1894-018
Nansemond Co. (Suffolk) Chancery Causes: Alex L. Duke vs Henry A. Morgan et al

Wright, Rebey

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY - GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON Henry A. Morgan, John H. Wright, Trustee, A. J. Raley and Emeline E. his wife

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 December *next to answer a Bill in Chancery, exhibited against them, in the said Court by* V. L. Duke,

and have then and there this Summons. Witness, PETER B. PRENTIS, Clerk of our said Court, at his office, this 8th *day of* November, *1884, in the* 109th *year of the Commonwealth.*

Teste : Peter B. Prentis *Clerk.*

Prentis Pg

A. L. Duke

vs } Summs: in Chy: &c

Henry A. Morgan &al:

To Decr: Rules, 1884.

Pro: B. No: 1. page

Civil Co:

Prentis:

The within named defendant, John H. Albright Sheeler, having regularly attorned me hereby [illegible] and authorized me to sell the Real Estate or any part thereof, conveyed to him by A. L. Duke, by Deed, dated the 27 day of January, 1880, until the further order of the Circuit Court of Rockbridge County.

Teste: Peter B. Prentis, Clerk

John H. Albright Sheeler, having regularly attorned me hereby [illegible] and authorized me to sell the Real Estate or any part thereof, conveyed to him by A. L. Duke, by Deed, dated the 27 day of January, 1880, until the further order of the Circuit Court of Rockbridge County.

Teste: Peter B. Prentis, Clerk

1884. Nov 22nd Summons executed and a copy thereof delivered to J. H. Albright and Endorsee & two Summons executed on the 10th day Nov 1884 & delivered to J. H. Albright & Jno L. Sullivan — Sheff

1884. Nov 22nd Summons executed and a copy thereof delivered to J. H. Albright and Endorsee & two Summons executed on the 10th day Nov 1884 & delivered to J. H. Albright & Jno L. Sullivan — Sheff

Know all Men by These presents, that we, A L Duke and Emeline E Rabey are held and firmly bound unto Henry A. Morgan, in the sum of One hundred and fifty dollars, to the payment whereof well and truly to be made to him, the said Henry A. Morgan, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly, by these presents. Sealed with our seals, and dated this 8th day of November, AD, 1884. And we hereby waive our Homestead Exemption, as to this Obligation.

The Condition of the above obligation is such, that Whereas the said A L Duke, in his Bill in Chancery against the said Henry A. Morgan John H. Wright, Trustee, A. J. Rabey and Emeline E. his wife, addressed to the Honorable George Blow, Judge of the Circuit Court of Nansemond County, has obtained from the Honourable Richard H. Rawles, Judge of Nansemond County Court an injunction to prohibit and restrain the said John H. Wright, Trustee, his Agents, Attorneys and all other persons from proceeding to sell the Real Estate or any part thereof, conveyed to him by said A. L. Duke, by Deed of Trust, dated the 27 day of January, 1880, until the further order of the Circuit Court of Nansemond County.

And whereas it is provided by the order of the said Judge, awarding the said injunction, that the plaintiffs shall not have the benefit thereof, until he or some one for him shall execute proper bond with security before the Clerk of the Circuit Court of Nansemond County, in the penalty of One hundred and fifty (150) dollars, conditioned to pay all such costs and damages as may be awarded against him, in case said injunction be dissolved:

Now therefore, if the said A. L. Duke shall pay all such Costs as may be awarded against him, and all such damages as shall be incurred in case the said injunction be dissolved, then this obligation to be void or else to remain in full force and virtue.

A L Duke (Seal)
Emeline E Rabey (Seal)

Executed & acknowledged before me in the Clerk's Office, this day & date above.
Peter B. Pruden Jr. Clerk
of the Circuit Court of
Nansemond County, Va.

A. L. Duke

vs § Injct: Bond

H. A. Morgan &c

1884.

Nov: 8th. Hearing Held.

At a Special Term of the Circuit Court, continued and held for Nansemond County the 4th: day of June 1887.

A. L. Duke Plaintiff.

against } In Chancery

Henry A Morgan Defendant.

This cause came on this day to be again heard on the papers formerly read and on the Report of Commissioner, Chas. H. Causey (the same being a Report of the claim of the defendant, Henry A. Morgan against the complainant, showing the sums of money paid on account thereof and the balance thereof still due and unpaid, in pursuance of the decree entered herein on the 10th: day of October 1885) and on the examinations of witnesses herewith filed and was argued by Counsel, On consideration whereof the Court doth approve and confirm the said Report to which no exception has been filed and on the motion of said Henry A. Morgan doth dissolve the injunction granted herein on the 8th: day of November A.D. 1884 by the County Court Judge for this County prohibiting the sale of the real estate

mentioned in the Bill and the exhibits thereunto filed until the further order of this Court.

