

1880-005
Nansemond Co. (Suffolk)

Chancery Causes: George N. Gardner et al vs James Daughtrey et al

Doles, Kilby, Withers, Prentiss

did convey, in Trust, unto Clark Chatfield, The Trustee, there is
named

Box 170
1. 5. 196

1. Su. 2, 10-10-0

2. 3. 4.

15-
28-

16 25-

[Faint handwritten notes]

XL

Lat. 16-5 30

27 1.50

160

55

658

52

150

5:00

$$\begin{array}{r} \text{\$}) 47.50 \\ \underline{46} \\ 150 \end{array}$$

Costs.

Clk.	\$15.00
Atto: Hay	16.50
Sup: Horse	50
" Southmountain	50
Consum: in Ch. (Debs)	10.00
Printed	5.00
	\$41.50

1880 July 6th. Received of Wilbur J. Kilby Trustee, Sixty nine and $\frac{50}{100}$ dollars in part of the debt of five hundred (500) dollars due to Dr. R. M. Dole by Jas. Daughtry and secured by a deed of trust executed by said Daughtry and wife on 10th. day of March 1877 and recorded on 21st. day of March 1877 in the Clerk's Office of Fauquier County Va.

\$69 $\frac{50}{100}$

Robt. M. Dole
per Wm. A. Prentiss
also

1880 July 2nd. Received of Wilbur
J. Kilby Trustee of James Daugh-
try under a deed of Trust da-
ted the 17th. day of May 1875. Ten
dollars for surveying the land
conveyed by said deed
\$10 00.

B. P. Baker Co. Surv.

1880 June 30th. Received of Wilbur
J. Kilby Trustee of James Laugh-
treay under a deed of trust
dated the 17th. day of May 1875
Six dollars for selling the
land conveyed by said
deed at auction before the
Courthouse of Lawrence
County on the 14th. of June 1880.
\$6.⁰⁰ Geo L Parker Cris

~~\$250~~ over before the first day of December next, with
Interest at the rate of nine per cent per annum. I promise to pay
unto George A. Gardner, his heirs,
executors, administrators, or assigns, the just and full sum of Two hundred and
fifty Dollars and Cents,
for value received; for the payment of which I bind myself, my heirs,
executors and administrators, firmly by these presents; and I hereby waive the benefit
of my Homestead Exemption as to this debt and obligation.

As witness my hand and seal this 12th day of May
in the year of our Lord one thousand eight hundred and seventy five

Witness

K. R. Griffiths

James Daughton (Seal.)

1880 June 14th. Received of Wilbur J. Kilby Trustee
 Two hundred and eight and 50/100 dollars
 in full of this Bond. Wilbur J. Kilby
 Atty. for Geo. N. Gardner

James Gardner from
 \$208.50
 Collected the 2 1877
 paid on the within
 Bond \$250.00

Bond	\$250.00
Int. from 17 May 1875 to 2 Oct.	
1877 - 2y. 4m. 15d	35.63
	<u>\$285.63</u>
Aid 2 Oct. 1877	106.19
	<u>\$179.44</u>
Int. from 2 Oct. 1877 to 14 June 1880 - 2y 8m 12 ds. -	29.06
	<u>\$208.50</u>

NEW ADVERTISEMENTS.

LAND AT WHALEYVILLE FOR SALE.—

By authority of a deed of trust executed by James Daughtrey and wife on the 17th day of May, 1875, and duly recorded, to secure the payment of a certain debt as therein specified, the undersigned will sell at public auction before the Courthouse of Nansemond county,

ON THE 14TH DAY OF JUNE, 1880,

(that being County court day), a parcel of one hundred and fifty acres of land, being all the land which constitutes the southern part of the tract of land mentioned and described in said deed of trust and which lies nearest of all the land to and within a few hundred yards of Whaleyville, and on the west side of Somerton road (on which it fronts for some distance), in Nansemond county, and which is bounded on the east by said Somerton road, on the south by the lands of Thomas W. Savage and George W. Truitt, on the west by the Willis Wiggins land (now owned by Bolling R. Doughtie and wife and Willis Austin and wife), and on the north by the remainder or northern part of the land mentioned in said deed.

The land here offered for sale is at the prosperous village of Whaleyville and the terminus of the Suffolk Lumber Company's railroad, which railroad runs through the land from north to south. Persons desiring to locate at Whaleyville will find this to be a valuable and desirable parcel of land. The one hundred and fifty acres to be sold will be surveyed and cut off for the purchaser by and at the expense of the undersigned.

TERMS CASH.

GEO. T. PARKER, Crier.
my26-3t

WILBUR J. KILBY,
Trustee.

Suffolk, Va., _____ 1880

Mr. Walter J. Kelby Trustee

TO SUFFOLK HERALD, Dr.

Book and Job Printing Neatly Executed.

THE HERALD, \$1.50 A YEAR.

Orders Solicited.

May 26

To Adv Sale of James Daughters Land
for sale under deed of trust

\$ 11.00

To 100 Hand Bills Sale of same Land 3.00

\$ 14.00

Paid Thomas Glavin

Suffolk, Va., Dec 31 1879

Mr Wilbur J. Kelly for Geo. N. Gardner.

To SUFFOLK HERALD, Dr.

Book and Job Printing Neatly Executed.

THE HERALD, \$1.50 A YEAR.

Orders Solicited.

June 4

To advertising order
of publication suit of
Gardner & others vs

Daugherty & Coles 3 in 4 times

Paid Aug 1st 1880

Thos. J. Clam

\$5.00

LAND

AT WHALEYVILLE

FOR SALE.

By authority of a deed of trust executed by James Daughtrey and wife on the 17th day of May, 1875, and duly recorded, to secure the payment of a certain debt as therein specified, the undersigned will sell at public auction before the Courthouse of Nansemond county

On the 14th Day of June, 1880,

(that being County court day), a parcel of **ONE HUNDRED AND FIFTY ACRES OF LAND**, being all the land which constitutes the southern part of the tract of land mentioned and described in said deed of trust and which lies nearest of all the land to and within a few hundred yards of Whaleyville, and on the west side of Somerton road (on which it fronts for some distance), in Nansemond county, and which is bounded on the east by said Somerton road, on the south by the lands of Thomas W. Savage and George W. Truitt, on the west by the Willis Wiggins land (now owned by Bolling R. Doughtie and wife and Willis Austin and wife), and on the north by the remainder or northern part of the land mentioned in said deed.

The land here offered for sale is at the prosperous village of Whaleyville and the terminus of the Suffolk Lumber Company's Railroad, which railroad runs through the land from north to south. Persons desiring to locate at Whaleyville will find this to be a valuable and desirable parcel of land. The one hundred and fifty acres to be sold will be surveyed and cut off for the purchaser by and at the expense of the undersigned.

 **TERMS CASH.**

WILBUR J. KILBY, Trustee.

GEO. T. PARKER, Crier.

May 6, 1880.

At a Circuit Court, continued and held for
Assess and County the 13th day of April 1880

George N Gardner and

Willbur J Kelly Trustee Plaintiffs

Against $\frac{2}{3}$ In Chancery

James Doughty and Mipouri E.

his wife Robert M Doles and

A. L. Withers Trustee Defendants

This day came by their attorney's, the parties to this
cause in which an issue out of Chancery and a
reference of the same to a jury had been ordered
and directed by the decree therein pronounced at
the October Term 1879 of this Court to try the issue
of whether Robert M Doles at the time of the execu-
tion on the 10th day of March 1877 of the deed of
trust (a copy of which is filed in this cause)
by James Doughty and Mipouri E his wife for
his benefit, had notice of the execution on the 17th,
day of May 1875 of the deed of trust, (a copy of
which is also filed in this cause) by said James
Doughty and wife for the benefit of said Geo
N Gardner and conveying the same land, And
thereupon came a jury to wit: Robert W Ashburn
Henry W Bradshaw, Simon Savage, Francis E
Parker, James W Hall, James R Parker, Wm D
Mitchell, Francis R Ellenor, John D Corbell Jr
Dempsey L Darcum, John B Vaughan, and J G
Doughty, who being elected tried and sworn,
the truth to speak upon the said issue directed

and ordered under the decree aforesaid, on their oath returned the following Verdict, to wit: We the jury find that R M Dole had notice of said deed of trust for said Geo A Gardner's benefit before he took his said deed of trust on the same land, and this cause came on this day to be again heard on the papers formerly read therein and on the examination of witnesses and the verdict of the jury aforesaid, on consideration whereof the Court doth decide, that said deed of trust for said Geo A Gardner's benefit, has priority over the said deed of trust for the benefit of said R M Dole, and doth adjudge, order and decree that William G Kelly, who has been substituted Trustee in the place of John R Kelly the trustee named in said deed of trust for the benefit of said Geo A Gardner, proceed to sell the land conveyed by said deed according to the provisions thereof, and the law in that case made and provided and out of the proceeds of the sale pay first all costs of this suit and the expenses of the sale, and then pay the balance of the debt due to said Geo A Gardner and secured by said deed of trust for his benefit and all interest due thereon and the surplus if any pay to said R M Dole on account of his claim due him under his said deed of trust and make report to Court of his proceedings under this decree, filing with his said Report proper receipts for all payments which he may make hereunder

A Copy: Teste:

Peter B. Prentiss, Clerk

Costs:

Clerk. . . .	\$15.00	pd
Atto: Hov. . . .	16.50	pd
Stff: Nams'	50	pd
" Southampton	50	pd
Commr. in Chy. (for Stdy)	19.00	pd
Printer	<u>5.00</u>	pd
	<u>\$47.50</u>	

xms

Geo. W. Gardner & Co

to { Copy Decree - April
Jan. 1880

James Daugherty & Co

To The Circuit Court of Hansemond
County, Va.

In pursuance of a decree of
said Court pronounced on the 13th.
day of April 1880 in a cause in
Chancery in said Court depending
between Geo. N. Gardner and others,
Plaintiffs, and James Doughtrey
and others, Defendants, a copy
of which decree is herewith an-
nexed: The undersigned respectfully
reports to Court, that as directed by
said decree, he proceeded, after due
and legal advertisement, to sell
a part only of the land conveyed
by said James Doughtrey and his wife,
by their deed of trust for the benefit
of said Geo. N. Gardner, dated the
17th. day of May 1875 and recorded
on the 7th. day of September 1877 in the
Clerk's office of the County Court of
said County, and did, on the 14th.
day of June 1880, sell at public auc-
tion before the Courthouse of said County
for cash (the day of sale being County
Court day), all that part of said
land, which contains by survey
one hundred and fifty acres, more
or less, and is situated in said
County near Whaleyville and is
bounded by the lands of Thos. W.
Savage, Geo. W. Smith, and the wives
of B. R. Doughtie and Willis Austin
and the remainder, or northern part
of the land mentioned in said deed

and by the County road leading from Suffolk to Somerton; and that at said sale Robt. M. Doles became the purchaser of said one hundred and fifty acres of land, more or less, at the fair and adequate price of —

\$390 00

which he has paid in cash and which has been disbursed by the Undersigned as follows:

To 5 per cent commissions	\$ 19 50
" paid Geo. T. Parker, Crier, per rect.	6 00
" " Thos. G. Elam for printing advertisements of the sale, per rect.	14 00
" " B. P. Baker, Surveyor "	10 00
" " for deed conveying to the purchaser, the land sold.	5 00
" Amount retained for payment of expenses of settlement for record in the Clerk's Office of the County Court of said County.	10 00
" paid P. B. Prentiss, Clerk's fees, per rect.	15 00
" " Thos. G. Elam for publishing Order of Publication, per rect.	5 00
" " Wilbur J. Kilby Jr. q. "	16 50
" " P. B. Prentiss, Counr. "	10 00
" " J. L. Fulgham, Shff. of Nantucket County, per rect	50
" " Shff. of Southampton Co. "	50
	\$ 112 00
	\$ 278 00

To paid Geo. A. Gardner in full of his claim, being the debt due to him and secured by said deed of Trust executed by said James Daughtrey per rect

\$ 208 50
\$ 69 50

bro. on
To paid Ro. M. Doles in part
of the debt of \$500. due to
him by said Jas. Daughtry
and secured by the latter's
deed of trust on said
land, dated the 10th. day
of March 1877. per acct.

