

1879-008
Nansemond Co. (Suffolk)

Chancery Causes: Wallace Kilby etc vs Hilary Spivey et al

Rawls

Know all Men by these Presents,

That we, *Wilbur J. Kilby and Charles H. Causey,*

are held and firmly bound unto the COMMONWEALTH OF VIRGINIA, in the just and full sum of *One Hundred (100)* Dollars, to the payment whereof, well and truly to be made to the said Commonwealth, 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 *18th* day of *February* in the year one thousand eight hundred and *seventy-nine*, and in the *103rd* year of the Commonwealth. And we hereby waive our Homestead exemption, as to this obligation.

THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above bound *Wilbur J. Kilby*

who has ^{by a Decree} ~~this day~~ qualified before the *Circuit* Court of Nansemond County, pronounced on the *10th* day of *April*, 1878, in the *Chancery Cause*, wherein *Wallace Kilby* is Plaintiff and *Sarah J. Shiver (widow)* & others, are Defendants, ~~been appointed a Special Commissioner to~~ sell certain Real Estate, in said Cause described, under said Decree, and all other Decrees he may be required to execute in said Cause shall faithfully discharge the duties of his said trust, then the above obligation to be void, or else to remain in full force and virtue.

Executed in
presence of
the Court.

Peter B. Powers, Clerk

Wilbur J. Kilby

(Seal.)

C. H. Causey

(Seal.)

(Seal.)

(Seal.)

(Seal.)

Wilbur J. Kilby, Commr

To Bond

Commonwealth

July 15th 1879 Executed & Filed

Virginia:

At Rules, in the Clerk's Office of the Circuit
Court of Hanseman County, on Monday the
3rd: day of September, 1877

Wallace Kilby Complainant

against } In Chancery

Sarah J. Spivey (widow) and Sarah Augusta,
J. Pauline and Clarah J. Spivey, the last three
being infants under twenty-one years of age;
F. W. Rawls and John L. Fulgham, Sheriff of
Hanseman County, and Committee of Henry
Spivey deceased Defendants.

On the motion of The Complainant, by Counsel, Peter B. Prentiss
is appointed guardian ad litem to the infant defendants,
to defend them, in this suit; and it is ordered, that notice be
given the said guardian, of his appointment, by serving on him
a Copy of this order.

Teste
Peter B. Prentiss. Clerk

1877. Sept: 3rd: I acknowledge service of the foregoing order,
and that I have received a Copy thereof

Peter B. Prentiss. ord: ad litem

Wallace Kelly

to { order aptly given as letter

Spivey Lali

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF NANSEMOND COUNTY,—GREETING :

YOU ARE HEREBY COMMANDED TO SUMMON *Sarah J. Spivey (widow) and Sarah Augusta, J. Pauline and Clara H. Spivey: the last three being infants, under twenty-one years of age; F. W. Raulo and John L. Fulkner, Sheriff of Nansemond County, and Committee of Hilary Spivey, deceased.*

to appear at the Clerk's office of our *Circuit* Court for the County of Nansemond, on the first Monday in *September* next, 1877, being rule day, to answer ^{*an original and an amended*} a bill in chancery, exhibited against *them and Hilary Spivey* by

Wallace Kelly

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 *16th* day of *August* 1877, and in the *102nd* year of the Commonwealth.

Peter B. Prentis Clerk.

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

Executed & copy delivered to Sarah J. Sprigg & H. W. Rawles
I here-by acknowledge service of same

J. L. Fulgham Stff

Attest
Wallace Kirk
to
Sarah J. Sprigg
Doct: 1877.

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF NANSEMOND COUNTY,—GREETING :

YOU ARE HEREBY COMMANDED TO SUMMON *Hilary Shivey.*

to appear at the Clerk's office of our *Circuit* Court for the County of Nansemond, on the first Monday in *March* next, 1877, being rule day, to answer a bill in chancery, exhibited against *him* by *Wallace Kilby, suing for himself and all judgment creditors of Hilary Shivey*

and unless *he* 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 *6th* day of *February* 1877, and in the *101st* year of the Commonwealth.

Peter B. Prentis Clerk.

Executed & copy delivered to Hilary Spring
March 1st 1877 J. L. Luyham Sff

W. G. Kelly. b. 9
Wallace Kelly, Canine

"
" { Sent in Chy:
" "

Hilary Spring
To Much Rock, 1877.

No. 13. No. 1. Large 94
C. C. Co.

To the Circuit Court of Hansemond County
Virginia:

In pursuance of a decree of said Court pronounced at the April Term thereof in the year 1878, in a cause in Chancery in said Court depending between Wallace Kilby, Plaintiff, and Sarah J. Spivey and others, defendants, a copy of said decree being herewith annexed: the undersigned, appointed Special Commissioner to sell the real estate mentioned and described in said decree respectfully reports to Court, that after various efforts to sell said real estate, the same being unsaleable and undesirable, he has finally sold the same privately as allowed by said decree, to Wallace Kilby for its full value, to wit, for the sum of seventy-five dollars, which he has paid in cash, the said real estate sold being the one-fourth fee-simple interest of Hilary Spivey deceased, (subject to the dower of his widow Sarah J. Spivey) in an undivided tract of land in Cypress District Hansemond County, Virginia, containing seventy-five (75) acres, more or less and bounded by the County road on which it lies and the lands of Dumphy Babb, Thomas W. Babb, and David Henderson.