And the Court doth adjudge order and decree that said real estate be sold after the expiration of the period of Sixty days from the date hereof if within that period the amount due on account of said claim as specified in said Report to wit: the sum of Eighty-eight and 33/100 dollars together with all interest on the sum of seventy-four and 86/100 dollars, part thereof from the 8th: day of June 1887 till paid, and the costs of this suit be not paid to said Henry A. Morgan, or his Attorney, and that Wilbur J. Kilby, who is hereby appointed Special Commissioner for that purpose, do proceed after the expiration of said period of Sixty days to sell said real estate by public auction before the Courthouse door of this County on some County Court day for Cash, and retain the money and the title to the real estate until the further order of Court But before proceeding to sell said real estate, said Special Commissioner will advertise the time place and terms of the sale by printed Notices

to be posted at least thirty days prior to the day of sale at the front door of the Courthouse of this County and at various public places in the neighborhood of the real estate and in said County and by publication of the notice once a week for four successive weeks in the "Suffolk Herald a newspaper published in the Town of Suffolk in said County and will execute before the Clerk of this Court in his office a Bond in the penalty of sixteen hundred dollars with good personal security payable to the Commonwealth of Virginia and conditioned for the faithful discharge of his duties under this decree and any other decree he may be may be required to execute in this suit and will obtain of said Clerk a certificate that said Bond has been executed and append the same or a copy thereof to the advertisement of the sale and make Report to Court of his transactions hereunder.

Pltffs: Costs

Clerk	$10.00	= Paid. Peter B. Prentis. Clerk
Writ Tax	1.50	= Paid. Peter B. Prentis. Clerk
Sheff:	2.00	= Paid J.L. Fulghum late Sheff
Commr: in Ch: for Sheff C.H.C.	10.00	= C.H. County Court
	$23.50	

Peter B. Prentis. Clerk.

Defts Costs

Clk	2.50	= Paid. Peter B. Prentis. Clerk
Atto fee	15.00	= Paid W. J. Kilby, Atty.
Total Costs	$41.00	

The within mentioned sum of Eighty-eight and 33/100 dollars due by Alex. L. Duke to Henry A. Morgan, has this day been paid to me by A. J. Rabey

Wilbur J. Kilby
Atts. for Henry A. Morgan
19th. July 1887.

Xmined.

Alex L Duke
vs Inch
Hen A Morgan

A. L. Duke

vs.

Morgan Tal.

This cause came on this day to be again heard on the papers formerly read and on the Report of Commissioner Chas. H. Causey, ~~made in pursuance of the~~ (the same being a Report of the claim of the defendant, Henry A. Morgan against the Complainant showing the sums of money paid on account thereof and the balance thereof still due and unpaid, in pursuance of the decree entered herein on the 10th. day of October 1885), and on the examinations of witnesses therewith filed and was argued by Counsel.

On consideration whereof the Court doth approve and confirm the said Report to which no exception has been filed and on the motion of said Henry A. Morgan, doth dissolve the injunction granted herein on the 8th. day of November A. D. 1884 by the ~~Judge of the~~ County Court Judge for this County prohibiting the sale of the real estate mentioned in the Bill and the exhibits therewith filed, until the further

order of this Court.

And the Court doth adjudge, order and decree that said real estate be sold after the expiration of ~~the period of~~ sixty days from the date hereof, ~~the amount due~~ as aforesaid of said claim as specified in said Report, to wit, the if within that period the sum of eighty-eight and 33/100 dollars together with the interest on the sum of seventy-four and 86/100 dollars, ~~part thereof~~ from the 8th day of June 1887 till paid ~~thereof~~, and the costs of this suit, be not paid to said Henry A. Morgan or his attorney, and that Wilbur J. Kilby, who is hereby appointed Special Commissioner for that purpose, do after the expiration of said period of sixty days proceed to sell said real estate by public auction before the Courthouse door of this County on some County Court day for cash ~~and out of the first proceeding proceeds~~ the expenses of the sale and of the sale pay the costs of this suit, ~~and the~~ including a fee of ~~dollars to the counsel of said Henry A. Morgan for his services herein, and the expenses of the sale~~ and then pay said sum of eighty-eight and 33/100 dollars together with interest on ~~seventy-four~~ and 86/100 dollars

part thereof from the 8th. day of June 1887 till paid to said Henry A. Morgan or his attorney in full satisfaction of his claim, and retain the money surplus, if any, until the further order and the title to the real estate until the further order of Court.