\$ 69 50

\$ 69 50

Respectfully submitted this 6th. day
of July 1880.

Wilbur J. Kilby
Trustee.

1880 July 6th. Received of Wilbur J.
Kilby, Trustee. The respective sums of
money charged in the foregoing
Report as paid to us and set
opposite our names as follows:

Peter B. Prentiss. Clerk.	\$ 15 00
Peter B. Prentiss. Commr. in Chg.	10 00
Wilbur J. Kilby. p. q.	16 50
Wilbur J. Kilby for Shff. of Southampton Co., Va.	50
Wilbur J. Kilby for J. L. Fulgham, Shff.	50

For other receipts, see the beginning
of this Report.

Geo. N. Gardner & al.

vs. } In Chy.

Jas. Daughtrey & al.

Report of Sale
by Wilbur J. Kilby
Trustee.

1880 July 6th: Filed
clk:

CHANCERY SUMMONS.

The Commonwealth of Virginia,

Southampton
TO THE SHERIFF OF ~~NANSEMOND~~ COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON *James Daughtrey and*
Mifson E. his wife, Robert M. Coker, and A.C. Withers,
Trustee,

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

Bill in Chancery, exhibited against them
in the said Court by *George N. Gardner, and Wilbur J. Kelly,*
Trustee,

and have then and there this Summons. Witness, PETER B. PRENTIS, Clerk of our said
Court, at his office, this *28th* day of *March* 1879, in the *10.3rd*
year of the Commonwealth.

Teste:

Peter B. Prentis Clerk.

Memo.

The within named Defendant, A.C. Withers Trustee, under a Deed of Trust executed on the 10th day of March, 1877, by James Daughney and Missouri E. his wife, for the benefit of Dr. Robert M. Dole, is hereby enjoined and restrained from proceeding to sell, according to his advertisement or otherwise, the Real Estate conveyed by said Deed of Trust, and therein fully described and mentioned. And the within named Defendant, Dr. Robert M. Dole and all others concerned, are hereby also enjoined and restrained from, in any way, proceeding to sell or requiring a sale of said Real Estate, until the further order of the Circuit Court of Naussemond County, Virginia.

Teste, Peter B. Prentiss. Clerk

Kelly, 67
George W. Gardner & Co.

Sum. on Chy. 10
v. 1

James Daughney & Co. & Co.

In April Rules, 1879

Naussemond Cir. Va.

Executed by delivering
Robt. M. Dole a copy
of this Summons on the
29th day of March 1879
W. L. Briggs St. H.

Pro. B. No. 1. Page 150

Civil

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON *James Daugherty and*
Mifson E. his wife. Robert M. Cole, and A.C. Withers,
Trustee,

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

Bill in Chancery, exhibited against them
in the said Court by *George W. Gardner, and Wilbur J. Kilby,*
Trustee

and have then and there this Summons. Witness, PETER B. PRENTIS, Clerk of our said
Court, at his office, this *28th* day of *March* 187*9*, in the *103rd*
year of the Commonwealth.

Teste:

Peter B. Prentis. Clerk.

Memo:

The within named Defendant, A.C. Withers, Trustee under a Deed of Trust, executed on the 10th day of March, 1877, by James Daughtry and Missouri E. his wife, for the benefit of Dr. Robert M. Dole, is hereby enjoined and restrained from proceeding to sell, according to his advertisement or otherwise, the Real Estate conveyed by said Deed of Trust, and therein fully described and mentioned.

And the within named Defendant, Dr. Robert M. Dole and all others concerned, are hereby also enjoined and restrained from, in any way, proceeding to sell or requiring a sale of said Real Estate, until the further order of the Circuit Court of Hanover County, Virginia.

Teste, Peter B. Prentiss, Clerk

George W. Gardner del:

vs
James Daughtry & wife

James Daughtry & wife del:

To April Rules, 1879.

Proc. B. No. 1. Page 130
Circuit Court

Suffolk March 28th 1879 Entered by returning
a true copy hereof to A.C. Withers trustee,
James Daughtry and his wife and
Robert M. Dole on not returned of my County
John A. Feltner Scl
By J. H. Russell

MISCELLANEOUS

VIRGINIA.—AT RULES HELD IN the Clerk's office of the Circuit court of Nansemond county on Wednesday, the 7th day of May, 1879—

George N. Gardner and Wilbur J. Kilby, trustee.....Complainants, against

James Daughtrey and Missouri E., his wife; Robert M. Doles, and A. C. Withers, trustee.....Defendants.

IN CHANCERY.

The objects of this suit are to enjoin and restrain the defendants, A. C. Withers, trustee, and Robert M. Doles, from proceeding, in any way, to sell, or require a sale of, the real estate in the bill mentioned, until the further order of the Court, and to ascertain the priority of the claims, respectively, due to the said George N. Gardner and Robert M. Doles.

Affidavit having been made that the defendants James Daughtrey and Missouri E., his wife, are not residents of the State of Virginia, they are hereby required to appear at the said Clerk's office within one month after due publication hereof, and do what may be necessary to protect their interests.

A copy—teste:

PETER B. PRENTIS, Clerk.
WILBUR J. KILBY, p. q. je4-law4w

Office of the Suffolk Herald,

Suffolk, Va., July 10 1879

We hereby certify that the order, of which the annexed is a copy, has been published in the SUFFOLK HERALD in the manner prescribed by law, once a week for four successive weeks.

~~WILLIAM C. GILL~~, Ed. Herald.

Thos G. Elam pr B

George N. Gardner Lat:

$\frac{20}{20}$ } Certificate of Pub:

James Daugherty & wife Lat:

1877. July 10th Feb 21

Suffolk, Va., Dec 4th 1879

Mr W Kelly Trustee S N Gardner
for Daughtrey wife & R M Wiles
To SUFFOLK HERALD, Dr.

Book and Job Printing Neatly Executed.

THE HERALD, \$1.50 A YEAR.

Orders Solicited.

To Pub Notice 4 Times
3 in

500

To

W. J. Kilby Trustee &c. and Geo: A. Gardner
Gentlemen

Take notice that we shall
on Saturday the 12th day of April 1879
move the judge of the Circuit Court of
Hanseman County to dissolve the
injunction sued out by yourselves
against Alwichters Trustee & Robt.
M. Dales on the 28th March 1879 - -
from Judge C. W. Hill of the Hastings
Court of the City of Portsmouth

Signed

Alwichters Trustee
& Robt. M. Dales
per Alwichters Att'y &c.

State of Virginia

Hammond County to wit

This day personally appeared before me
A. L. Withers a Notary Public in and for the
County of Hammond, Lee Britt who is over
sixteen years of age and made oath that
he delivered a true copy of the within notice
to W. J. Kelly Trustee &c. & atty. for Geo. M.
Gardner. on this the 3rd day of April
1879. Given under my hand this the
3rd day of April 1879.

A. L. Withers
Notary Public

To the Clerk of the Circuit Court of
Hausemond County, Virginia

Issue Summons in Chancery as
follows:

George A. Gardner and Wilbur J. Kilby
Trustee, Plaintiffs

vs.

James Daughtrey and Missouri E. his
wife, Robert M. Doles and A. L.
Withers, Trustee, Defendants.

To Appear Rules 1879

21st. March 1879

Wilbur J. Kilby
p. g.

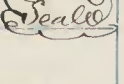
Memorandum
for
the Clerk

Know all men by These Presents, That we, George N. Gardner
and Nelson B. Gardner are held and firmly bound unto James
Daughtry and Missouri E. his wife, Robert M. Dole and A.
C. Withers, Trustee, Their heirs, Executors, Administrators or
assigns, in the sum of Five Hundred Dollars, to the pay-
ment thereof, well and truly to be made to them, we bind
ourselves, our heirs, Executors, Administrators and assigns, jointly
and severally, firmly, by These presents. And we hereby waive
our Homestead Exemption, as to this obligation.

Sealed with our seals, and dated this 28th day of March, A.D.
1878, and in the 103rd year of the Commonwealth.

The Condition of the above obligation is such, that
Whereas, George N. Gardner and Wilbur J. Kelly, Trustee,
in their Bill in Chancery against said James Daughtry and
Missouri E. his wife, Robert M. Dole and A.C. Withers, Trustee,
addressed to the Honorable George Blow, Circuit Court Judge,
in and for the County of Hanseman, State of Virginia, has obtained
an Injunction from the Honorable C. W. Bell, Judge of the Hastings
Court of the City of Portsmouth, Virginia, to enjoin and restrain
the said A.C. Withers, Trustee, under a Deed of Trust executed on the 10th
day of March, 1877, by said James Daughtry and Missouri E. his wife,
for the benefit of Dr. Robert M. Dole, from proceeding to sell, ac-
cording to his advertisement or otherwise, the Real Estate conveyed by
said Deed of Trust, and therein fully described and mentioned, and
also to enjoin and restrain the said Robert M. Dole and all
others concerned, from, in any way, proceeding to sell or requiring a
sale of said Real Estate, until the further order of said Circuit
Court: And Whereas, it is provided, by the order of the said Judge,
awarding the said Injunction, that the Plaintiffs are not to have
the benefit thereof, until the Plaintiff, George N. Gardner shall
enter into a bond, with sufficient security before the Clerk of said
Circuit Court, in his Office, in the penalty of Five Hundred

1 Dollars, payable to the said Defendants, and conditioned to
2 pay to them, or either of them, all such damages and costs,
3 as they or either of them, may sustain, in consequence of the
4 said Injunction, in case the same shall be dissolved. Now
5 Therefore, if the said George N. Gardner shall pay all
6 such costs, as may be awarded against him, and all such
7 damages as shall be incurred, in case the said Injunction
8 be dissolved, then, this obligation to be void, otherwise to
9 remain in full force and virtue

10 Executed in presence of { George N. Gardner 
11 Peter B. Prentiss, Clerk { Nelson B. Gardner 

14 In the Clerk's Office of the Circuit Court of Newseman County,
15 the 28th day of March, 1879.

16 This day George N. Gardner and Nelson B. Gardner
17 signed and acknowledged the foregoing bond. The said Nelson
18 B. Gardner made oath before me, Clerk of the said Court, that his
19 estate, after the payment of all his just debts, and such liabilities
20 as he has incurred for others, is worth the sum of Five Hun-
21 dred dollars.