And your Commissioner further reports to Court that, although not authorized by said decree so to do, yet to save further costs and expense about a matter of so little importance as that involved in said cause, he has paid said sum of \$75. cash paid for said real estate, in satisfaction as far as

it would go. of the debts due to said Wallace Kilby by said Hilary Shirey deceased, he being the only judgment creditor of said Shirey, whose claims have been reported in said cause and the only creditor entitled to said sum of money by reason of the priority of said judgments over all other claims against said Shirey, if indeed they are not the only debts due by him, no others having been reported - Your Commissioner having first deducted the commissions due to him, leaving the costs of said Cause to be paid by said Wallace Kilby, the plaintiff, - as will fully appear by the following statement and the receipt of said Wallace Kilby herunto annexed:

Statement

By proceeds of sale of the real estate as aforesaid.	\$ 75 00
To 5 per cent Commissions	3 75
Balance	\$ 71 25
To paid Wallace Kilby in full of his first judgment vs. said Hilary Shirey, as per Report of debts filed in said cause 12th January 1878 & per recd.	15 28
Balance	\$ 55 97
To paid Wallace Kilby the amount of his second judgment vs. said Shirey as per said Report, principal and interest.	\$ 51 22
	4 75 = \$ 55 97

Your Commissioner further reports to Court, that as directed by said decree he has made to said Wallace Kilby a deed with special warranty in the usual form conveying the real estate to him purchased by him as aforesaid subject

to the dower therein of Sarah J. Spivey widow
of said Hilary Spivey.
Respectfully submitted this 20th. day of February
1879.

Wilbur J. Kilby Counr.

1879 Feby. 20th. Received of Wilbur J. Kilby, Counr.
the respective sums of \$15.28, and \$55.97 charg-
ed in the foregoing report as paid to me
in full of my two first judgments against
Hilary Spivey deceased.

Walter Kilby

Wallace Kilby
vs. } In Chy.
Helary Spivey

Report of sale and
payments
20 Feby. 1879

1879. Feby. 21st. Filed
celk:

At a Circuit Court begun and held for Nansemond
County, the 10th: day of October, 1877.

Wallace Kilby,

Plaintiff.

against } In Chancery

Sarah J. Shivey (widow) and Sarah Augusta,
J. Pauline and Clara H. Shivey: The last
three being infants, under twenty-one years
of age. F. W. Rawls and John L. Fulgham,
Sheriff of Nansemond County, and Committee
of Hilary Shivey, deceased. Defendants.

This Cause came on this day to be again heard on the
papers formerly read therein, and on the amended Bill of
the Complainant, taken for confessed, as to the adult
Defendants, Sarah J. Shivey (widow), F. W. Rawls and
John L. Fulgham, Sheriff of Nansemond County, Virginia,
and Committee of the Estate of Hilary Shivey, deceased, on
whom process had been duly executed, they still failing
to appear and answer, and on the answer of the infant
Defendants, Sarah Augusta, J. Pauline and Clara H.
Shivey, to said amended Bill, by Peter B. Pentis, their
guardian ad litem, and on general replication to said
answer, and on the Exhibits filed with said amended
Bill, and was argued by Counsel.

On Consideration whereof, the Court doth set aside and
declare to be null and void, the deed ("Exhibit C" filed
with said amended Bill), executed on the 30th: day of
January, 1877, by said Hilary Shivey and Sarah J. Shivey,
his wife, and recorded in the Clerk's Office of Nansemond

County Court, on the 3d day of March, 1877, whereby said Shirey and wife convey unto said F. W. Rawls, all their interest in an undivided tract of land, containing Seventy-five (75) acres, more or less, situated in Cypress District, Nansamond County, Virginia, and bounded by the lands of said F. W. Rawls, Geo. W. Babb, Tho. W. Babb, David Henderson and others, and described in the proceedings in this Cause.

And the Court doth order and direct that a Commissioner of this Court, having first given notice thereof, to the parties to this Cause, proceed to take and settle at his Office

1. An Account of the transactions of John L. Fulgham, Sheriff, Committee of the Estate of said Helary Shirey, deceased.
 2. An Account of the Debts due by said Helary Shirey deceased, or his Estate, according to their Priorities.
 3. An Account of the judgment liens of Creditors of said Helary Shirey on any Real Estate of which he may have died, seized and possessed, and of any other liens thereon, according to their Priorities.
 4. An Account of the fee-simple and annual values of the Real Estate of which said Helary Shirey died, seized and possessed together with a description of the same.
- And said Commissioner will make Report ^{to Court} of his proceedings under this decree, as well as any matters, specially stated, deemed pertinent by himself, or which he may be required so to state, by any of the parties.

A Copy, J. B. Prentiss, Clerk

Wallace Kelly

vs Co. Heave

Sarah J. Shirey (widow) Adm.

Commissioner's Office,
SUFFOLK, NANSEMOND COUNTY, VA.