But before proceeding to sell said real estate, said Special Commissioner will advertise the time place and terms of the sale by printed notices to be posted at least thirty days prior to the day of sale at the front door of the Courthouse of this County and at various public places in the neighborhood of the real estate and in said County and by publication of the notice once a week for four successive weeks in the "Suffolk Herald" a newspaper published in the Town of Suffolk in said County and will execute before the Clerk of this Court in his office a Bond in the penalty of sixteen hundred dollars with good personal security payable to the Commonwealth of Virginia and conditioned for the faithful discharge of his duties under this decree and any other decree he

may be required to execute in this suit and will obtain of said Clerk a certificate that said Bond has been executed and append the same or a copy thereof to the advertisement of the sale and make Report to Court of his transactions hereunder.

Duke
vs. } In Chy.
Morgan et al.

In the Circuit Court of Hammond County.
June 4th, 1887
Decree
To be entered
C M Dee

Alex. L. Duke

vs.

Henry A. Morgan & als

With the consent of the parties given in open Court and hereby entered of record, it is ordered that this cause may be submitted to the Judge of this Court in vacation for decision or decree to be made therein in vacation.

Alex. L. Duke

vs. } In Chy

Morgan & al.

In the Circuit Court of Chancery and County April 14th 1886

Order
To be entered

Geo. T. Bland

Entered Oct 1886 in Bk 78

We consent to this order:
Wilbur J. Kilby. Atty. for the defendants, Henry A. Morgan and John H. Wright, Trustee.
Rob. R. Prentis,
atty. for complainant & Ruby & wife —

Alexander L. Duke

vs. } In Chancery

Henry A. Morgan, John H. Wright, Trustee Andrew J. Rabey and Emeline E. his wife.

This cause came on this day to be heard on the Bill of the Complainant taken for Confessed as to the defendants, John H. Wright Trustee, and Andrew J. Rabey and Emeline E. his wife on whom process had been duly served. they still failing to appear and plead answer or demur to the Bill and on the exhibits filed with said Bill. and on the answer of the defendant, Henry A. Morgan, and the exhibits therewith, this day filed by leave of the Court, ~~filed~~, with general replication to said answer, and was argued by counsel.

On consideration whereof the Court doth order that the papers in this cause be referred to one of the Commissioners of this Court, who is instructed to

table, state and Report to Court, an account of the claim of the defendant, Henry A. Morgan, against the plaintiff to which reference is made in said bill and answer, showing what sums of money may have been paid on account thereof and what part thereof, if any, may yet be unpaid, together with any matters specially stated deemed pertinent by himself or which may be required by any of the parties to be specially stated.

Alex. L. Duke
vs. } In Chy.
Morgan & al.

In the Circuit Court of Shawnee County October 10th 1885

Decree
To be entered

A. L. Duke
v
H. A. Morgan &al

In Chancery

Commissioners Office
Suffolk Va. May 18th 1887

To the Circuit Court of Nansemond County

Pursuant to the decretal order of Said Court made on the 10th Day of October 1885, in the Cause the undersigned, one of the Commissioners of Said Court, proceeded on the 2nd day of April, 1886, to Execute Said decree and herewith returns his report

An Account of the Claim of the defendant H. A. Morgan against A. L. Duke

To Amt of Bond Secured by deed of Trust - - - - - - - - - -	$275.00
To int: from Jany 27-80 to Dec 11-82 - 2y. 10m. 14da.	47.45
	$322.45
By Amt paid Dec-11-82	100.00
Balance due	$222.45
To int: on $222.45 from Dec 11-82 to Jany 29-'83 - 1m. 18da	1.75
	$224.20
By Amt paid Jany 29-'83	60.20
Balance due	$164.00

(Carried over)

By Amount brought on
due H. A. Morgan Jany 29-'83 $164.00
To int from Jany 29 '83
to 8 March '84-1y-1m-9d - 10.86
$174.86
By Amt paid 8 March '84 100.00
$74.86
To interest from March 8-'84
to June 8-'87 - 13.47
" Amount due H. A. Morgan — $88.33
All of which is respectfully
submitted by your Commissioner
C. H. Causey

Fee for depositions
and report $10.00

A. L. Duke
et al
vs In Ch
H. A. Morgan et al

Deposition and
Report of Commr

1887. May 18th. Filed
clk

The depositions of Henry A. Morgan and others taken before me, E. H. Cocke, a Commissioner in Chancery of the Circuit Court of Nansemond County, Virginia, said deposition being taken by consent of parties through their Attorneys, to wit: Robert R. Prentis Attorney for Plaintiff and Wilbur J. Kilby Attorney for the defendant, at the Office of E. H. Cocke in the Town of Suffolk on the 2nd day of April, 1886 between the hours of 9 A.M. and 6 P.M. to be read as evidence on behalf of Henry A. Morgan in a certain suit in equity depending in the Circuit Court for the County of Nansemond wherein J. L. Dube and others are plaintiffs and the said Henry A. Morgan is defendant.