22 Teste,

23 Peter B. Prentiss, Clerk
24
25
26
27

George N. Gardner
d.l.

Injunction Bond

28
29
30
31
32

James Doughty & Co.

1879
March 28th. Executed & filed

In The Clerk's Office of the Circuit Court of Nause-
mond County, The 28th day of March, 1879.

George N. Gardner and Wilbur J.

Kilby, Trustee Plaintiffs.

vs { Chy. suit pending in the Cir. Ct. of Nausemond County

James Daughley and Missouri E. his wife;

Robert M. Wiles; and A. C. Withers,

Trustee Defendants.

This day George N. Gardner, one of the Plaintiffs, in
the foregoing suit, personally appeared before me and
made solemn affirmation, James Daughley and
Missouri E. his wife, two of the Defendants, in said
suit, are non-residents of the State of Virginia.

Teste

Peter B. Prentiss, Clerk

George H. Gardner & al

to { Affidavit, as to non
residence &

James Doughty Dep: & al



1879
March 28th: Made & filed

Gardner

vs.

This day came by their
Doles & al. ^{to this cause} ~~this cause~~ in which
attorneys, the parties ~~This cause~~ in which
an issue out of Chancery and
a reference of ~~this case~~ the same
to a jury ~~by~~ had been ordered and
directed by the decree therein pro-
nounced at the October Term
1879 of this Court to try the issue
of whether Robert M. Doles at the
time of the execution on the 10th,
day of March 1877 of the deed of
trust (a copy of which is filed in
this cause) by James Daughtry and
Missouri E. his wife for his benefit,
had notice of the execution on the
17th, day of May 1875 of the deed
of trust (a copy of which is also
filed in this cause) by said
James Daughtry and wife for
the benefit of said Geo. N. Gard-
ner and conveying the same land,
~~came on this day to be again heard~~
~~on the papers formerly read therein~~
~~and on the examinations of wit-~~
~~nesses.~~ And thereupon came
a jury to wit: Robert W. Ash-
burn, Henry W. Bradshaw, Simon
Savage, Francis E. Parker, James
W. Hall, James R. Parker, Wm.

P. Mitchell, Francis R. Ellenor, John
D. Corbee Jr., Dempsy L. Darden
John B. Vaughan and T. G. Daughtrey,
who being ~~truly~~ elected tried and
sworn, the truth to speak upon the
said issue directed and ordered
under the decree aforesaid, on their
oath returned the following ver-
dict, to wit, ^{"We the jury find that"} ~~That~~ ^{that} Geo. M. Doles
~~aforesaid~~ had notice of said deed
^{of trust} for said Geo. N. Gardner's benefit
before ~~the execution~~ ^{he took} of said deed
of trust for his, the said Doles' ~~benefit~~
^{on the same land", and this cause}
^{came on this day to be again heard in the papers formerly read therein and on}
^{the examinations of witnesses and the verdict of the jury,} ~~On consideration whereof the~~
~~Court doth and do does order and decide~~
^{that said deed of Trust for said Geo. N. Gardner's benefit has priority over the said deed}
^{of trust for the benefit of said Geo. M. Doles, and both pay all, order and}
decree that William F. Kilby who
has been substituted Trustee in
the place of John R. Kilby the
trustee named in said deed of
trust for the benefit of said Geo. N.
Gardner, proceed to see the ~~said~~
land ~~as~~ conveyed by said
deed according to the provisions
thereof And the ~~land~~ law in
that case made and provided
and out of the proceeds of the
sale pay first all costs of this

suit and the expenses of the sale and
then pay the balance of the debt
due to said Geo. N. Gardner and
secured by said deed of trust
for his benefit and all interest
<sup>and the surplus if any pay to said Geo. M. Doles on ac-
count of the claim due him under his said deed of trust</sup>
due thereon and make report to
Court of his proceedings under
this decree, as well as of any
surplus money which may
~~remain~~ ^{be} in his hands, filing
with his said Report proper
^{receipts} ~~and~~ for all payments
which he may make hereun-
der.

Gardner

vs.

Doles tal

Nauvoo Co. Cir. Ct.

13 Apr. 1880

Decree

To be entered

Geo. B. Snow.

Entered O. B. No 1

p-484

Gardner tal

11.

Daughtrey tal

This cause in which the Com-
plainants ^{as to the non-resident defendants, James Daughtrey and the Missouri} have proceeded, in manner
prescribed by law as to ~~the~~ non-
resident defendants, came on this
day to be heard on the Bill of the
Complainants taken for confessed
as to the defendants James Daughtrey
and Missouri E. his wife and A. C.
Withers Trustee, on whom process had
been duly executed, they still failing
to appear, answer demur and plead,
and on the Answer of Robert M.
Doles and the exhibits filed with
said Bill ~~and on the examina-~~
~~tions of witnesses with general~~
refutation, and was argued
by counsel.

~~On consideration whereof the~~
~~Court ^{doth decide} being of opinion~~
that the deed of trust executed
on the 17th day of May 1875 by James
Daughtrey and Missouri E. his wife
^{for the benefit of Geo. H. Gardner}
and recorded on the 7th day of
September 1877 in the Clerk's office
Hauemann County Court has
priority ~~over the~~ by way of a lien
on the land therein described, now.

on consideration whereof the defend-
dants demanding an issue out
of Chancery and a reference of
~~the issues~~ of this cause to a
jury for the trial of the issue
herein involved, the Court doth
order that the said issue out
of Chancery be allowed and
this cause be referred to a
jury to try the issue of whether
Robert M. Doles at the time
of the execution on the 10th day of
March 1877 of the deed of trust
described in this cause
by James Daughtry and Missouri
& his wife for his benefit, had
notice of the execution on the
17th day of May 1875 of the deed
of trust, a copy of which is filed
in this cause, by said James
Daughtry and wife for the
benefit of said Geo. A. Gardner
and conveying the same land,

copy of
which is filed

We the jury
~~find~~ ^{find} that
R. M. Dells
has notice of said
deed ~~trust~~ ^{trust} for said Geo. A. Gard-
ner's benefit before he took his said
deed of trust in the same land
J. W. Hall

Honorable

13 Apr. 1880

Gardner
or John
Daugherty

Oct Term 1879

To be entered

Geo. Blount

Entered O.B. No. 1

p. 465-

The Depositions of George N. Gardner, James Daughtrey and others. Taken before me, a Commissioner in Chancery, of the Circuit Court of Nansamond County, pursuant to Notice hereto annexed, at the Clerk's Office of Nansamond County Court, in Suffolk, Va. on the 3rd day of September, A.D. 1877, between the hours of 8. A.M. and 6 P.M. to be read, as evidence on behalf of George N. Gardner & others, in a certain suit in Equity, depending in the Circuit Court, for the County of Nansamond wherein George N. Gardner & others, are Plaintiffs, and A.C. Withers, Trustee, R. M. Boles and James Daughtrey and Mesdemoiselle E. his wife, are Defendants.

Present. Wilbur J. Lilly, Counsel for Plaintiffs.
A.C. Withers Counsel for Defendants.

James Daughtrey, being duly sworn on the Holy Evangelists of Almighty God, deposes and saith as follows:

1st Ques^t by Plffs

What is your age?

Counsel

Answer. Thirty-four years.

2nd Ques^t by same

Do you know the parties to this suit?

Answer. I do, and I am one of the parties, defendant, myself

3^d Ques^t by "

Before the Execution on the 10th day of March, 1877, by yourself, of the deed of Trust of that date, marked "Exhibit C," & filed with the papers, in the Cause, to secure to Dr. R. M. Boles, your indebtedness of \$500⁰⁰ to him; as therein named, did you tell him; that you & your wife had executed on prior deed of Trust, marked "Exhibit A," & filed as

as aforesaid, and dated 27th: May, 1875, to secure to George N. Gardner the sum of \$250⁰⁰, as in the last deed named?

Answer. ~~When~~ I went to Dr. Doles to purchase a mill, ~~before~~, I don't remember when, but before I gave the deed of Trust of the 10th: March 1877: I told ^{him} what way I ^{for the payment of the mill} would secure him - I told him, that I would give him a deed of Trust on a certain tract of land, estimated to contain 350 Aers, in Hansberran County, Va. - I also told him, that Mr. George N. Gardner (the Plaintiff) had a deed of Trust on the same tract of land for \$250⁰⁰ but, I had done some work for Mr. Gardner, & I did not suppose, that when we should settle, that I would owe him more than \$125⁰⁰ or \$150⁰⁰. I afterwards purchased the mill of Dr. Doles and gave him said deed to secure the purchase money, to be paid for the mill; and the deed of Trust was on the mill and said land.

4th Quest: { same.

Q. Did Dr. Doles, after you went to purchase of him, said mill, sell you the same, & take of you a deed of Trust, with full knowledge, prior to that, of said deed of Trust to Gardner?

Answer. I do not know that he had full knowledge, but I had previously told ^{him} of the said deed to Gardner.

1st Quest:

by Deft's Counsel

Cross-Examined by Defendant's Counsel.

Where did you reside, at the time or times, that you made application to the Deft (Doles) for the purchase of the mill, & how many times did

you make such application, before the bargain was struck?

Answer. I resided in Isle of Wight County, Va; it think it was ^{at} the third time or visit, that the bargain was struck.

2^d Quest: & some

How long ~~had~~ ^{had} the deed to George N. Gardner been made, at the time the bargain was struck, between yourself & Dole?

Answer. About Two (2) years - The Deeds, however, will show.

3^d Quest: " "

Did you have more than one tract of land, or an interest in more than one, at the time the Bargain was struck between yourself & Dole; L. H. D., where was such land, or interest & situated (Excluded by Plaintiff's Counsel, as being irrelevant to the issue.)

Answer. I had an interest in a piece of land in Isle of Wight County - at that time.

4th Quest: " "

Was the land mentioned in the deed of Trust to Gardner ever advertised to be sold, by direction of said Gardner, & was it sold in obedience to said direction, L. H. D., why not, which you know?

(Excluded to, for above reason)

Answer. The land ~~advised~~ ^{was} advertised to be sold, by direction of said Gardner - it was not sold, because I had a portion of the debt, & costs of advertisement, & ^{he} they agreed to abandon the sale.

5th Quest: " "

Was it advertised the second time, after the bargain arranged, by direction of said Gardner & was it sold?

under said second advertisement?

(Except to as above)

Answer. It was advertised a second time, but was not sold - the only reason, that I am aware of, that it was not sold, ^{is} that I supposed Mr. Gardner thought, that Dr. Dole's deed was ahead of his

Re-examined by Plff's Counsel

1st Ques.

On the day, when the second offering of the land for sale, ~~was~~ was to take place, did you talk with Dr. Dole - & if so, did he say any thing about his having promised to pay said Gardner his debt and take up his deed & that he, then, had the matter in contemplation?

Answer. Yes, I talked with Dr. Dole, that day - Dole said that he had offered Gardner his money, but he declined taking it - & he said, that he would pay it with Gardner, soon.

2^d Ques.

How long a time intervened ~~was~~ between the time of your purchase of the Mill & the execution of the deed to Dr. Dole, to secure the money therefor?

Answer. I do not exactly remember - but I am certain it did not exceed two (2) weeks. Was it at the time you purchased the Mill or afterwards, when you gave the deed of trust last named, that you told Dr. Dole, of Gardner's deed?