9th. December 1877

To Wallace Kilby etc. Plaintiff

and Sarah J. Spivey (widow) and Sarah Augusta. J. ^{Plaintiffs,}
Pauline, and Clara H. Spivey, the last three being infants
under twenty-one years of age by P. B. Prentiss, guardian ad litem, F.
W. Rauls, and Juv. L. Fulgham, sheriff and committee of
Hilary Spivey deceased ^{Defendants.}

You are hereby notified that I have fixed upon the 12th day of January
next, to take and settle, at my office, the following accounts, to-wit:

1. An Account of the transactions of Juv. L. Fulgham
Sheriff, Committee of the Estate of said Hilary Spivey
deceased.
2. An Account of the debts due by said Hilary
Spivey deceased, or his estate, according to their
priorities.
3. An Account of the judgment liens of creditors
of said Hilary Spivey on any Real Estate of
which he may have died seized and possess-
ed and of any other liens thereon, according to their priorities.
4. An Account of the fee-simple and annual
values of the Real estate of which said Hilary
Spivey died, seized and possessed, together with
a description of the same.

required to be taken by the decree of Nansemond County Circuit Court, rendered on the 10th.
day of October 1877 in a suit in Chancery depending in said Court, in which you
are parties, plaintiffs and defendants; at which time and place you are required to attend.

Given under my hand as Commissioner in Chancery of the said Court, the day and year first
aforesaid.

Peter B. Prentiss,
Commissioner

1877 Dec. 9, Service of the within notice is
hereby acknowledged for all parties, Plaintiff
and defendant.

Walbur J. Kilby
Attorney

Commissioner's Office
Suffolk

Nausumund County, Va.

To the Circuit Court
of Nausumund County.

12th January 1878

In pursuance of a decree of said Court pronounced on the 10th. day of October 1877 at the October Term of said Court in the year 1877, in a cause in Chancery in said Court depending between Wallace Kilby, Plaintiff, and Sarah J. Spivey, widow of Henry Spivey deceased and others. Defendants, a copy of said decree being herewith annexed; the undersigned, a Commissioner of said Court, having given notice to the parties to said Cause, as will appear by a copy of said notice herewith returned, and having proceeded to take, and having this day taken and settled at his office, the several accounts required by said decree to be taken and settled, herewith respectfully submits the result of the proceedings, in the premises, had before him, expressed in the following statement:

(See over)

Account No. 1

An Account of the transactions of Juv. L. Fulgham, Sheriff, Committee of the Estate of said Hilary Spivey deceased.

Under this head, Your Commissioner has no transactions of said Fulgham. Committee to report; said Spivey having died leaving no personal estate to come into the hands of said Committee for administration.

Account No. 2

An Account of the debts due by said Hilary Spivey deceased, or his estate, according to their priorities:

Your Commissioner reports that he has no knowledge of any debts due by said Spivey, or his estate, other than such as appear below, and therefore reports none other.

Account No. 3.

An Account of the judgment liens of creditors of said Hilary Spivey on any real estate of which he may have died seized and possessed and of any other liens thereon, according to their

priorities:

Under this head, your Commissioner reports all the liens as aforesaid of which he has any knowledge, being all judgment liens and debts due by said Hilary Spivey or his estate, as follows:

Wallace Kilby vs. Hilary Spivey.

Judgment at September Term of House-
hold County Court 1875 in favor of said
Wallace Kilby vs. said Spivey for costs.

15 28

Same vs. Same

Judgment docketed in House-
hold County Court Clerk's Office 28 Aug. 1876
in favor of Wallace Kilby vs. said Spivey for
Int. from 13 Sept. 1875 to 20 Jan. 1878.

42 00

7 92

Costs of judgment

1 30 51 22

Same vs. Same

Judgment at April Term of Circuit
Court of said County 1877, docketed the
25 day of April 1877 for
Int. from 28 Apr. 1875 to 20 Jan. 1878.

200 00

32 74

Costs

7 60 240 34

Same vs. Same

Judgment at April Term of said Cir-
cuit Court 1877, docketed the 25th
day of April 1877 for
Int. from 14 June 1875 to 20 Jan. 1878

100 00

15 60

Costs.

7 60 123 20

Total

430 04

Account No. 4

An Account of the fee-simple and annual values of the real estate of which said Hilary Spivy died seized and possessed, together with a description of the same.

Under this head Your Commissioner reports that said Hilary Spivy died seized and possessed of the following real estate held by him in fee-simple, to wit:

one-fourth ($\frac{1}{4}$) interest in an undivided tract of land, being mostly cleared land, having on it an old dwelling house of but little value, and containing seventy-five (75) acres, more or less, and situated in Cypress District, Hanseman County Virginia and bounded by the county road and the lands of Dempsey Babb, Thomas W. Babb and David Henderson and being near Turnersville: the fee-simple value of said Spivy's $\frac{1}{4}$ interest therein being \$80.00 and its annual value \$5.00

Your Commissioner reports specially that said Spivy's interest in said land is subject to a sale to satisfy said judgment liens, and that the rights of the widow and infant children of said Spivy to the benefit of the homestead exemption are barred, inasmuch as the first of said judgments is for costs in^a suit. The

second for rent, and the third and fourth
are judgments on notes waiving the benefit
of said homestead exemption.

And your Commissioner further reports
that Sarah J. Spirey, widow of said Hilary
Spirey deceased is entitled to dower in his
said $\frac{1}{4}$ interest in said land.