Present R. R. Prentis Esq Atty for Plff
and W. J. Kilby Esq Atty for Deft.

H. A. Morgan

Henry A. Morgan being solemnly sworn
deposeth and saith as follows

1 2. Q. What is your name, age, occupation and where do you reside and are you one of the parties to this suit?

Ans. A. Henry A. Morgan 57 yrs of age. Doctor of Medicine and reside in Gatesville N. C.

and I am one of the defendants.

2. 2 It appears from the record in this suit (Ht. not filed with the bill) that on the 27th of January 1880, the plaintiffs & Duke obtained a decree of that Court against the Defendants to secure to them the payment of the sum of $275.00 due by bond bearing interest from 27th of Jany 1880; please state whether any part of said Sum of Money has been paid, and what part if any is still due upon

Ans One hundred dollars on the 11th of December 1882 has been paid - Sixty dollars and twenty Cents paid the 29th January 1883 - One hundred dollars paid March 8th 1884 - and the said Defendant has filed the original bond showing above Credits as part of this answer - marked 700

Exhibit No 9 filed with my answer in the Cause shows a correct statement of the above indebtedness and that the Sum of Seventy-four dollars and eight-six Cents was due me on the 8th of March 1884, and that amount is still due me with interest from that day, nothing I have frequently

demanded payment of the same. the plaintiff Alex L. Dube persistently refusing to pay the same.

~~Upon such~~ ~~this~~ ~~defendant sworth and~~
~~states thereon.~~

X-Examined

1st Q. Did you ever loan the plaintiff the amount of the bond alleged to

Ans I did

2 Q. How was it loaned to A L Dube? by Check or in Currency?

Ans By Check for $200.00 and for $75. he assumed a debt for me that was due me - it may have been $203. or $213 in currency On reference to a memorandum I find that it was $200.30 - and the debt assumed was $74.70

3rd Q. Where debt was assumed

Ans U. J. Raly's

4th Q. Was the bargain made with A L Raly?

Except by Defts Att on the ground that there is a matter between Raly & Dube.

Ans. Raly told me Dube owed him a note for $200. on my note against Raly - when I loaned Dube the $200. Raly said he owed me $75.00 or so - and he included that amount in the bond making the bond $275.00 - instead of $75. before $74.70 c.

Stated above

5th Q. Why did Duke assume Raby's debt.

Ans Were Raby wanted some money about that time, and I told him I could not lend him any - and about that time Raby sold Duke one half of his farm and I then loaned Duke some money and took a mortgage upon it -

6th Q. But why did Duke assume Raby's debt?

Ans He purchased this farm from Raby and Raby required so much cash from him, that he came to me to get it -

7th Q. How was the amount $74.70 arrived at?

Exception to

Ans Duke promised $200 cash certain and he had persuaded Raby to pay so much on his note - I agreed to take $75.00 off the first mortgage due by Raby, and have it secured on Duke's part, as I had a mortgage on the whole farm at this time - I paid Duke a check for $200.30 and there then left $74.70 - to make up the $275.00

8 Q. Did Raby execute a new bond at that time

Exception to by Defts Att.

Ans No —
9th Q. Was his old bond cancelled?
Ans Yes —
10th Q. Was that old bond been paid off and delivered to Raly?
Ans It was —
11. Q. Was Raly present at the Drake transaction?
Excepted to by Deft's Atty
Ans He was not — His action Mr Wright was
12 Q. Are you sure that Mr Wright was any known Mr Raly's Atty when he was sworn?
Ans He was not my Atty — Mr Raly or Mr Drake got him to write the mortgage and the bond.
13 Q. Was A L Drake paid you any other money than that ordered on the bond?
Ans He gave me a negotiable note for $40, for money loaned him outside of the transaction
14 Q. Did it have no connection with the transaction
Ans It did not —
15 Q. Did Raly pay you no other money?
Ans He bought ~~him~~ a horse from Charles Taylor on the 2 nd of Dec 1887 I had a mortgage

on the Loan - and he paid one thousand dollars on the 24th of March 1886

16 Q. Then I understand you to swear that neither A. L. Duke nor any one for him has paid you any money besides the three amounts endorsed on the back on account of this transaction