Answer. It was when I purchased the Mill and further than dependent saith not

James Doughty

George N. Gardner being duly sworn on the Holy Evangelists of Almighty God, deposes and saith as follows:

1st Quest. {

Declar. Counsel {

2nd do-

3rd "

What is your age?

Answer. 30 Years.

Do you know the parties to this suit?

Answer. I do - and I am the party Plaintiff.

Did you ever have any conversation with Dr. Dole, with reference to said two (2) deeds of Tr. & L. Co., & the substance of the conversation?

Answer. I had two (2) conversations with Dr. Dole. The first one was on the day when the said land was first to have been sold - He told me that I was ahead of him & he proposed to go in shares & buy the land, & sell it & divide the profits, if any - but, I told him, Mr. Daugherty had come & settled about that work, & that I had credited his bond with \$106¹⁹. I think & I promised Mr. Daugherty that if he would pay the expenses of advertising the land, & Mr. Kelly, for his trouble, that I would sell the land & give him further time, which Daugherty agreed to do. and this is the reason, that I did not accede to Dr. Dole's proposition.

My second conversation with Dr. Dole ~~was~~ was, the 9th day of December, 1878

On the day when the second sale was to have taken

place - when he ~~told~~ ^{said} me that you cannot sell the land -

I asked him, why? He said your Trustee is dead & there is no one to sell it - ~~he is to know that the land~~

~~was to be sold for him~~ He told me that he knew that my deed was given some two (2) years before he:

but, was recorded in Isle of Wight County, & it had about

it well have been recorded in Nova Scotia, so far as
binding the land was concerned. He said, he did not find
~~out until after the first day appointed for the sale, that~~
his deed (Doh's Deed) was recorded first, in Hantsman
County.

4th Lawt.

Did D^r. Doh's state, that he knew the deed to ^{in Hantsman County} ~~have~~
been given ~~and~~ on the land referred to, in the Depository,
when he took his deed?

Answer. He told me that ~~that~~ he knew, that my deed
was ahead of his - when he took his deed.

Cross examined by Defts. Counsel

1st Lawt.

How did D^r. Doh's tell you that he found out, on the 10th
March, 1877, that you had already a deed of trust on the
same land, that was conveyed to his (Doh's) Master?

Answer - D^r. Doh's told me that Mr. James Daughly
told him - that he told me, on the 8th. Octo: 1877.

2^d " "

Did D^r. Doh's tell you in that or any other conversation
that the first knowledge, that he had of the priority of
his deed, was obtained after the first advertisement
of the land, by Mr. R. Kelly, Trustee?

Answer. He did, say that he found it out, that his
deed was recorded, ~~about~~ (6) months ahead of mine -
and found it out after the first day, it was expected
the land would have been sold.

3^d " "

Did not D^r. Doh's tell you, that he thought your
deed was ahead of his, until after the first ad-
vertisement of the land by John R. Kelly,
Trustee?

Answer - Dr. Dole told me, he thought, that my deed was recorded before his, until after the day the law went to have him set, under the first advertisement.

4th " " Did not Dr. Dole tell you, that John R. Kelly, the Trustee, had lead him (Dole) to believe, contrary to his first belief, that your deed, had ~~previously~~ answer - I do not recollect any thing about it, at all.

5th " " Did Dr. Dole tell you, in that or any other conversation that, after he (Dole) saw the 1st advertisement, that he (Dole) went to see Mr. J. R. Kelly Trustee, & enquire of him (Kelly) how he could sell under your deed when he (Dole) had a prior lien?

Answer - He did not - I don't recollect ~~of~~ having any conversation of that sort.

6th " " You state that Dr. Dole offered to buy in the land with you, & divide the profits - did he not state in that conversation that he thought his lien was superior to yours?

Answer - No Sir, he did not.

7th " " What was this piece of land worth, in your opinion, on the 10th March, 1877?

Answer - I thought it was worth enough to bring my money.

8th " " Were you familiar with the land & did you know where it was located, or had you ever seen it, when you took your lien?

(Exhibit to an exhibit)
Answer - I knew where it was located - I was not familiar with it - I had seen a portion of it, only.
If, as you say, you knew where the land was located

why did you, have your deed recorded in Isle of
Wight County, in stead of Hanseman County, where,
you say, you knew the land to be?

Answer - I left it to Mr. Kelly, the Notary, and it
was ~~his~~ his mistake.

9th

Did you not know, at that time, that Mr. Gaughly
resided in Isle of Wight County, & had interest in
land in that County?

~~Answer~~

(Quoted to as above)

Answer. I knew that he lived in Isle of
Wight County, & I thought that he owned land
in that County, at that time, but he was selling
& buying, & was not positive, that he had own
land, there.

10th " "

Did you not say to Dr. Boles, that, at the time your
deed was recorded, you thought the land was in Isle
of Wight County?

~~Answer~~

(Quoted to as above)

Answer. I did not, for I knew the land was
in Hanseman County.

And further this deponent saith not.

George N. Gardner

Nelson B. Gardner being duly sworn, on the Holy Evangelists
of Almighty God, deposes and saith as follows:

1. St. Quest:

What is your age?

Answer - 78 years.

2. " "

Do you know the parties to this suit?

Answer. I do Sir.

3. " "

Were you present, at the time of any conversations which
may have taken place between Dr. Dole and your son,
George A. Gardner, with reference to said deeds of trust,
life, so, state when & the substance of the conversation?

Answer - I was present on the 9th day of Decr: 1878, the
^{app. int. for} day of the last sale. I met Dr. Dole, on that day in
Suffolk, with my son ~~and~~ son - The Dr. remarked to
my son & myself, that he supposed that we had come
down to sell the land ~~that~~ I supposed that he offered
to the land as a tract to be sold on that day - he
said to us, gentlemen, you cannot sell the land
to-day - because I thought of, until recently, that your
deed was recorded before mine, ~~but~~. I thought
myself, ^{that} my son's deed was before his - my son gave me
the deed to have recorded - I saw Mr. John R. Kelly, the
Trustee I had been, who was the proper man to
record that deed, his answer was, I am the man -
I gave Mr. Kelly the deed to have ~~it~~ recorded.

4. " Quest:

Did Dr. Dole say to your son & yourself that he knew
~~that~~ the deed to your son had been executed before he
took his deed, in that, or in any other conversation in
your presence?

Answer. He did not in that, but he did in a.

previous execution, which took place at Isle of
Wight Court House, he wished to know what my
son's debt was - I told him the original was
\$250⁰⁰, but Mr. Daughtry had done a job of
work for my son, & if ~~he~~ could get him to a
settlement, I supposed my son's debt would be
about \$200⁰⁰, balance - he then said to me
to say to my son, to meet him at James
Daughtry's Sunday, in that week; & Mr. Daughtry
would not settle with my son, that he would make
him settle - & previously, to the day that he wished
my son to meet him, Daughtry, & George N. Gardner
came to my house & had a settlement ~~by which~~
by which there was a balance of about \$200⁰⁰ or
about that.

5th 9th 1805

Did Mr. James Daughtry ever say to you or your son
that, before giving Dr.oley his deed of trust, he had
told Dr.oley, that your son had his said deed
of trust on the same property, except the mill?
Answer - Yes, he did - and that Dr.oley would
acknowledge it.

Cross examined

1st 1805

When did you or your son first ascertain, that
your deed of trust was improperly recorded, in Isle
of Wight County?

Answer - I do not know, that I or he ever ascertained
that it was improperly recorded in Isle of Wight County;
it was a short time before the land was lost -

advertised. ~~But~~ ~~the~~ ~~they~~ ~~came~~ ~~to~~ ~~my~~ ~~house~~
~~my~~ ~~last~~ ~~time~~ ~~before~~ ~~the~~ ~~last~~ ~~advertisement~~, ~~it~~
~~was~~ ~~my~~ ~~son~~ ~~that~~ ~~was~~ ~~in~~ ~~charge~~, ~~and~~ ~~he~~ ~~was~~ ~~in~~ ~~charge~~
~~of~~ ~~the~~ ~~sale~~, ~~and~~ ~~he~~ ~~was~~ ~~in~~ ~~charge~~ ~~of~~ ~~the~~ ~~sale~~.

Why did your son not sell, under the last advertisement
if his deed, as is alleged, had priority?

Answer— We came down to Suffolk to see Mr. Kelly,
who was not prepared to do any business that day—
(his father having been buried the day before)— Mr. W. J. Kelly
had advertised for so much cash— I think that was
to cover my son's debt to Dr. Dole's first instal-
ment— & we, having up the land at that time for
so much cash, we did not think it worth buying
\$300⁰⁰ the amount of cash required. I am concluded to
stop the sale at that time.

Did your son ever, afterwards, request the Dr. Dole
to sell the said land & if not, why not?

Answer— No Sir— pretty soon after the Dr.
Dole had it advertised

and from then this dependent, faith not.

W. J. Kelly

William J. Kelly, being duly sworn on the Holy Evangelists
of Almighty God deposes and saith as follows:

In December, 1877, Dr. Dole came to the Law Office
of John R. Kelly & Son, in Suffolk, Va. & in my
presence, stated to John R. Kelly, what he ^(Dole) said
was a fact, ^{and} about which he sought his advice.
He (Dole) said, that he had just learned that

Mr. James Doughty was about to remove the Saw-
mill & fixtures, out of this State into North Carolina,
from its location, at that time, as I supposed, near
Franklin, Va. which Saw Mill & fixtures, constituted
a part of the property conveyed for his (Doughty's) benefit
in Doughty's Deed of Trust of the 10th. March,
1877, and called Mr. R. Kelly's attention to the fact,
that before the last named Deed of Trust, had been
executed, said Doughty had given the Deed of
Trust of the 17th. May, 1875, for the benefit of said
George N. Gardner, in both of which Deeds, the same
land had been conveyed. That he was afraid, that if
he permitted the Saw mill & fixtures, to be removed
out of the State, he was afraid, that when the land
was sold, that it would not sell for enough to
pay said Gardner's debt, which was due to him, &
leave a balance sufficient to pay his debt, without
the Saw mill & fixtures, & that he had come to
get him (Mr. R. Kelly) to take the necessary legal
steps to stop the removal of said Saw Mill, &
stated of having known of said Gardner's Deed, ^{before he took his} I do not
know, what became of the matter, as John R. Kelly's
services alone, were solicited, in the matter, &
he did all that was done, of advising, of any consultation
with me or knowledge on my part, as the junior
member of our law firm.

C/S - examined

~~You state that you further~~ who wrote both of

Ed
1. Lest

said deeds of trust, & who was trustee in both?
Answer— I am certain that John R. Kelly wrote
the deed to Gardner, & I think the one to Dr. Soley—
I know he was trustee in both deeds.

2^d Quest:

You state that you were personally present at
a barrister's Consultation which took place, at the
office of John R. Kelly Esq in Decr: 1877: will
you state whether the said conversation occurred in
your room of the said office or that occupied by
your father?

Answer. It was on my father's side & I was around
there with them— and I think that I put in an
occasional word during the consultation.

3^d . . .
You state that you had nothing to do with this partic-
ular matter spoken of— please explain why, it should
have made such a vivid impression upon your mind
as to enable you to remember the exact conversation
nearly two (2) years afterwards?