Respectfully submitted
Peter B. Prentiss.

Commissioner



Wallace Kilby &c,
vs. } chy,
Hilary Spivey &als.

Commissioner's Report of
debts &c

12 Jan. 1878

See, where judgments
doct'd

dover worth \$20

1878. Jan. 12th: Filed.
clk:

At a Circuit Court continued and held for New-
moud County - the 12th day of April 1877 -
Wallace Kelly, suing for himself and all
Judgment creditors of Hilary Spivey . . . Plaintiffs
Against J In Chancery
Hilary Spivey . . . Defendant

This cause came on this day to be heard on the Bill
of the Complainant Taken for confessed as to the
Defendant Hilary Spivey, on whom process had been
served and executed, he yet failing to appear and
answer, and on the Exhibit filed with said Bill and
was argued by Counsel -

On consideration whereof the Court doth order
and direct that a Commissioner of this Court
having first given notice thereof to the parties to
this cause, proceed to take and settle at his office
and report to Court the following accounts.

1. An Account of the fee simple and annual
values of the real estate of which said Hilary
Spivey may be seized and possessed together
with a description of the same
2. An Account of liens of the judgment-creditors of
said Hilary Spivey on said real estate, or of any
other liens thereon, according to their priorities

And said Commissioner will make report
to Court of his proceedings under this decree as
well as of any matters specially stated deemed
pertinent by himself or which
he may be required so to state by

Key
is of Copper Secum
Springs

Hand

any of the parties
a copy; Note,

Catharine. N.Y.

Kilby

vs.

Spivy & als.

This cause came on this day to be again heard on the papers formerly read therein and on the Report of Commissioner Peter B. Prentiss, made in pursuance of a decree of this Court pronounced in this cause at October Term thereof in the year 1877 and was argued by counsel.

An consideration whereof the Court doth confirm the said Report to which no exception has been filed and doth adjudge order and decree that Wilbur J. Kilby, who is hereby appointed a Special Commissioner for that purpose, proceed to sell privately or at public auction before the Court house door of Hausmann County, Virginia, ^{in some court day} as he may deem best, the real estate of which Hilary Spivy ^{subject to the dower of Sarah J. Spivy his widow, the same} died seized and possessed, being ~~an~~ ^a ~~undivided~~ one-fourth fee-simple interest in an undivided tract of land, being mostly cleared land having on it an old dwelling house of but little value and containing seventy-five (75) acres, more or less, and situated in Cypress District, ~~Hausmann~~ ^{Hausmann} County, Va., and bounded

by the county road and the lands
of Humphrey Babb, Thomas W. Babb and
David Henderson; that said Commissioner
before proceeding to sell said ^{interest in said} real estate
^{at public auction} advertise the time and place of sale by
printed notices posted at said courthouse
door and in the neighborhood of said
land and at several public places
in said county, ^{for at least twenty days previously to the sale,} and that said Com-
missioner sell said interest in said
land for cash and make to the pur-
chaser thereof a deed in the usual
form with special warranty conveying
to him the same to him, when the pur-
chase-money shall have been paid, and
out of the purchase-money pay all
costs of this suit and expenses of said
sale and the surplus, if any, retain
until the further order of Court.

And before proceeding to sell said
interest in said real estate, said Commis-
sioner will execute before the Clerk of this
Court in his office, a Bond in the penalty
of \$100 with good security, payable to the
Commonwealth of Virginia and con-
ditioned for the faithful execution of
this decree and all other decrees he
may be required to execute in this

cause, and said Commissioner
will make report to Court of his pro-
ceedings hereunder.

Kilby

vs,

Spivey & Co.,

Hausmann County
Circuit Court

April Term 1878

Deceit

To be entered

Geo. B. Co.,
Att'y

10 Apr. 1878

Entered O.B. No 1 p. 380

Kilby

vs.

Spivey's Per. Rep. & als.

This cause came on this day to be again heard on the papers formerly read therein and on the amended Bill of the Complainant, taken for confessed as to the adult defendants, Sarah J. Spivey (widow), F. W. Rauls and John L. Fulgham, Sheriff of Hanover County, Virginia, and Committee of the estate of Hilary Spivey deceased, on whom process had been duly executed, they still failing to appear and answer, and on the answer of the infant defendants, Sarah Augusta, J. Pauline, and Clara H. Spivey, to said amended Bill by Peter B. Prentiss, their guardian ad litem, and on general replication to said answer and on the exhibits filed with said amended Bill, and was argued by counsel.

On consideration whereof the Court doth set aside and declare to be null and void, the deed ("Exhibit B" filed with said amended Bill), executed on the 30th day of January 1877 by said Hilary Spivey and Sarah J. Spivey, his wife, and

recorded in the Clerk's Office of Cause-
mond County Court on the 3d. day of
March 1877, whereby said Spirey and wife
convey unto said F. W. Rawls all their in-
terest in an undivided tract of land
containing seventy-five (75) acres, more or
less, situated in Cypress District, Causemond
County, Virginia, and bounded by the lands
of said F. W. Rawls, Geo. W. Ball, Thos. W. Ball
David Henderson and others, and described
in the proceedings in this cause.

