted to be taken
or paid of this bill: Your orator
does not know whether the said bill
of sale, is "bona fide", and for Voluntary
Consideration or not, and he reserves
to himself the right to impeach the
same here after if he shall think
proper so to do.

Your orator is informed and believes
that the said Disclaimer is about to
remove and sell the pear wood
cutted on the land, as aforesaid, as
soon as his arrangements for that
purpose can be effected -

In further consideration of
all which, and for as much as
your orator is well and ready in
the premises, soon by the institution
of a Court of Equity, when mat-
ters of the sort are cognizable
and alone removable, to the said
therefore, he prays that his Dis-
-claim, and the R. Kelly, his two
as aforesaid, may be made parties

1 1

Defendant to this bill, and required
to answer under oath, all and sin-
gular the allegations hereof; that
the said Geo. Dickson may be enjoined
and restrained from cutting any more
wood or timber from the said land, until
the further order of the Court, that he
may be enjoined from selling or removing
the wood already cut, and now re-
maining on the land as aforesaid,
and that he may be compelled to
give bond, with sufficient security, to
have the same forth coming to answer
any further claim made in this cause,
and upon his failure to give such
bond, that the said Geo. R. Kelly as
such kister, and as the Receiver
of the Court, may be directed to
enter possession of the same, and
sell the same, upon such terms as
to the Court may seem best, the
proceeds of such sale to be held sub-
ject to the further order of the Court
in this cause; that all necessary
and proper accounts may be taken,
and all other relief, both legal
and equitable, granted in the prem-
ises, which the nature of the case
requires, and equity and good

Conscience demand, May a Deem more
if you and your action will ever be
se.

W. H. Baker

County of Nassau, meadow to wit

James J. Lewis

This day personally appeared before me
and made oath that the matter
and things set forth in the foregoing
Bill is charging on true to the
best of his knowledge and belief

Given under my hand the 20th
day of April 1868.

W. L. Riddick

James J. Lewis

W. F. Bill of Exp.

John Sinclair Cal.

1848. Apr. 21. 4. F. H. C. K.

Lewis

to { Chy. Notes

See Law del:

1868. Apl: 21st Bill filed in Court & returning order held for sale

" " 27th: Same in Chy: filed

" " Super: Bond executed & filed

" Octo: 14th: Continued.

1869. Apl: 19th. Order for accos: (Octo: 14th) Continued

1870. Apl: 20th Continued (Octo: 13th) Continued

1871. Apl: 19th: Continued

1875. Octo: Term. Removed from the Docket & Lr

Chy: Notes