Answer— I meant by having nothing to do with it, that I
took no professional part in it, & I have not attempt-
ed to give the exact words of the conversation, but
have only stated the facts of the conversation. I might
have taken part, if any thing had been done, subse-
quently in the matter, & way of preparing the papers
for a case, & the fact, that I recollect nothing more
about the case, convinces me, that nothing was done
afterwards. It was the only subject of conversation, & we
were talking about that matter alone.

11-
4th Quest:

If it were, in your knowledge, that Dr. Soley,

admitted, a knowledge, on his part, of Gardner's prior
deed; when he took his deed, why is it, that you
have not, in your frequent intercourse with me &
others, in relation to this matter, and the argument
of the Injunction, before the Judge of the Circuit
Court, made known your information?

Answer. In the first place, I have not been called
upon, nor has there been any necessity for stating what I
knew on the subject, & especially, to the Defendants
in their Counsel; nor what my witnesses know on
the subject and because the argument, on the in-
junction, in this case, was on a question of law, &
not of fact; & there was no necessity, then, of stating,
by whom I expected to sustain my case.

Did you or did you not, in the argument, on
the Injunction before the Circuit Judge, state, that
you relied on certain letters, then, in your possession,
from the said Dohs, to show, that he (said Dohs)
had notice of said Gardner's deed?

Answer. I may have so stated - & I think I did,
in the belief, that I would find some letters
on the subject among the letters, received by my
father; knowing that he never failed to preserve
every letter he ever received, on business for, &
believing that I would find letters, on the subject,
between him & Dr. Dohs.

5th Last:

You state, that, at the visit of said Dohs, in
December, 1877, was made to you & your
father's Law Office; please state, whether or not

at that time, there were not numbers of calls, daily,
when you, & your father's time, on business.

Answer - There were frequent calls, at that season of the
year, & some persons may have come in; on that day -
but, that the above conversation took place, late in
the day, when persons seldom ever called, & there
was no one present, except us three.

and further this deponent saith not.

Wilbur J. Kilby

The further taking of these Depositions is continued until
Wednesday, the 17th day of September, 1879, at the same
place and between the same hours.

Peter B. Reuter. Comm'r. in Chy.

Wednesday, September the 17th: 1879

(Present - Wilbur J. Kelly, Counsel for Plaintiff

A. C. Withers, Counsel for Defendant

J. Robert M. Doles, being duly sworn on the Holy Evangelists of Almighty God, deposes and saith as follows:

1. Ques^t. What is your age

Answer. Nearly 60 years of age

2^d " Are you a party to this Suit

Answer - Yes - I am one of the Defendants -

3^d " Will you give a detailed statement, as near as you can, of all the transactions between yourself & said James Doughty, & the parties, Plaintiff, in the Bill, with reference to the Deed of Trust, taken by yourself, & especially, with reference to the alleged notice referred to, by Wilbur J. Kelly and said George W. Gardner?

Answer. Some two or three weeks before the record of the Deed for my benefit - Mr. James Doughty & William Bracy came to see me, in regard to the purchase of a Steam Saw-Mill, conveyed from Thomas D. Boykin to Joseph H. Prince, as Trustee for my benefit, which Deed is at least in Southampton Co. Co.; at that time - I did not sell him the Mill, at that time, I having no authority, as I understood, to do so - Then I would see Mr. Boykin & Mr. Prince, in whom the legal title to the mill was, ~~but~~ I ~~did~~ did see them ~~they~~ gave their assent to the sale - The

Second visit, was made by Mr. Daughtry alone, to my house - he stated that Mr. Bray had declined to be a partner ~~in~~ in the purchase of the Mill - and said that he would purchase it by himself, if the terms could be agreed on - he then proposed, that he could convey a piece of land, in Nausemound County - of 300 acres, more or less, ~~from the~~ said Mill to secure the debt for the mill (\$500⁰⁰), which said ~~land~~ ~~was~~ which were evidence of two bonds, each, for the sum of \$250⁰⁰ & payable in 102 years after date, with interest from date, he also mentioned something about a conveyance of a piece of land to Mr. Geo. R. Kiege for the benefit of Mr. Gardner. I do not recollect whether the land referred to was in this Co. or Isle of Wight. & that (he Daughtry) mentioned the amount due to Mr. Gardner, but that there had been a payment on the bond & that the amount then due only amounted to \$25. - I declined selling just at that time, in order to inquire of Mr. Geo. R. Kiege who I understood was the trustee in the Gardner deed, whether such a debt existed in Nausemound Co. & what payment had been made on said note

if any, & whether the deed was
recorded in Nassau County. &
also to know if there was any
liens on the land of any kind.
and I am positive that I wrote
Mr. Kelly in account of it, & re-
ceived no answer from Mr.
Kelly whatever, & came to Suffolk
& examined the record in regard
to it. found no deed of trust
recorded and no judgments liens
& this was the day before that on
which ^{he} was to meet me at home.
On the next day he came accor-
ding to promise to my house -
he then bought the mill, I being
fully convinced that there were
no liens on the land referred
to. I thinking that Doughty had reference to
the land in which he had interest, in Isle
of Wight County. The first position, when
that I had of any other deed, ~~on~~ the land in
Nassau County, was that contained in
the first notice of Sale, advertised in the
Suffolk Herald, to take place at Nassau
County October Court, in 1877. I came down
the Sunday Evening preceding & on the following
Monday Morning I saw Mr. John R. Kelly, the
Trustee, in relation to the matter.

My lesson of the conversation had with Mr. J. R. Kelly, ~~and~~ ~~and~~ and acting under his advice, I went to Mr. Gardner, who was then in Suffolk (where, I had then seen for the first time) and proposed to pay him the balance due on his note, which was, as I understood ~~was~~ \$200⁰⁰, & for him to assign over to me his interest in the land I Deed of Trust to, which Mr. Gardner refused. I think that Mr. Gardner said to me, that his Deed was ^{older} ~~older~~ than mine. I did not tell Mr. Gardner that I knew that he had a Deed on the land in Naussement older than mine, but I did say that I knew he had a Deed older than mine, for Mr. Daugherty had told me something about it.

Quest: Did you ever say, in the presence of Wilbur J. Kelly, in his, & his father's Office in Suffolk, that you knew, at the time, that you took your Deed of Trust, from Daugherty, that there was a prior Lien for Gardner's benefit in the land located in Naussement County?

Answer. Mr. Wilbur J. Kelly is mistaken in regard to the conversation which occurred in his father's office, at the close of December 1877. At the December Term, 1877 of Southampton Co. Ct., the elder Mr. Gardner (father of said George) told me, that Mr:

Daughtery had the Mill, on a boat, at
Franklin, intending, as he understood, to carry
the Mill to North Carolina - I consulted Mr
J. Kelly, the Trustee, as to how I could
stop the Mill - Acting under his advice
I wrote a note to Mr. Daughtery, forbidding him
carrying the Mill out the State. Subsequently,
say a few days after, learning that Mr.
Daughtery had carried the Mill out of the
State, in defiance of ^{my} letter to him; I came
to Suffolk to consult the said Trustee, & to
inform him of the fact, & to learn how I
should proceed - Mr. Wilbur J. Kelly
& his father were present at the interview;
a part, if not all the time - in which
I used this expression, "as you told me, Mr.
Gardner's deed was ^{that} ~~obscure~~ mine, the
Mill being moved out of the State & out of
my reach, I thought, that it was exceedingly
doubtful, whether the land conveyed, alone
would Mr. Gardner's & my debts. This
was the substance of the conversation which
took place between us - The rest of
the conversation flowed out of the above
statement.)

Quest.

Were you at that time, under the impression
that the Gardner deed was upon Daughtery's
interest, in the Isle of Wight land &
Answer. I was under the impression, at that

time, have information received from the Trustee, that the Gardner Deed was on the Housenand Land, but, previously, I was fully of the impression that it was on the Isle of Wight Land, because I had examined the Housenand Records, & found no Deed or Judgment Lien there recorded, and this examination of the records took place prior to the sale of the Mill to Daugherty.

Quest: Do you state that you had no knowledge, notice or information ~~that~~ prior to the making of your Deed of Trust to you, of any lien, in favor of Mr. Gardner or any other person, upon the lands mentioned in said Deed of Trust, located in Housenand County?

Answer. I was fully convinced ^{there} was no lien of any kind, after making the examination of the Housenand Records.

Quest: Did you take this Deed of Trust, as an innocent purchaser, for value, without notice, of any kind, either constructive or express, that there was any prior lien upon the Housenand Land?

Answer. I have stated before, that Daugherty had said something about a Deed of Trust to Mr. Geo. H. Gardner but never trusting the statement of any person, ~~these~~ matters of this sort, I postponed the sale of the Mill, until the next visit of Mr. Daugherty in order, to inform myself whether there was any

1
1
been on the Hanscombed land or not, after a full examination & being convinced that there was none, I sold Douglas the Mill & took the Deed of Trust, without any intention of defrauding or injuring any one - it being in fact a bona-fide sale, in my part.

Quest:

^{Were} you satisfied, in your own mind, before your Deed of Trust was taken & after some reference had been made by Douglas to a deed for Gardner's benefit, & after your examination of the records that the Gardner Deed referred to was in the Isle of Wight land & not upon the land in Hanscombed County?

Answer - I was certain of it, as I thought.

~~Cross examined by Plffs: Counsel~~

Quest:

Quest:

Please state, whether or not you are not in the habit of having frequent transactions of this kind & whether you do not frequently lend money on Real Estate, Bonds & Deeds of Trust? Answer - I have done it frequently & invariably, have the records examined, either by myself or my attorney.

Cross examined by Plffs: Counsel

Quest:

Did you know whether James Douglas owned any land in Isle of Wight County, at the time you took your Deed, & if you did

from whom I have did you obtain your knowledge?

Answer— I only knew, at that time, that Mr. Daugherty told me that he had an interest in ^{land in} Isle of Wight County. Personally I had no knowledge of it.

Quest:— Why did you go to the Clerk's office of Nansemond County to see, if Gardner's deed or any other deed were on Daugherty's land, if you had been given to understand Daugherty, or you ^{suppose} that Gardner's deed was on land, in Isle of Wight?

Answer— The deed that Daugherty proposed to make to me was on land in Nansemond County. ~~I did not go to the Clerk's office~~ I simply examined the records to see whether the land, actually, existed here & whether there was any memorandum whatever on it & what that memorandum might be.

Quest:— Did Mr. Daugherty, when he went to purchase the saw-mill of you, or before you took your deed, make the impression on you, that the land in Gardner's deed was in Isle of Wight or Nansemond County?

Answer— The impression made on my mind, by the conversation, in regard to Gardner's deed, amounted to nothing.

Quest:— ~~What did~~ Did you believe that the land in Gardner's deed, was in Nansemond or Isle of Wight County?

Answer. I did believe, ~~after examining the records~~
of Naussement County, that if Gardner had any deed,
at all, it was upon the interest in land
in Isle of Wight County.

Quest:

~~at the time when,~~
~~at the time you sold said land, you~~
you say, that Daughtry "mentioned something about a
conveyance of a piece of land, to Mr: John R.
Lilly, for the benefit of Mr: Gardner" at that time
did you believe or suppose the land in Gardner's
deed was in Naussement or Isle of Wight
County?