And the Court doth order and direct
that ~~an officer~~^{Comr.} of this Court, having first
given notice thereof to the parties to this cause
proceed to take and settle at his office

1. An Account of the transactions of
John L. Fulgham, Sheriff, Committee of
the estate of said Hilary Spirey deceased.
2. An Account of the debts due by said
Hilary Spirey deceased or his estate, ac-
cording to their priorities.
3. An Account of the judgment liens of
creditors of said Hilary Spirey on any
real estate, of which he may have died
seised and possessed, and of any other
liens thereon according to their priorities.
4. An Account of the fee-simple and
annual values of the real estate of
which said Hilary Spirey died seised.

and possessed together with a description of the same.

And said ~~officer~~ ^{Copier} will make report to Court of his proceedings under this decree as well as any matters specially stated deemed pertinent by himself, or which he may be required so to state by any of the parties.

Kilby
vs. } In Chy.
Spincy's Per. Rep. fals.

Nausumund County
Circuit Court
October Term 1877

Decree

To be entered.

Geo. T. Blaw.
J

Copied

Entered O. B. No 1

h-334

Wallace Kilby

vs.

Hilary Spirey

This cause came on this day to be heard on the Bill of the complainant taken for confessed as to the Defendant, Hilary Spirey, on whom process had been served and executed, he yet failing to appear and answer, and on the Exhibit filed with said Bill, and was argued by counsel.

On consideration whereof the Court doth order and direct that a Commissioner of this Court, having first given notice thereof to the parties to this cause, proceed to take and settle at his office and report to Court the following accounts:

1. An Account of the fee-simple and annual values of the real estate of which said Hilary Spirey may be seised and possessed together with a description of the same.

2. An Account of liens of the judgment-creditors of said Hilary Spirey on said real estate, or of any other liens thereon, according to their priorities.

And said Commissioner will ^{make} report to Court of his proceedings under this decree as well as of any matters specially stated deemed

Kilby
vs } chy.
Shirley

Saunderland County
Circuit Court
April Term 1877

Decree

To be entered

Geo. Brown

Entered O. B. Not-p 344

for himself or which he may be
required so to state by any of the parties.

Kilby

vs.

Spring

This cause came on this day to be again heard on the papers formerly read therein and on the Report of Special Commissioner, Wilbur J. Kilby, being a Report of sale of real estate, and payment of money made in pursuance of a decree of this Court pronounced at the April term thereof in the year 1878 in this cause and was argued by counsel. On consideration whereof, the Court doth confirm the said Report to which no exception has been filed and doth adjudge, order and decree that the proceedings had in this cause be and they are hereby declared to be final and binding between the parties thereto, and nothing more remaining to be done in this cause the Court doth order that the same be removed from the docket of this Court and that the costs thereof ^{to be taxed by the Clerk of this Court.} be paid by the Plaintiff, Wallace Kilby.

Kilby
vs. } In chg.
Shurcy

Hausen and County
Circuit Court
April Term 1879
Final decree
To be entered

Geo. S. Sear,

Entered C. B. No. 1-
R. 424

To the Circuit Court of Nassau and County.

The joint and separate answer of Sarah Augusta, J. Pauline and Clara H. Shirey, infants by Peter B. Prentiss, their guardian ad litem, to an original and an amended Bill in Chancery, exhibited in said Court by Wallace Kelly, against them & others:

These Respondents say that the facts set forth in said Bill are true, so far as they know, but being infants & ignorant of their rights in the premises, submit the same to the Court, and pray that no order or decree may be made in the premises, inconsistent with their rights.

(Signed)

Peter B. Prentiss, g. ad litem

Wallace Kelly

25

Holary Spring Lake

Answer of Defendants, who
are Infants

Know all men by these presents, that Hilary Spivey and his wife, Sarah J. Spivey, in obedience and in keeping with an obligation and covenant executed by them on the 10th day of July, A.D. 1875, for the benefit of F. W. Rawls, his heirs and assigns, doth execute the following Deed and rental Covenant, to wit:

This Deed made this 30th day January, A.D. 1877, between Hilary Spivey and Sarah J. Spivey, his wife, of the first part, and F. W. Rawls of the second part, both parties residing in the County of Nansemond and State of Virginia. Witnesseth, that the said Hilary Spivey and Sarah J. Spivey, his wife, in consideration of the sum of Eighty-two dollars and ninety-four cents (being the amount still due the said F. W. Rawls, as shown by written covenant, executed by the party of the first part, bearing date July 10th 1875 to which reference is given above) to them in hand (as described also in said covenant referred to) paid by the said F. W. Rawls, and also for the further consideration of the said Hilary Spivey and Sarah J. Spivey, his wife, having the rental use and enjoyment of the sold interest (hereafter to be described, as well as heretofore described in the former covenant to which allusion has been made) until the 25th day of December next, doth again grant and sell, and now, without any reservation, and by these presents hath granted and sold, unto the said F. W. Rawls, his heirs and assigns, all the right, title and interests they hold, by reason of the Deed of Bargain and Sale from Edwin Spivey to the said Hilary Spivey, executed and admitted to record in the year, 1860, in the tract of land situated in Cypress Township, Nansemond County, Virginia, and known as the tract of land, of which

Theophilus Spivey died seized and possessed, and upon which his widow, Nancy Spivey lived and died, estimated to contain Eighty acres, more or less, and bounded by the lands of the said F. W. Rawls, Geo. W. Babb, Tho. W. Babb, David Henderson and others. And the said Hilary Spivey and Sarah J. Spivey, his wife, doth sell their interests in the above described tract of land unto the said F. W. Rawls, his heirs and assigns, and the right and title of which, they forever warrant and defend by these presents. Given under their hands and seals.

