

1880-007
Nansemond Co. (Suffolk)

Chancery Causes: Samuel Eley vs John W B. Atkinson et al

Goodsorz, Wright, Moore

The Commonwealth of Virginia,

To the Sheriff of Nansemond County---Greeting:
YOU ARE HEREBY COMMANDED TO SUMMON *J. W. B. Atkinson Elizabeth E. Atkinson, John H. Wright, Trustee for the benefit of Wm: P. Moore, and Wm: P. Moore,*

to appear at the Clerk's Office of our *Circuit* Court, for the County of Nansemond, on the first Monday in *March* next, 18*77*, being rule day, to answer a bill in chancery, exhibited against *them, in said Court* by

Saml Eley

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

And have then and there this writ. Witness, PETER B. PRENTIS, Clerk of our said Court, at his Office, this *27th* day of *February* 18*77*, and in the *101st* year of the Commonwealth.

Peter B. Prentis Clerk.

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

² Entered & copy delivered to Jas W B Atkinson
& Elizabeth E Atkinson & John H Wright
trustees of M P Moore, & wife. Man.
L Fulebears Ship

Wright Rawls. p. 9

Saml. Ely

vi { same in Chy.

J. W. B. Atkinson Secy.

To March Rule 5, 1877

Pro. 13. No. 1. Page 99

Cur: Co.

To J. W. B. Atkinson and
Elizabeth E. Atkinson and W. P. Moore and
John St. Wright:

I do notice that - I shall on the
4th day of October next - at the clerk's
office of Hannu County Court - before
P. B. Prouty, between the hours of
8 am & 6 p.m. of that day
proceed to take the depositions of
Saml. Eley and others to be
used as evidence in my behalf
in a certain suit - in which I am
suing in the Circuit Court of Hannu
County Virginia wherein I am
defendant and I am plaintiff and
from my cause the taking of it is
deposited the not-comes on that day, and
cannot be not-comes on that day the
taking of the same will be adjourned and
continue from day to day or from time
to time at the same place and

between the same hours, within a
small share to complete.

Alfred R.
Stamley

With kindest
concerns to every
expectant.

Sept 26th 1877. Received and a true copy
delivered to William J. Kelly, atty. for. Respondent
J. H. Smith. J. H. Kelly.

Eley

71

Atkinson & ass.

This cause came on this day to be again heard, as the papers formerly read & upon the suggestion of the death of Samuel Eley, The Plaintiff, since the last calling of the cause, on the motion of the Defendants, it is ordered that the cause be revived in the name of his personal representative, and that it be continued.

Saml. Eley

71

attestus & als -

April term 1899

Deed for rev-
oc in name of Pliffs
Personal representation.

To be entered.

Geo. W. H. S.

Entered O.B. No 1
p. 444,

Saml. Eley Plff

vs

Jos W. B. Atkinson & Elizabeth E. his wife.

This cause came on this day to be heard, and upon the suggestion of the Plaintiff, that Elizabeth E. Atkinson, one of the defendants in this action, has departed this life intestate and without issue, and that the Deed of Trust executed by the said Elizabeth E. Atkinson (Jos W. B. Atkinson to Jos H. Mudgett Trustee for the benefit of Mrs P. Moore, has been released, and another Deed of Trust has been executed by the said parties to W. J. Kelly, Trustee for Thos. E. Outland, dated this day of 187; and that the only heirs at law of the said Elizabeth E. Atkinson decd, are Mrs H. Goodson (sister) Missouri C. Mann (sister) the wife of H. C. Mann, and Mary J. Gale (a widow, her sister)

it is ordered that the said Mrs H. Goodson, Missouri C. Mann & H. C. Mann, her husband, Mary J. Gale

W. J. Kelly Trustee & Thos. E. Outland, be made parties defendant to this Plaintiffs bill and that this cause be revived against them.

Saml. E. Day }
to } Chamber
J. H. Atkinson &
Elizabeth E. Atkinson

Recd

To be entered -

Oct Term 1878.

To be entered

Geo. B. Stow.

Entered O. B. Pro

R. 406

Eley

75

Atkinson & als -

This cause came on this day to be again heard upon the papers formerly read; and upon motion of the Plaintiff, the subject-matter in controversy having been settled and costs of suit paid, it is ordered that this cause be ^{dismissed} ~~removed from the docket~~.

Elay
vs

Atkins v. sals -

April 12th 1880

Final Decree re-
moving cause from
the docket.

To be entered.

Geo. Brown.