Answer. ~~The time of the sale of said land~~ at the
time the Mill was sold, I believe that ~~there~~
~~was a conveyance of the land in Naussement~~
~~and~~ the land was in Isle of Wight, if it
existed, at all, upon which the Gardner deed
was.

Quest:

In consequence of the statement to you, of Mr:
Daughtry, ~~at the time of his final visit to you,~~ that
he had given Gardner a deed: did you refuse to take
your deed?

Answer. I postponed taking my deed, until I could
examine the records of Naussement County, in order
to see whether Daughtry owned any land here & if so,
whether there was any trust or judgment liens
on it.

Quest:

Did Mr: Daughtry tell you, before you
took your deed, that he had given a deed
of trust to Gardner?

Answers. He mentioned something about it.

Re-examined by Defts: Counsel

Quest:

You say, that Daugherty mentioned something about a deed of trust to Gardner: state whether or not you, at the time your deed was taken, did not think, that the deed so mentioned by Daugherty to Gardner was on the Isle of Wight land?

Answers. If it were, at all, I did think so.
(Signed) Robert M. Dole

Nelson B. Gardner re-called.

Quest:

Said Dr. Dole, on the day these depositions were commenced, take you aside to the door of the Clerk's Office & state to you, that of course he knew of Gardner's deed before he took his, or words to that effect?

Answers. Yes. The Doctor (Dole) came to me while ~~the deposition was being taken~~ taking Mr. W. J. Kelly's deposition & whispered to me: I said Dr. I cannot hear you well - if you want me to hear what you say, I will step out to the door with you - I walked to the vestibule of the Clerk's Office - when he said to me: Mr. Kelly, was mistaken; I ~~had~~ told him that I had nothing to do with Mr. Kelly's mistake, that he knew, that my son's deed was before his, before he took his deed - he answered, he did.

Cross examined by Defts: Counsel

Did Dr. Dole, in this remarkable conversation, tell you, that he, (Dole) knew, that your son's deed was on the land in Worcester County and not in Isle of Wight County, before he took his deed?

Answers. He did not tell me any such thing, because there was nothing said about what County the land was in.

and further this deposition with note

Nelson B. Gardner

Peter B. Prentiss, being duly sworn by A. C. Witters, a Notary Public, for Hanson County, on the Holy Evangelists of Almighty God, deposeseth & saith:

Question
Phillips
& Counsel

Have you frequently examined the records of Hanson County Court, for S. R. M. Dohy, & if so for what purpose?

Answer. As the Clerk of said Court, and having charge of said records, I have, on several occasions examined said records for said Dohy, with the view as ascertaining title to sandy land, in which he had been, of deeds of trust. I recollect, at ~~this~~ ⁱⁿ this time, the three following instances: He been on the Ro: Lawrence land, the Albert G. Cope land & the land of James Daughtry, now in question.

Question

Was the examination ^{by you,} as to Dohy's said deed of trust, from said Daughtry made, after the record of the same, to ascertain, whether it had been recorded prior to the deed of trust to Gardner?

Answer. It was.

Question

Before the record of the deeds of trust to said Dohy, & Gardner, ^{or either} do you recollect, whether said Dohy called upon you to examine said records, to see whether or not there was any deed of trust or been on said Daughtry's land in Hanson County?

Answer. I do not.

and further this deponent saith not.

(Signed)

Peter B. Prentiss

State of Virginia

Nassau County, to wit: }

I, Peter B. Prentiss, a Commissioner in Chancery of the Circuit Court in and for the County aforesaid, in the said State, do hereby certify that the foregoing ~~Deposition~~ Depositions were duly taken, sworn to and subscribed before me, at the times and place mentioned therein.

Given under my hand, this 17th day of September, AD,
1879.

Peter B. Prentiss.

Comm^r in Chy.

George W. Gardner vs.

vs. { Depositions

James Daugherty vs.

1879. Sept. 2. Cont. Filed.
dk

To Jos. C. Withers Trustee, Ro. M. Doles and James
Daughtry and Missami E. his wife

Take notice that I shall on the 3d. day of September 1889, next, at
the Clerk's Office of Houseman and County Court in —
Suffolk Va. between the hours of 8 a. m. and 6 p. m. of that day, proceed to

take the Depositions of James Daughtry
— and others, to be read as evidence in our ~~the~~ behalf, in a certain suit
in Chancery, depending in the Circuit Court of Houseman
County, wherein we —

— are plaintiffs, and you —
— are defendants; and if from any cause the taking of the said Depositions be
not commenced on that day, or if commenced be not concluded on that day, the taking of the same will
be adjourned and continued from day to day or from time to time, at the same place and between the
same hours, until the same shall be completed,

To the Sheriff of
County to execute.

Respectfully,

Wilbur J. Kilby Trustee,
and Geo. A. Gardner. Plaintiffs.
By W. J. Kilby Atty.

August 23d. 1879, Service of the within notice is
hereby acknowledged by us.

{ James Daughtrey
and Missouri E. his wife
by W. J. Kilby, atty.

Robt M. Davis
by Alwinus Trustum
Aug. 26th 1879

Geo. A. Gardner & al.

vs.

Jas. Daughtry & al

This cause came on this day to be again heard on the papers formerly read therein and on the Report of Wilbur J. Kilby Trustee filed on the 6th day of July A.D. 1880, 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.

And nothing more remaining to be done in this cause, the Court doth order that the same be removed from the docket

Geo. N. Gardner vs.
} In chy.
Jas. Daugherty vs.

Nauvoo County
Circuit Court
October Term 1880
Final Decree
To be entered

Geo. B. D.


Entered O. B. No 1-
p. 493

257⁰⁰

Two years after date, with a receipt from
date, I agree and promise to pay unto
Mr R. M. Cole the sum of Two Hundred
and fifty dollars good and lawful
money for value received, and I hereby
waive the benefit of my Homestead Ex-
emption as to this debt

Witness my hand and seal this
10th day of Novr 1877

James Daughtrey

I hereby assign the within
bond to R. S. Baykin for value
without recourse.
Mar. 17th 1882.

Robert McDole *RM*

"L"

Secured by deed of
Trust on Land
John R. Kelly Trustee

Franklin, N.H. March 12th 1877
Mr. J. R. Kilby
Suffolk N.H.
Sir

Enclosed find Voud from
me to Dr Dales also (4) two
notes. Dr Dales requested me
to send you the Voud to have
re-ordered, and for you to
take charge the notes &c.
Respectfully
James Waukey

Dr

Seed records,
You are clerk for 2.25
to send it
J. A. Kilby

2502

Twelve Months after date, with interest
from date I agree and promise to pay
unto Dr R. M. Doles the sum of Two Hun-
= dred and fifty dollars good and
Lawful Money, for value received And
I hereby waive the benefit of my Com-
= mon Exemption as to this debt.

Witness my hand and seal this
10th day of March 1897

James Daughtry 

I hereby assign the within bond
to R. S. Bayless for value, without
recourse.

Mar 17th 1882.

Robt M. Dole

\$53

Received from R. S. Bayless
\$53.00 in full of the above bond.
Aug 5th 1882.

R. S. Bayless

Assignor of the above

W^m

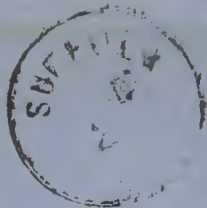
Secured by deed of

Trust in land in

Stammons Co

John A. Kelly Trustee

If not called for in 10 days return to
JOHN R. KILBY & SON,
Attorneys at Law,
SUFFOLK, VA.



Dr. R. M. Waley

June,

*J. of lot, Co
Va*

"3"

George A. Gardner
and William J. Kiley Trustees.

vs. { In Chancery
James Daughtery et al

This defendant now and
at all times hereafter saving and reserving
unto himself all benefit and advantage
and right of exception to the said bill of com-
-plaint exhibited against him, for answer
thereto saith:

That it is true as alleged in the
bill that both he and Geo: A. Gardner had
loaned money to James Daughtery and
that each of them had taken deeds of
Trust to secure their respective debts, with
power of sale under the same, it is also
true that Geo: A. Gardner's deed of Trust ante-
-dated that of James Daughtery by sever-
-al years, and it is also true as alleged
in the bill that the said Gardner's deed of
Trust was through his gross negligence
recorded in the County of Isle of Wight
and not in the County of Hanseman
as required by law, and it is equally
true that James Daughtery's deed
was duly admitted to record in the
Clerk's Office of Hanseman County on
the 21st day of March 1877 as appears from
exhibit "C" filed with the complainants

bill, and that the said Geo. S. Gardner's deed
was not admitted to record ^{in Hanscom County} until the
7th day of September 1877 nearly six months
after that of your respondent.

But your respondent utterly denies
that he at any time before his deed was
made and recorded had any notice
of any kind of Gardner's deed. and says
as follows: That in March 1877 your respon-
dent sold to James Daughtrey a steam-
saw mill for \$500. for which two bonds
were given signed by the said Daughtrey
and secured by a deed of Trust filed
with the complainant's bill & marked
"C." which is prayed to be taken as a part
of this answer. That before the sale was
concluded your respondent took the
first opportunity that presented itself &
came to the Clerk's Office of Hanscom
County (where the land was) and made a
minute examination of the records of
the said County, to ascertain whether there
were any prior liens upon the said land
and found none, and alleges that none
can be found now, prior to the 2nd March
1877. Not feeling satisfied at this your
respondent made a still further exam-
ination assisted by the Clerk, of the judgment
docket, and found nothing there against

the said James Daughtery, your respondent then returned home (his house in Southampton County) and the said James Daughtery came there to see him, and they then & there concluded the bargain and the deed marked "C" was prepared on the 10th day of March 1872 and admitted to record on the 21st of the same month that your respondent had no notice of any other deed of trust having been given upon the said land until he saw the property advertised he thinks either in October or Nov. of 1872 in the Suffolk Herald by John R. Kelly Trustee for Geo. N. Gardner, when your respondent applied to the said John R. Kelly Trustee, to know how he could see for Gardner, when he was told by the said Trustee that Gardner's deed was the oldest deed, but did not tell your respondent that it was not recorded in Nansemond County after your respondent's deed was recorded, the sale was not made as advertised, your respondent believing that the error committed had been discovered by the said Trustee. — Your respondent further says that John R. Kelly was Trustee in both the deeds, and had them both recorded

himself me in Sale of Wight County, and
your respondent in Hanseman
County, both on the same tract of
land, Your respondent says and believes
that if there was any "mala fides" it
was on the part of others and not your
respondent, Your respondent says
that the whole of the debt of \$500. is
now due and unpaid with the interest
thereon, as will be seen by the notes here-
with filed & a letter from James Daugherty
directed by John R. Kelly to your respon-
-dent and also an endorsement made
by the said John R. Kelly on the back of
the said bond, ^{all made by} Your respondent fur-
ther answers says that the saw-mill
& fixtures was removed under protest
from your respondent, out of this state
by James Daugherty into North Carolina, and
that his security is lost upon that, and
his remedy is now alone against the
land, That your respondent is advised
& so states that his deed being the oldest
deed for the said land, & he being a subse-
quent purchaser for value, without
notice that he is clearly entitled to his
sale, and so believing directed Albertus
his substituted trustee to sell under
the deed, as required by law.

that the said Alvertus Trustee, advertised
the property in both the news-papers-pub-
lished in Suffolk, Your respondent says
further that his deed should have been
recorded on or about the 14th March 1872
as it was then sent to Geo. R. Kelly for
that purpose as shown by exhibit
"Z". Your respondent says that he can
not be held liable for the gross neg-
ligence of others, that he has entered
into the transaction under the belief that
his ^{deed} was entitled to priority as it was
first recorded, and your respondent
had no notice of any kind until after
his deed was recorded. Your respondent
further says that Wilbur J. Kelly substi-
tuted ^{Trustee} advertised the said land for sale
at the Dec. Term of the County Court. and
that he was told that he could not
sell the same, and the sale though adver-
tised did not take place, Your respon-
dent believes, because the said Geo. R.
Gardner knew he could not sell he having
no power through his Trustee to make title
except subject to your respondent's
deed.