Witness

Daniel Skinner

A. J. Rabe

his
Hilary X Spivey Seal
mark

her
Sarah J X Spivey Seal
mark

In The Clerk's Office of Nansen and County Court, the 3rd day of March, 1877.

This Deed was presented and acknowledged by Hilary Spivey and Sarah J. his wife, to be their act and deed. And the said Sarah J. Spivey being duly examined by me, privily and apart from her husband and having said Deed fully explained to her, acknowledged that she had willingly executed the same, and wished not to retract it. Whereupon said Deed is admitted to record.

Teste,

Peter B. Prentiss. Clerk

a Copy:

Teste,

Peter B. Prentiss. Clerk

mid.
Hilary Spivay & wife
To } Copy Dec 5th
F. W. Rawls.

Exhibit ~~11~~ 6.
filed with amended
Bill

At a Monthly Court held for Hantsmond County the
13th day of August, 1877.

On the motion of Wallace Kelly it is ordered that
the Estate of Hilary Spivey, deceased, be com-
mitted to John L. Hulgham, Sheriff of this County,
for administration according to law, it ap-
pearing that the said Hilary Spivey has been
dead more than three months, and no person
having applied for administration on his
Estate.

A copy,
w
Lester,

Peter B. Prentiss. Ck

Kilby
vs. 3 chy.
Spivry tals

"Exhibit B"
filed with amended
Bill

Nausemond County, to Wit:

To Wm: H. Howell, Constable of Said County:

I hereby command you to summon Hillary Spivey, if to be found in your Township to appear at R. R. Smiths the 13th. day of Sept: 1875, before me or some other Justice of the said County, as may be then and there to try this Warrant to answer the Complaint of Wallace Kilby upon a claim for money not exceeding fifty dollars, exclusive of interest, to wit: for the sum of Forty two dollars — cents, due by Account, and then and there make return of this warrant Given under my hand This 13. day of Sept. 1875.

Summon.

R. R. Smith. J. P.

}

Sept: 13th. 1875

Judgment — That the Plaintiff recover of the Defendant, Forty-two dollars and — cents with interest from the 13th. day of Sept. 1875. till paid, and 1.³⁰ for his costs.

R. R. Smith. J. P.

Nausemond County — To Wit,

To Wm H. Howell, Constable of Said County.

I Command You, in the Name of the Commonwealth of Virginia that of the goods and chattels of Hillary Spivey, in your Township you cause to be made the sum of Forty-two dollars and — cents with interest thereon from the 13th. day of Sept. 1875. till paid, which Wallace Kilby has recovered before me, in a warrant in debt, and also the sum of \$1.30 cents, which were adjudged to the said

Doct. H. Aug.
28th. 1876

Wallace Kilby, for costs in prosecuting his said warrant.
Given under my hand this 13th day of Sept. 1875.

R. R. Smith, J. P.

Endorsed - "No property found to satisfy the within execution."

Wm. H. Howell Const.

BOOTS AND SHOES SPECIALTY—Orders Carefully and Promptly Attended to.

Suffolk, Va., Sept. 13th, 1875-

Mr. Hilary Spivey



WALLACE KILBY,

DEALER IN

DRY GOODS, HOSIERY, GLOVES, NOTIONS, CLOTHS, CASSIMERES, UMBRELLAS, BLANKETS,

TERMS, 30 DAYS.—Bills standing longer than 30 days will be charged interest at rate 12 per cent.

HATS, CAPS, BOOTS, SHOES, TOBACCO, CIGARS, SNUFF, GROCERIES, ETC.

Rents Payable Monthly.

All Kinds of Produce Bought.

Amt. due for use of Leesville to date

From 1st Jan'y 1875 to date.

Judgment Sept. 13 1875
R. R. Smith, J. P.

\$ 42 00

Hammer and County - to wit:

I, Peter B. Prentiss, Clerk of the County Court of said County do certify that the foregoing is a true copy of a paper on file, in my office - and that the foregoing account, is a copy of the enclosure therein.

Given under my hand, this 1st day of February, 1877.

Peter B. Prentiss, Clerk

Wallace Kilby
vs E Co. Judgt. L.
Hilary Shivey.

Exhibit
"A"
—
filed with Bill

To Honorable George Blow. Circuit Court
Judge in and for Fauquier County in
the State of Virginia

Complaining respectfully represents
and shews unto Your Honor, Your Com-
plainant, Wallace Kilby that on the 6th
day of February 1877, he instituted his suit
in Chancery in the Circuit Court of said
County against Hilary Spivey and that
on the 5th day of March 1877 Your Com-
plainant filed his Bill in said suit
praying that the interest of said Spivey
in certain land described in said
Bill might be sold and the proceeds
of the sale applied in payment of your
Complainant's judgment lien, referred
to in said Bill and any other judgment
liens on said interest in said land, and
that said judgment liens and the fee-
simple and annual values of said in-
terest in said land might be ascertain-
ed, and a report thereof made to said
Court; And that afterwards certain pro-
ceedings were had in said suit as
the papers therein will shew.