Entered O. B. Hall.

p. 469

In the Circuit Court of Hanscom County

Between Paul Eley, Complainant, & Jos W. B. Atkinson, Elizabeth E Atkinson, Jos W. Wright, Justice and Mrs P. Moore, Defendants.

Exceptions taken by the Complainant to the insufficient answers of the said Defendants Jos W. B. Atkinson and Elizabeth E Atkinson.

- 1st For that it is not competent for the Defendants to explain what was the intention of a record, but that the deed must be construed according to its terms; the Defendants cannot allege that any specific judgment was intended to be protected by the said deed of Geo Goodson, while other judgments were in existence, unless such judgment was particularly recited in terms.
- 2^d For that the Defendants undertake to argue the validity of a judgment given against other parties; that it is not competent for the defendants to deny the validity of a judgment to which they were not parties, and that the return upon the warrant shows the parties ^{Geo Goodson & Mrs B. Goodson} had notice and the judgment was properly returned to the Clerk's Office of Hanscom County, by reason of the "Stay Law" then in force which prohibited the levying of executions upon such judgments; and that as between the parties to the said judgment, it was not necessary to docket it.
- 3^d For that the deed from the said Geo Goodson to Elizabeth E Atkinson his daughter, is in terms a deed of gift with a condition precedent, and the Defendants have not sufficiently set forth in their answers how the said Elizabeth

became a purchaser for valuable consideration, but have undertaken to deny the conditions of the said deed.

- 4th For that if the said judgment against Wm. H. Goodson and Geo. Goodson, was rendered for insufficient cause, they should have taken proper measures at the time to have the same reversed, and not have waited twelve years after the judgment and several years after the death of one of them to explain why such judgment should not have been rendered, and that this action of the defendants' answer is not only insufficient but inadmissible.
- 5th In that it is not essential to make Wm. P. Illone, the beneficiary in the deed of trust made by the said Atkinson and wife to Geo. H. Wright trustee, a party to this suit, and that his non-joinder or misjoinder as a co-defendant is not sufficient cause of objection to the said bill.
- 6th For that the said defendants have not alleged any personal assets in the hands of an administrator, and as the deceased Geo. Goodson, by his own deed subjected the said land to the satisfaction of the complainant's judgment, before the title to the same should rest in the said Elizabeth E. Atkinson, it is unnecessary to make the administrator a party to this suit & his non-joinder is insufficient cause of objection to the said Bill.

A Judgment obtained in the Clerk's Office of
Hanseman County Court, and confirmed at
a Court held and closed for said County,
on Monday, the 9th day of March, 1868.

Costs.

Clerk. \$2.48

Att: \$3.00

Shff: 1.00

\$ 6.48

Martha Beamon (now Martha Barnes) guardian
of Marietta Beamon. Plaintiff.
Against } In Debt
George Goodson and Wm: H. Goodson. . . Defendants.

The Judgment obtained at the Rules not having been set aside,
and the plaintiff being now entitled to a final judgment:
it is therefore considered, that the Plaintiff recover against
the defendants, Twenty Dollars and forty-three cents, parcel
of the debt in the declaration mentioned, with compound
interest thereon from the 7th day of August, 1861, till
paid, and her costs, by her, about her suit, in this behalf
expended. And the said Defendants, in mercy &c.

A Copy:

Jesse,

Peter B. Prentiss. Clerk

Recorded

1868. March 20th

^{2nd}
Martha Beamon (now Martha
Barnes)
vs } Copy Judgment
George Goodson & Wm. Goodson

Ex(X)
filed with answers

This debt has been
paid, see Execution
at the Clerk's Office

John O. Kelly
p. 4

In the Circuit Court of Hanseman Co. Va.

The joint and separate answers of Geo W. B. Atkinson and Elizabeth E. his wife, to a Bill in Chancery exhibited in said Court by Samuel Elzy against them & another

These Respondents say, That The statements contained in said Bill, in the second clause thereof, as to execution of the deed by George Gordon to said Elizabeth are correct, but your

Respondents deny that the claim as set forth in the Bill as due to the Complainant, is or was, ever intended to be protected by said deed: That at the time the said deed was executed, to wit: the 7th Nov. 1869, there was a judgment against the said George Gordon, the grantor in said deed, in favor of Martha Beaman (now Martha Barnes) for \$20.43 with interest from the 7th of August 1861 & c^{ts}, which was a judgment of the County Court of said County & known to said Geo. Gordon, and like an honest man as he was, he desired his just debt to be paid, and said judgment which execution issued, was, duly paid - a copy of said judgment is filed here with marked (X).