And now having fully answered the
complainant's bill this respondent prays
that this bill, & injunction be dismissed

and he gave respondent be dismissed
with his reasonable costs in this
behalf expended, and thus the sale
be allowed to proceed and he will
ever pray &c. Robert M. Dole

State of Virginia
Hanover County to-wit:

This day personally appeared
before me A. L. Withers a Notary Public in
and for the County aforesaid, Robert M. Dole
whose answer is above written, & made
and that the statements contained in
the said answer, so far as made of his own
knowledge are true; & that such statements
as are made therein from knowledge and
information derived from others, he believes
to be true, Given under my hand, this 4th day
of April 1879.

A. L. Withers
Notary Public.

George St. Gardner ^{also.} et
as } In Chair
James Daughton et al

Answer of
Robt. M. Dale
& Exhibits

"
Exhibit E"
"

MARCH 14, 1879.

NEW ADVERTISEMENTS.

LAND FOR SALE.—

I shall proceed to sell at public auction, in front of the Court House door, on MONDAY, the 14th day of APRIL, Court day, as substituted Trustee, the following real estate: All that piece of land lying in the county of Nansemond, and State of Virginia, containing by estimation 350 acres, more or less, and bounded on the North by the lands of Moses Horton and others, on the South by the lands of S. P. Bryant, on the East by the lands of Thomas Savage and on the West by the Wiggins tract, owned by ——— Doughtie and others, being the same lands conveyed to John R. Kilby, Trustee, by deed dated the 10th day of March, 1877, by James Daughtrey and Missouri E., his wife. This property is very near Whaleyville, and very desirable.

Terms made known on the day of sale.

A. C. WITHERS, Trustee.

mh14-3t

(Herald copy)

At a Monthly Court continued and held for Nausetown
County, the 13th day of August, 1878.

John R. Kelly, by Counsel, appeared in Court, and tendered
his resignation of the Trusteeship, in the following deed, to wit:

James Daugherty & wife to John R. Kelly, Trustee, for
Robert M. Dole: Deed dated 10th day of March, 1877; and
of record the 21st day of March, 1877: which said resigna-
tion is accepted by the Court, and is now here entered of record.

Whereupon, on the motion of the said Robert M. Dole,
it appearing to the Court, that the parties interested,
have had due notice: it is ordered, that A. C. Withers
be substituted for said John R. Kelly, as Trustee, in the
said deed, with all the powers, rights, duties and re-
sponsibilities of the said John R. Kelly, as the original
Trustee therein.

Attest:

Teste,

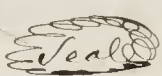
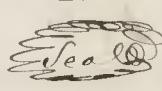
Peter B. Prentiss, Clerk

"Exhibit D"

This Deed made this 10th day of March, in the year 1877, between James Daughtrey and Missouri E. his wife of the County of Isle of Wight and State of Virginia, of the first part, and John R. Kilby, Trustee, of the County of Nansemond and State aforesaid of the second part. Witnesseth, that in consideration of the sum of Five Dollars to them in hand paid, the receipt whereof is hereby acknowledged, they, the said parties of the first part, do grant, bargain, sell and convey unto the said John R. Kilby, Trustee, the following real and personal property, to wit: One tract of land lying in the County of Nansemond and State of Virginia, containing by estimation, three hundred and fifty (350) acres, more or less, and bounded on the North by the lands Moses Horton and others; on the South, by the lands of S. P. Bryant; on the East, by the lands of Thomas Savage; and on the West, by the Wigges track belonging to — Daughtrey and others, together with all and singular the Appurtenances belonging thereto: Also One portable Steam Saw Mill, which the said James Daughtrey purchased of R. M. Doles of Southampton County, together with all the gearing and fixtures of every kind, whatsoever, appertaining to the same: To Have and To Hold the aforesaid Real and Personal property, to him, the said John R. Kilby, Trustee, his heirs and assigns forever: In Trust to Secure to Dr. R. M. Doles, the payment of the sum of Five Hundred Dollars as evidenced by two several bonds, each, for the sum of Two Hundred and fifty dollars, bearing even date herewith and payable as follows: One bond executed by James Daughtrey for the sum of ~~Two Hundred~~ \$250⁰⁰, bearing date on the 10th day of March, 1877, and payable to Dr. R. M. Doles, twelve months

after date, and one other bond, executed by the said James Daughney for the sum of \$250⁰⁰ bearing date on the 10th day of March, 1877, and payable to Dr R. M. Odes, two years after date, each bond bearing interest from date.

Witness the the following signatures and seals the day and year above written.

James Daughney 
M. E. Daughney 

Southampton County, to wit:

I, W. B. Holland, a Justice of the Peace for the County aforesaid, State of Virginia, do certify, that Jas: Daughney, whose name is signed to the writing above, bearing date on the 10th day of March, 1877, has acknowledged the same before me in my County and State aforesaid.

Given under my hand this 12th day of March, 1877.

W. B. Holland, J. P.

Southampton County, to wit:

We, W. B. Holland and J. W. Burke, Justices of the Peace for the County and State aforesaid, do certify, that Mrs M. E. the wife of Jas: Daughney, whose name is signed to the writing above, bearing date 10th day of March, 1877, personally appeared before us in the County aforesaid, being examined by us, privily and apart from her husband and the writing aforesaid fully explained to her, she, the said M. E. Daughney acknowledged the said writing to be her act and declared that she had willingly executed the same and does not wish to retract it. Given under our hands, this

12th day of March, 1877.

W. B. Holland. JP

J. W. Duke JP

In The Clerk's Office of Nausemound County Court. The
21st day of March, 1877.

This Deed of Trust was received, and with the Certifi-
cates written thereon, admitted to record.

Teste,

Peter B. Prentiss. Clerk.

A Copy:

Teste,

Peter B. Prentiss. Clerk.

Xnd

James Daughtry Lox
To & Copy Deed of Trust
John R. Kelly, Trustee for Dr.
Ro: M. Oles.

Exhibit C.

at a Monthly Court, held for Nauseland County, the
11th: day of November, 1878.

John R. Kilby, Esquire, by Counsel, appeared in Court and
tendered his resignation of the Trusteeship, in The Deed, dated
the 17th: day of May, 1873, and of record the 7th: day of September,
1877, from James Daughtrey and Missouri E. his wife, to said John
R. Kilby, Trustee for George W. Gardner, which resignation is
accepted by the Court: Whereupon, by consent of all the
parties to said Deed, it is ordered, that Wilbur J. Kilby be
substituted for said John R. Kilby, as Trustee, in said Deed,
with all the powers, duties, rights and responsibilities of the said
John R. Kilby, as the original Trustee therein.

A Copy:

Weste,

Peter B. Prentiss. Clerk

"Exhibit B"

This Deed,

MADE the ^{fourth} ~~seven~~ day of May

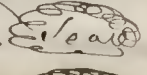
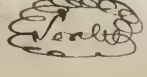
in the year eighteen hundred and seventy five between James Daughhey and
Mysomi, his wife of Isle of Wight, and ~~in the~~ State of Virginia of the one
~~of the~~ part, and John R. Kelly, of Nansemond County, Va., chosen as
Trustee for the purposes herein named,

of the ^{other} ~~second~~ part.

Witnesseth, THAT ~~IN CONSIDERATION OF~~

~~dollars~~ the said James Daughhey and Mysomi
his wife do grant, with general warranty, unto the said John R. Kelly, Trustee as aforesaid
The following property, to wit: a parcel or tract of land, ~~that~~
in Nansemond County, Virginia, containing three hundred and
fifty acres, more or less, situated on the west side of the
Sorrenton Road and adjoining the lands of Tho^s. Savage, Geo.
Hurrell & the Wiggins Land; and was devised to said
Mysomi Daughhey, by her father, Joshua Bryant dec'd, by
Will, duly recorded in Nansemond County, Va., together
with all and singular the appurtenances belonging to the same.
In Trust, to secure to George W. Gardner, his heirs, executors,
admo^rs. or assigns, the sum of Two hundred fifty dollars, on
or before the 1st day of December, 1875, with interest at the rate
of Nine per cent. per annum, from this day, & as evidenced
by Bond, dated this day: with power to sell said land as the
law directs, & after paying expenses, including a Commission of
five per cent on all sales, then pay the residue as
the law directs.

Witness the following signatures and seals.

James Daughhey 
Mysomi E. Daughhey 

State of Virginia, County of Southampton, to wit

~~CORPORATION OF THE CITY OF NORFOLK, TO WIT:~~

I, *K. R. Griffin* ~~in and for the County aforesaid~~
a Notary Public ~~for the Corporation of~~

~~the City of Norfolk~~, in the State of Virginia, do certify that *Missouri E. Daughtry*

~~the wife of~~ *James Daughtry*

whose names are signed to the writing above, bearing date ~~the~~ *Seventeenth* day of

May, 1875 ~~in the year eighteen hundred and seventy~~

personally appeared before me, in the ~~County~~ *County* aforesaid, and being ~~examined~~ *examined* by me privily

and apart from her husband, and having the writing aforesaid fully explained to her, she,

the said *Missouri E. Daughtry* acknowledged the said

writing to be her act, and declared that she had willingly executed the same and does not

wish to retract it.

Given under my hand this *22nd* day of *May, Eighteen* ~~in the year 187~~
Hundred and Seventy-five

K. R. Griffin. N.P. ~~Notary Public~~

~~CORPORATION OF THE CITY OF NORFOLK, TO WIT:~~

Virginia, County of Southampton, to wit
I, *K. R. Griffin* ~~a Notary Public for the Corporation~~
~~in and for the said County~~

~~aforesaid~~, in the State of Virginia, do certify that *James Daughtry*

~~whose name~~ *is* signed to the writing above, bearing date

~~on the~~ *Seventeenth* day of *May, 1875* ~~in the year eighteen hundred and seventy~~

~~has~~ *the County* acknowledged the same before me, in ~~my corporation~~ aforesaid.

Given under my hand, this *22nd* day of *May* ~~in the year 1875~~

K. R. Griffin. N.P.

~~Notary Public~~

In the Clerk's Office of Isle of Wight County Court, May 26th.
1873. This Deed of Trust from James Daughtry wife
to John R. Kelly, Trustee for Geo: N. Gardner, was
received, and being duly certified, according to law, was
thereupon admitted to record.

Teste,

C. H. Hart, Deputy for
W. P. Young, Clerk.

In the Clerk's Office of Nansemond County Court,
the 7th day of September, 1877.

This Deed was received and with the Certificates annexed,
admitted to record.