And Your Complainant now files
this, his amendment to said Bill in
said suit and further represents and
says in addition to the facts set forth

in said Bill, that, since the institution of said suit and since said proceedings have been had therein, to wit, on the 17th. day of April 1877, said Hilary Spivey died intestate, seized and possessed of his said interest in said land and leaving a widow, Sarah J. Spivey, and three infant children, Sarah Augusta, J. Pauline and Clara H. Spivey. That said Sarah J. Spivey, widow, is now entitled to dower in said interest of said Hilary Spivey, her late husband, in said land.

That the estate of said Hilary Spivey deceased has been, by order of Hausmann County Court, at the August Term thereof 1877, committed to the hands of John L. Fulgham, sheriff of said County for administration, as will appear by a duly certified copy of said order filed herewith and marked "Exhibit B".

That the judgment of Your complainant referred to in said Bill was duly docketed in the Clerk's Office of Hausmann County Court on the 28th. day of August 1876, as will appear by the duly certified copy thereof, "Exhibit A", filed with said Bill.

That on the 30th. day of January 1877

about five months after said judgment was docketed as aforesaid, the said Hilary Spivey, then living and his wife, Sarah J. Spivey executed their joint deed of bargain & sale to me F. W. Rawls, conveying to him said interest of said Hilary Spivey in said land for the alleged consideration of \$82.94, as will appear by a duly certified copy of said deed filed herewith and marked "Exhibit B."

And your Complainant charges that his said judgment was docketed as aforesaid, more than fifteen days, to wit for about five months, previous to said conveyance to said Rawls and that, therefore, (said interest in said land being in said County), said judgment is a lien thereon as against said Rawls, having precedence of his said deed, notwithstanding said deed and the fact (if it be such, your Complainant denying that it is a fact) that he might have been a purchaser thereof for valuable consideration without notice. (Code of Va. 1873, ch. 182, § 8).

And your Complainant further charges that, in truth, said Hilary Spivey was never indebted to said Rawls in the sum of \$82.94, and that said conveyance to said Rawls was made without valuable

consideration and with intent, if possible, to deceive and defraud Your complainant of his just claim by lien or otherwise on said interest in said land, and of his rights in the premises, and that, therefore, said deed should be declared null and void and be set aside, and said interest of said Hilary Spivey deceased in said land sold, subject to the dower of Sarah J. Spivey therein, and the proceeds be applied in satisfaction of Your complainant's judgment lien and of other judgment liens, as set forth in said Bill of your complainant and the prayer therein.

In consideration whereof, Your complainant prays that the said Sarah J. Spivey widow, and Sarah Augusta, J. Pauline and Clara H. Spivey, and said F. W. Rawls and John L. Fulgham, sheriff and committee of the estate of said Hilary Spivey deceased, may be made parties defendant to this Bill and be required to answer on oath all the allegations contained therein, the adults in their persons and the infants by their guardian ad litem to be appointed for them; that said deed from said Hilary Spivey and wife to said Rawls

may be declared null and void and
be set aside and cancelled; that
the interest of said Hilary Spirey in
said land may be sold, subject to
the dower of said Sarah J. Spirey; that
an officer of this Court may be required
to take and settle at his office an ac-
count of the transactions of said John
L. Fulgham, Sheriff, as said committee
and on account of the debts due by said Hilary Spirey or his estate; of said estate, and that otherwise
the prayer of your complainant as set
forth in his said Bill may be granted
and your complainant will ever
pray &c.

Wilbur J. Kilby
P. J.

Kilby
is } chy
Spivey

Amended Bill

To the Honorable George Blow, Circuit
Court Judge for the County of Hansemond in
the State of Virginia:

Complaining respectfully represents and shews unto Your Honor, Your Complainant, Wallace Kilby, suing for himself and all judgment creditors of Hilary Spivy of said County and State, that on or before the first day of January in the year 1875, Your Complainant purchased of W^m E. Wood Executor and Caroline M. Wood Executrix of the last will and Testament of Edward Wood deceased late of Johnston County in the State of North Carolina, two (2) acres of land, more or less, having on it, a store house a warehouse and other buildings, and known as "Leesville", situated in Cypress District in said County of Hansemond in the South-east corner, formed by the junction of the Old Amertown and Duke's shop roads and adjoining the Davy M. Lee farm (now that of Charles Parker); that at the time of said purchase, to wit: on or before the first day of January 1875, said Executor and Executrix gave Your Complainant possession and control of said two acres of land and the houses thereon, and the right to all rents and profits arising therefrom from the first day of January 1875 and thereafter; that Your Complainant paid said Executor and Executrix for said premises the sum of \$601.⁷/₁₀₀

and that on the 27th. day of April 1875, they made and executed a deed conveying said land and houses to Your Complainant, thus completing Your Complainant's title thereto: which deed was duly recorded in the Clerk's Office of Hausmann County Court on the 5th. day of August 1875.