That the claim set up by the Complainant, your Respondents deny altogether, and say, That the said George Gordon has no notice of any warrant or judgment against him, when the said deed was made by him, and that the

record filed as, exhibits with the Bill do not
show that any warrant was ever served on
the said Geo. Gordon, or that he ever had notice
of such warrant — That said pretended
Judgment was never docketed in the Clerk's office
of Claiborne County Court, so as to make the same
notice to creditors and subsequent purchasers,
and no execution ever issued on the same.

That your Respondent the said Elizabeth is
a purchaser of said real estate, ^{for valuable consideration} referred to in said
deed and has paid the Judgment of said Beaman
and \$500 to her sister Miss Mary Brown as named in
said deed. That the said Geo. Gordon when he
executed said deed, intended to provide for the
Judgment in favor of said Beaman, of which he
had full notice, and no other — That the claim
on which the Complainant bases his claim was
a Bond executed by one Wm H. Gordon (son of
said George Gordon) on the 1st day 1856 for the hire
of a negro girl named Mary Jane for 1856, That soon
after the said Wm H. Gordon hired said girl, he took her
home, but soon found that she was a foolish & weak
minded girl, unfit for the purposes for which she was hired
& not such as the contract required
and thereupon the said W. H. Gordon, carried her back
to said same Eley to return her as worthless, when
said Eley told the said Wm H. Gordon to take her home &
take care of her from which her ^{so as not to have stripes on her} as he wanted to see her, &
the said Eley requested the said Wm H. Gordon to keep the
said nego at his (W. H. Gordon's) house until the said Eley

could see her, as he said he would have to or as there
was so much complaint against the girl that the
girl needed clothes which were furnished by said
W. H. Gordon as the request of said Ely. — That the
said Ely assured said W. H. Gordon, he would not
be charged, ^{full price} for the hire of the girl, that the said W. H.
Gordon furnished clothes to the amount of \$8.50 &
paid \$15, a full compensation for said hire, and
the matter considered ended, & not till long after was
any effort made so far as the papers show to collect
any thing more out of W. H. Gordon, no attempt to
enforce the claim against said George Gordon, the
security, who has been dead a number of years
and now when he is not alive to explain ^{the matter} this suit is
commenced to disturb titles and arrangements
long since made.

That your Respondents have made
a deed of Trust on the land to a trustee to secure
a debt to W. P. Moore & your Respondents say that they
understand the said Moore has assigned the Bond
of your Respondent to some one else.

That said Deed does not show what connexion
W. P. Moore a defendant has with the case, & is therefore
defective. ⁱⁿ That no administrator of said George
Gordon is before this Court as there ought to be.

That the Complainant's bill should be & is wiped
which your Respondent pray may be done

signed J. W. B. Atkinson
Elizabeth E. Atkinson

State of Virginia

Hammond County, to wit:

I, Wilbur J. Kilby, a Notary Public in and for said County in said State, do certify that J. W. B. Atkinson and Elizabeth E. Atkinson, whose names are signed to the foregoing writing, this day personally appeared before me and made oath that the facts and statements contained therein were true to the best of their knowledge and belief.

Given under my hand this 26th day of March 1877,

Wilbur J. Kilby
Notary Public

Sam. Eley

h.

Atkinson trustee

Answer of

Atkinson trustee

● The Hon Geo W. Judge of the Circuit Court of Hants County.

The answer of Geo H. Wright, Trustee, to a Bill in Chancery exhibited against him & others in the said Court by Saml Eley.

This respondent says that the statements contained in the said Bill, so far as he knows & believes are true, and is advised that the Trust which he holds was created originally by the defendant Elizabeth E Atkinson to enable her to perform the condition of the deed of gift from Geo Gordon dead, with reference to providing a home for Miss Ann Mann, and not with a view to defeat the claim of the Complainant, Saml Eley. And this respondent does not assert any claim to the said land superior to the liens existing at the time the said Geo Gordon executed the said Deed of Gift. And now having answered the Complainant's Bill this respondent prays to be hence dismissed, with his reasonable costs &c

Geo H. Wright, Trustee.

Hants County, to wit:

This day personally appeared before me Reed H. Rawls ~~Geo H. Wright~~ a Notary Public for the County aforesaid, Geo H. Wright, Trustee, whose answer is above written, and made oath that the statements contained in the said answer are true, so far as made of his own knowledge, & as far as made on information received from others he believes them to be true.

Given under my hand this 9th day of April 1877

Reed H. Rawls

Notary Public.