Teste,

Peter B. Prentiss, Clerk

A Copy:

Teste

Peter B. Prentiss, Clerk

James Daugherty & wife
To { Copy Deed of Trust
John R. Lilly, Trustee for
Geo. N. Gardner

"Exhibit A"

To The Honorable Geo. Blow, Circuit
Court Judge in and for the County of
Haustrumund, State of Virginia.

Humbly complaining respectfully
represent and shew unto Your Honor,
Your Complainants, Geo. A. Gardner and
Wilbur J. Kilby, Trustee:

That on the 17th day of May 1875 James
Daughtrey and Missouri E. his wife by
their Deed of Trust bearing date as of
that day, conveyed to John R. Kilby the
trustee named in said deed of trust
a certain tract of land in Haustrumund
County, Virginia, fully described
in said deed, in trust to secure to
Your Complainant, Geo. A. Gardner, the
payment of the sum of \$250.⁰⁰ as
specified in said deed, as will appear
by a duly authenticated copy of said
deed filed herewith as part of this
Bill and marked "Exhibit A," which
on the 26th day of May 1875 was recorded
in the Clerk's Office of the County Court
of Isle of Wright County, Va. where Your
Complainant, said Geo. A. Gardner and
said grantors, James Daughtrey and
Missouri E. his wife then resided,
and in the Clerk's Office of the County
Court of Haustrumund County, where said

tract of land lies, on the 7th. day of September 1877, as will appear by the indorsements respectively of the Clerks of said Counties on said deed.

That on the 11th. day of November 1878 Wilbur J. Kilby was substituted and appointed Trustee in said deed of trust in the place of said John R. Kilby Trustee named therein, by Chaussemond County Court, as will appear by a duly authenticated copy ^{the order of} of said last named Court, making said appointment, filed herewith as part of this Bill and marked "Exhibit B".

That on the 10th. day of March 1877 said James Laughtrey and Missouri E. his wife, executed their second deed of trust on said land, conveying ^{and former property} the same and every part thereof, to said John R. Kilby trustee in trust to secure to Dr. Ro. M. Doles the payment of the sum of \$500 as specified in said deed and that this deed was admitted to record in the Clerk's office of the County Court of said Chaussemond County where said land lies, on the 21st. day of March 1877, as will appear by a duly authenticated copy

of said last named deed filed herewith as part of this Bill and marked "Exhibit C"

That on the 13th. day of August 1878 A. C. Withers was substituted and appointed Trustee in said last named deed of trust in the place of said John R. Kilby the trustee named therein by said Houseman County Court, as will appear by a duly authenticated copy of the order of said Court filed herewith as part of this Bill and marked "Exhibit D."

Your Complainants charge and say that although said deed of trust of the 17th. May 1875 for the benefit of said Geo. J. Gardner was not recorded in said Houseman County until on the 7th. day of September 1877 and that although said deed of trust of the 10th. day of March 1877 for the benefit of said Ro. M. Doles, was recorded on the 21st. day of March 1877, or about six months prior to the record of said first named deed of trust on the same land in the Clerk's office of said Houseman County, where said land lies, yet said Doles before the execution of said deed of

trust for ~~his~~^{the} benefit of said Doles ^{said Daughtry} and before ~~he had~~
~~became indebted to said Doles in~~^{loaned} said sum of \$500, to said Daugh-
try secured by said last named deed,
said Doles had full and complete
knowledge and notice of the existence
of said deed of trust for the benefit
of said Gardner, and, having said
knowledge and notice, is, therefore,
a purchaser in law ~~and~~ with notice
subsequent to said Gardner, and
said deed of trust for his (said Doles')
benefit is, therefore, void as to your
complainant, said Gardner, who was
in law, a prior purchaser of said
land for valuable consideration as
set forth in said deed of trust for
said Gardner's benefit.

That it was the intention and
desire of said James Daughtry and
wife and said Gardner and his said
trustee ~~that~~^{to have} said deed of trust for
said Gardner's benefit ~~to have record-~~
ed at the time it was executed, to wit
on or about the 17th day of May 1875 in
said Cassamond County Clerk's office
where said land lies, and until
recently they supposed, believed and
thought that it had been so recorded

That said last named deed for said Gardner's benefit was recorded on the 26th day of May 1875 by mistake in said Isle of Wight County where said Daughtrey wife and said Gardner, the parties thereto, all resided at that time. That the mistake evidently arose from forgetfulness, ^{or oversight} at the time ~~on the fact~~ that said land did not lie in said Isle of Wight County where said parties resided, or in consequence of the impression for the time being that said land did lie in said Isle of Wight County.

That as soon as said mistake was discovered, your Complainant on the 7th Sept. 1877 caused his said deed of trust to be recorded in said Hanover County where said land is situated.

That said deed of trust for the benefit of said Gardner has, nevertheless priority over said deed of trust for the benefit of said Doles. That in fact the latter deed is void as to your Complainant Geo. A. Gardner, said Doles being as charged above a subsequent purchaser with notice of your Com-

plainants prior deed aforesaid, and that as said Doles had said notice, the said deed of trust for his benefit, notwithstanding its prior ~~registry~~ registration, is void as to said Gardner who was a prior purchaser for value and whose deed ante-dates that of said Doles several years.

That said Doles, himself until lately never supposed or knew that said Gardner's deed of trust had not been recorded prior to his, but on the contrary thought and believed that it had been recorded prior to his, as your complainants also believed until the mistake was discovered, and that said Doles' deed ^{taken with a free knowledge of your complainants' deed of trust.} of trust, is not only void as to said Gardner, but the taking of said deed of trust by said Doles subsequently to your complainants and with a free knowledge and notice of said Gardner's deed, was mala fide on the part of said Doles.

That said Doles wholly disregards the rights and equities of your complainants in the premises and asserts ~~his~~ the priority of his said

deed of trust over that of your Com-
plainant and claims that his said
deed of trust or the money secured
thereby must first be satisfied and
paid in full by a sale of said
land under his deed of trust and
to carry out his claims as aforesaid
has directed his said trustee, A. C.
Withers to sell said land under
his said deed of trust, and in
accordance with said direction said
A. C. Withers has advertised said land
for sale ^{on the 14th day of April, 1879}, wholly disregarding the rights
of your Complainants, as will ap-
pear by the advertisement of said
Withers trustee, which has been cut
by your Complainants from the "Chris-
tian Ann" of the 14th, March 1879" and
is herewith filed as part of this Bill
and marked "Exhibit E", said "Christian
Ann" being a newspaper published in
the Town of Suffolk, Hanseman
County, Va. and that said Withers
will sell said land on said 14th,
~~the~~ day of April 1879, in disregard
of the rights of your Complainants
and before your Complainant can
have his rights ascertained and
fixed unless enjoined and re-

strained from so doing by injunction
of your Honor.

That more than half of your
Complainant's claim aforesaid se-
cured by said deed of trust to
him, is yet unpaid and fast
due, and your Complainant be-
lieves that all of the claim of
said Doles under the deed of trust
for his benefit is due and unpaid.

In consideration whereof your
Complainants being without remedy
save in a Court of Equity, pray
that said James Daughtry and
Missouri E. his wife, and Ro. M. Doles
and A. C. Withers Trustee as aforesaid
may be made parties defendant
to this Bill and be required to
answer all the allegations herein
contained on oath in their proper
persons; That the rights of your
Complainants, ^{Geo. A. Gardner} in the premises may
be ascertained and the priority of
his claim aforesaid over that of
said Doles established; that said
deed of trust for the benefit of
said Doles may be declared to be
void as to your Complainant, said

Geo. A. Gardner : that the respective claims
of said Gardner and Loes may be
ascertained by a Commissioner of
this Court and stated for the infor-
mation of this Court : that the trustee
of your Complainant, Geo. A. Gardner,
in said deed of trust for his ben-
efit, to wit, said Wilbur J. Kilby
trustee may be directed to sell
said land for the satisfaction of
the claims aforesaid according
to their priorities : and that the
said A. C. Withers Trustee may be
enjoined and restrained from
making said sale according to
his said advertisements until
~~the~~ the rights of all parties in
the premises are ascertained : and
that all further and adequate re-
lief consistent with Equity may
be granted. And as in duty bound
Your Complainants will ever pray
+ c.

George A. Gardner
Wilbur J. Kilby, Trustee

26th. March 1879

(over)

State of Virginia

Hammond County, to wit

This day personally appeared before me, Peter B. Prentiss, Clerk of the County Court of said County in said State of Virginia, George A. Gardner and Wilbur J. Kilby, Trustee, Plaintiffs in the foregoing Bill and made oath that the statements made in said Bill, so far as made of their own knowledge are true and so far as made upon knowledge or information derived from others, they believe them to be true.

Given under my hand this 20th day of March 1879.

Peter B. Prentiss, Clerk

Order of Injunction

On the motion of the Plaintiffs by counsel and for good cause shewn; a writ of Injunction is awarded them to enjoin and restrain the defendant, A. C. Withers Trustee ^{for the benefit of} ~~for~~ Dr. Robert M. Doles under a deed of trust executed on the 10th day of March 1877 by James Doughtrey and Missouri E. his wife for the benefit of Dr. Robert M. Doles, from proceeding ^{according to his advertisement or otherwise} to sell the real estate conveyed by said deed of trust and therein

fully described and mentioned,
and also to ^{enjoin and} restrain said Dr. Robert
M. Doles and all others concerned
from in any ^{way} proceeding to sell or
requiring a sale of ~~sale~~ said real
estate until the further order of the Court.

But the plaintiffs are not to have
the benefit of this order until the said
Plaintiff, George A. Gardner shall enter
into a Bond with sufficient security
before the Clerk of this Court in his
office in the penalty of \$500—
payable to the said defendants and
conditioned to pay to them, or either of
them all such damages and costs
as they or either of them may sustain
in consequence of the said Injunction
in case the same shall be dissolved.

C. M. W. H. i

To the Clerk of the Circuit Judge Court
Court of Houseman County

Portsmouth
 ~~Norfolk~~ Va.

City - Portsmouth

March 25th, 1879

George A. Gardner & al

vs. } In chy.

James Laughtrey & al

Bill

George N. Gardner

vs J. Chy. Notes

James Daugherty & ux: Ld.

1879. March 25th: Order granting Injcn: awarded
" " 28th: Bond executed filed
" " " Sum. in Chy. & Injcn: issued to April Ruled 1879
" " " Affidavit as to non-residence of Defs: Daugherty & wife
made filed
" May 5th: Bill & xtrs: filed - answer of Deft. Dotes filed, genl:
reple. & Cause set for hearing, as to him.
" " " Decree nisi vs Deft. Wetters, Trustees -
" " 7th: Or: Pub: awarded vs Deft. Daugherty & wife
" June 2nd Decree nisi vs Deft. Wetters, Trustees. confirmed &
Cause set for hearing as to him.
" July 7th: Continued for proof of Publication
" " 10th: Certif: of Pub: filed
" Aug: 4th: Order of Publication having been published & posted
according to law, Cause set for hearing.
" Sept: 26th: Depts: filed
" Octo: 16th: ~~cause~~ Issue to be tried by a Jury, (See decree)
1880 April 13th: Issue tried & verdict for Plffs, & decree to sell lcs,
" July 6th: Report filed

Chy: Notes