And Your Complainant further represents and says that at the time of said purchase of said land and ~~houses~~ ^{houses} therein by him as aforesaid, to wit on or before the first day of January 1875, he entered into a contract with one Hilary Spivey; that by the terms of said contract, said Spivey was given the privilege of purchasing said land and houses, that said Spivey was to have possession of said land and houses from the first day of January 1875, that he was to pay Your Complainant for said land and houses the sum of \$601, if he should decide to purchase the same as by the terms of said contract, he was at liberty to do, and that, if he should fail or refuse to purchase said land and houses and to pay therefor \$601 as aforesaid, he was to pay Your Complainant the sum of five dollars per month as rent for said land and houses from the first day of January 1875 onward to the day upon which he should cease to occupy the same.

And Your Complainant charges that said Spirey failed and refused to purchase said land and houses and to pay therefor the sum of \$601, as by the terms of said contract he might have done, that he, the said Spirey, had possession and charge of said land and houses from the first day of January 1875 to the 13th day of September 1875, - a period of eight months and a half, - when Your Complainant recovered the same of him in due course of law; and that for said eight months and a half, said Spirey became indebted to Your Complainant in the sum of \$42, being rent at the rate of \$5 per month, which he promised to pay as aforesaid.

And Your Complainant further represents and says that said Spirey refused to pay to him the said sum of \$42, rent due by him as aforesaid, and that Your Complainant obtained a judgment therefor against said Spirey, on the 13th day of September 1875 by warrant before R. R. Smith, a Justice of the Peace in and for Hanswemund County, Virginia, as well as for interest thereon from that day till paid and for \$1³⁰ costs of said warrant; that an execution on said judgment against said Spirey was duly issued on the day last named, by said Justice, and directed to Wm

H. Howell, Constable of said County of Hansemond, commanding him, of the goods and chattels of said Hilary Spivey to make the sum of \$42 ⁷/₁₀₀ aforesaid, with interest thereon from the 13th. September 1875 till paid and also \$1 ³⁰/₁₀₀, costs, which your Complainant had recovered, being sent as aforesaid, before said Justice: And that said Constable, W^m H. Howell made return on said execution in these words, to wit: "No property found to satisfy the within execution, W^m H. Howell, Const.", and then returned said judgment and execution to the Clerk's Office of said Hansemond County, Virginia, where said judgment has been duly docketed according to law, all of which will appear by a duly certified copy of said judgment and execution and return, filed with this Bill as part of the same and marked "Exhibit A."

And your Complainant further represents and says that said Hilary Spivey was at the time said judgment was obtained by your Complainant, has been ever since, and is now the fee simple owner, and is now possessed of one-fourth (¹/₄) of an undivided tract of land, being mostly cleared land and having on it an old dwelling house, containing seventy-five (75) acres, more or less, and situated in Cypress District, Hansemond County, Virginia.

and bounded by the County road and the lands of Dempsey Babb, Thomas W. Babb, and David Henderson: said Spivey's one-fourth of said land being nineteen acres, more or less.

And Your Complainant further represents and says that his said judgment is a lien on the land last aforesaid of said Spivey, and that the rents and profits of the same will not satisfy his said judgment in five years, and that said land of said Spivey should, therefore, be sold and the proceeds of the sale applied in payment of said judgment and any other judgment against said Spivey, being a lien on said land and unpaid.

In consideration whereof, Your Complainant, being without remedy save in a Court of Equity, prays that said Hilary Spivey may be made party defendant to this Bill and be required to answer, on oath, all the allegations contained in the same; that the land last aforesaid of said Spivey may be sold and the proceeds of the sale applied in payment of Your Complainant's judgment lien aforesaid and any other judgment liens on said land; that an officer of this Court may be required to take and settle an account of said judgment lien of Your Complainant, as well as

an account of any liens, other than that of
Your Complainant aforesaid, on said land
of said Spirey, and their priority, and
an account of the feesimple and annual
values of said land of said Spirey: and
that all further and adequate relief may
be granted consistent with Equity. And,
as in duty bound, Your Complainant will
ever pray &c.

Wilbur J. Kilby,
Attorney for Complainant.

6th. February 1877

Wallace Kilby &c.
vs. } In Chancery
Hilary Spivey

Bill

Wallace Kelly, Surveyor
2^d { Chy. Notes

Hilary Spruay

1877. Feb: 6th: Sum: in Chy: issued to March Rules, 1877.

" March 5th: Bill & filed - Conditional Decree vs. Deft.

" April 2^d: Conditional Decree confirmed & cause set for hearing on mo: of
Pell's Counsel

" Aug: 16th: amended Bill & Expts filed & Sum: issued to Sept: Rules, 1877

" Sept: 3rd: Conditional Decree vs. adult depts. - Peter B. Pears
applied for: and taken to report depts who filed their answers to
which there was a good: reply: & cause set for hearing as to them

" Octo: 1st: Conditional Decree confirmed & set for hearing

" " 10th: Decree setting aside Dec (vs. C) & for accor:

1878. Jan: 12th: Report filed (of depts)

" April 10th: Decree to sell de. 1877. Feb: 15th: Comm: Bond executed & filed

1879. Feb: 21st: Report of sale & payment, filed

" Apr: 10th: Final Decree

Chy: notes