Land & Eley

to

Atkinson & als -

Answer of Jos H. Wright
Justice.

This Deed of Gift, made this 9th day of November, A.D. 1869
between George Goodson of the one part and Elizabeth E.
Athinson, wife of John W. B. Athinson (daughter of the
said George Goodson) of the other part, witnesseth; That
for and in consideration of ~~the~~ natural love and
affection and of the provisions hereinafter named, the
said George Goodson hath granted and by these presents
doth grant unto the said Elizabeth E. Athinson that
piece or parcel of land lying in the County of New-
mond, containing One Hundred and thirty three
acres upon which the said George Goodson now lives
and adjoining the lands of Thos. J. Saunders W^m
H. Goodson, Edwin E. Philips Estate, and the County-
line dividing Newmond from Isle of Wight County.
Provided however that the said Elizabeth E. Athinson
shall purchase a lot in the Town of Suffolk or elsewhere
in the name and for the benefit of Marston C. Brown
wife of Henry C. Brown, also a daughter of the grantor
of the value of Five Hundred Dollars; and shall pay
off all executions or judgments now existing against
the said Grantor, before this Deed of Gift shall be
operative, and shall moreover provide for and main-
tain the said Grantor for the remainder of his natural
life in a decent and becoming manner.

Witness the following signature and seal.

Jacob Lawrence
Witness

George ^{his} Goodson 
march

State of Virginia
Hanover County Court:

I, Jacob Lunshe, a Justice of the Peace, for Hanover County, State of Virginia do certify that George Goodson a party to the foregoing writing dated November 9th: 1869, has acknowledged the same before me on this day to be his act and deed.

Given under my hand this 9th: November 1869.

Jacob Lunshe J.P.

Acknowledged before me Jacob Lunshe November 9th: 1869, at five o'clock and forty-five minutes P.M.

Jacob Lunshe J.P.

In the Clerk's Office of Hanover County Court. the 16th: day of November 1869,

This Deed of Gift was received and with the certificate written thereon, admitted to record (stamps of the Internal Revenue amounting to \$1.00 having been affixed and cancelled.

Teste,

Peter B. Prentiss, D.C.

A Copy -

Teste,

Peter B. Prentiss, Clerk

Hand Office

Feb. 3^d 1877

(A Copy)
George Goodson

Deed of Gift

Elizabeth E. Atherton

"Exhibit C"

Hammond County to wit:

To James E. Stallings, Constable
of said County;

I hereby command you to summon William H. Goodson & George Goodson if to be found in your district, to appear at H. P. Phillips' house the 14th day of November 1865 before me or some other justice of the said County, as may be then and there to try this warrant, to answer the complaint of Samuel Eley upon a claim of money not exceeding fifty dollars, exclusive of interest, to wit: for the sum of Fifty three dollars and 71 cents due by note. and then and there make return of this warrant. Given under my hand this 13th day of November 1865.

Summon

Thos. J. Kielz J. P.

Executed. J. E. Stallings. Const.

14th day of November 1865.

Judgment - That the Plaintiff recover of the defendant, fifty three dollars and 71 cents with interest from the 7th day of Oct., 1865, till paid and ninety fine & for his cost.

H. P. Phillips J. P.

Endorsed - "Returned to the Clerk's Office by virtue of the stay law. J. E. Stallings Const."

Hammond County to wit:

J. Peter B. Prentiss. Clerk of the

County Court. of said County do certify that the fore-
going is a true copy of a paper on file in my office
Given under my hand this 1st. day of February. 1877
Peter B. Prentiss. Clerk.

Sumner Ely

vs { Copy Judgment

William H. Goodson & George

Goodson

"Exhibit B."

\$45.00

On demand the 25th of Dec 1856, we promise to pay to Samuel Eley, Servant of J. R. D & Martha S. Darden, the sum of forty-five dollars for hire of negro girl Mary Jane, which girl we have two summer suits & one winter suit, yarn stockings & shoes & blanket, for which payment well and truly to be made, we bind ourselves, our heirs, executors, jointly and severally, firmly by these presents.

Witness our hands and seal, this 1st Jan: 1856.

Witness
H. L. Tynes.

William H. Goodson Seal
his
George X Goodson Seal
mark

Endorsed: "Oct 7th 1865. Received of William H. Goodson
The sum of fifteen dollars, in part of the within
note

Samuel Eley

I, Peter B. Prentiss, Clerk of the Court of the County of
Nansemond, in the State of Virginia, do certify, that the
 foregoing is a copy of the Bond with the endorsement thereon,
 filed with the papers, in the warrant of Samuel Eley vs
 William H. Goodson and George Goodson, filed in said
 Office the 18th day of March, 1867.

Given under my hand, at my Office, this 5th day of
 March, 1877.

Peter B. Prentiss. Clerk

"Exhibit 'a'"

To The Hon. Geo. Blow, Judge of the Circuit Court of Hancock
County.

Complaining sheweth to Your ^{Hon} Court Your
Orator, Samuel Eley, that on the 14th day of November 1865,
before W. T. Phillips, a Justice of the Peace for the County ^{of Hancock} he
recovered a judgment for \$53⁷/₁₀₀, with interest from the
7th day of October 1865, till paid, ^{against Mrs. H. Goodson & Geo. Goodson} which judgment in-
cluded principal, interest & costs on a certain bond, a copy
of which is herewith filed, marked "Exhibit A", as also a copy
of said judgment marked "Exhibit B", both of which Your
Orator prays may be made a part of this bill; that the
said judgment, with all the papers in the cause, was prop-
erly filed in the Clerk's Office of Hancock County Court,
by virtue of the "Stay Law" then in force, and has not
since been executed.

That subsequently on the 9th day of November 1869, the
said Geo. Goodson, executed a Deed of Gift, to Elizabeth
E. Atkinson, the wife of Geo. W. B. Atkinson & daughter of
the said Geo. Goodson, of a certain tract of land in Han-
cock County, which said Deed contains a condition
to the effect that the grantee "shall pay off all executions
or judgments now existing against the said grantee be-
fore this Deed of Gift shall be operative", which appears
by a copy of said Deed, herewith filed, marked "Exhibit
C" & prayed to be taken as part of this bill.

And Your Orator further shews, that on the 21st day of
December 1874 the said Geo. W. B. Atkinson & wife
executed a Deed of Trust to Geo. W. Wright, Trustee for

the purpose of securing to Mrs P Moore the payment
of the sum of \$350.

Now Your Orator is advised and believes that his
judgment (no part of which has been said) is a
lien upon the said Real Estate, both under the Stat-
ute law of Va, & by reason of the said Deed of Gift,
of greater dignity than that created by the said
Deed of Lease, and that the rents & profits of the
said Land will not pay the said judgment, with
the interest since accrued, in five years.

In tender consideration whereof, forasmuch
as Your Orator is remediless in the premises, save
by the aid of a Court of Equity where such matters are
alone properly cognizable, Your Orator prays that the
said Geo W. Atkinson & Elizabeth E. Atkinson, his wife,
& the said Geo H. Wright, Trustee, & Mrs P. Moore, be made
parties defendant to this bill and required on their personal
oaths to answer the same, according to the best of their
Knowledge & belief, as fully & particularly as if the State-
ments ~~here~~ of this bill were here again repeated and the
said defendants thereto specially interrogated; That
the said Real Estate, or so much thereof as may be nec-
essary, be sold to satisfy Your Orator's judgment, and
that Your Honor will grant unto Your Orator such fur-
ther and general relief as may be consistent with
Equity & the Case requires.

May it please &c & Your Orator will ever pray &c —

Samuel Eley
per R. A. Rawles
Att'y

R. A. Rawles

key
Hausemond County, to wit.

J. R. H. Rawles a Notary
Public for the County of ~~Hausemond~~ do hereby
certify that Samuel Eley has formally
appeared before me in my County of ~~Hausemond~~
this day, and made oath that all the
allegations in the foregoing bill stated ~~are~~
coming within his own knowledge he knows
to be true and all others resting upon the
knowledge or information of others, he
believes to be true,

Given under my hand this 5th of
March 1877.

J. R. H. Rawles
Notary Public,

Sam'l Eley
vs
Atkinson et al

In Chancery

Bill

Thos + Rawls
p.g.

Sam'l Eley

20th Chy: Notes

J. W. B. Atkinson & Co.

1877. Feby: 27th: Sum^t in Chy: issued to March Rules, 1877.

" March 5th: Bill^t filed - Conditional Decree to defendants

" April 2nd: answer of the defendants, Atkinson & wife filed

" & gave replication thereto.

" " " Conditional Decree to the other defendants
confirmed & cause set for hearing.

" " 14th: Continued (Octo: 15th) Continued

1878. Apr: 13th: Continued - Octo: 15th Continued

1879 " 12th Death of Attk's son, & order wrong cause in the name of
his admors.

" Octo 15th Ditto (1880 Apr: 12th) Dismissed

Chy: Notes