Ans. To the best of my knowledge and belief they are the only amounts paid on that loan -

17 Q. Can you not swear to certainty?

Ans. I can - I swear that these three amounts are all that were ever paid me on this transaction -

18 Q. How much money, Banister, has been borrowed from you by A. J. Raby, and has repaid by A. L. Duke?

Ans. Objected to as from a Party to the cause

Ans. Raby borrowed $400, at one time, I think in March 1874, that was paid in full in March 1882 - A. L. Duke borrowed $200.30 and assumed for Raby $74.70 - making a total of $275,

19 Q. Now State the Amounts of these & other proper Credits to which these respective Debts are entitled and their dates?

Excepted to for hearsay, owing to Roby
is concerned

Ans I do not know that I can tell as it has been twelve years since I loaned Roby the money

20 Q. Do you find any books from which you could ascertain?

Ans I think I have memoranda from which I might learn

21 Q. Will you make up such a statement and file as a part of this deposition within ten days?

Ans Except as to Roby

Ans If I can get up the data I will do so

Re-examined in Chief

1 Q. Do I understand you to say that A. J. Roby was once indebted to you in the sum of $400, secured by deed of trust on his land, and that between Wm. the 1st was credited March 1874, and March 1882 the same except the $74.70 was paid in installments and debt finally closed

Ans Yes

2 Q. Do I also understand you to say that part of the land that stood as security for the $400 debt was sold to A. L. Duke and that after

the part so sold he gave ~~the~~ his deed of trust referred to in this suit - to secure his debt of $275., due you, made as of above.

Ans 3 2

Yer.

And further this defendant said not

W. A. Morgan

The further taking of these depositions is adjourned to the ___ day of ___ 188_, by Consent

C. H. Kearney, Comr

State of Virginia
Rockingham County, to wit -
I. C. H. Kearney, a Commissioner in Chancery for the Circuit Court of the County aforesaid, in the said State, do hereby certify that the foregoing deposition was duly taken, sworn to and subscribed before me at the time and place mentioned therein.
Given under my hand this 16th day of April 1887

C. H. Kearney Comr

Deposition

$275.00 Suffolk Va January 27th 1880

Twelve months after date, with interest from date I promise to pay unto Dr H. A. Morgan, his heirs Executors administrators & assigns the just and full sum of Two hundred & seventy five Dollars. For the just & full payment of which sum I bind myself, my heirs, Executors and administrators, jointly, severally, firmly by these presents, & hereby waive the benefit of my homestead Exemption as to this debt. Witness my hand & seal, the day & year above written.

A L Dickens (Seal)

Witness:
Jno H Wright

$100 Recd. Dec 11th 1882 One Hundred Dollars in part of within
H. & M.

~~Recd Jan 29th 1883 Sixty Dollars~~

$60.20 Recd. Jan 29th 1883. Sixty Dollars and 20 cents in part of within
H. & M

$100 Recd March 8th 1884 One Hundred Dollars in part of within
H. & M.

9 700

Whereas Alex L Duke by deed dated 27th day of January 1880 and recorded in Deed Book No 8 page 222, (in order to secure, first, to Dr Henry A Morgan the sum of Two hundred and seventy four dollars, and second to Mrs Emaline E Raley the sum of Nine hundred and seventy four dollars; did convey with general warranty unto John H Wright, Trustee, the following property, to wit: One hundred and twenty four acres of land, more or less, situate, lying and being in the County of Monroe and State of Virginia, and being a part of the farm (then) occupied by A J Raley and that day conveyed to the said Alex L Duke by the said A J Raley and others and bounded as follows: On the North by the lands of John W Haig & Bros: On the East by the New Somerton road: On the South by Dukes' Swamp and the lands of C F Savage and on the West by the Main channel of what is known as the Screech branch - The said A J Raley reserving in front of his residence from the western boundary to the Eastern boundary of said land, a space measuring two hundred and fifty feet in width. And whereas, the said Alex L Duke has sold unto Mrs Emaline E Raley, the said tract, piece or parcel of land - And whereas, the same being subject to the Deed of Trust aforesaid. Therefore, the said Dr Henry A Morgan and the said Mrs Emaline E Raley the beneficiaries of the said Deed of Trust, being willing to release the aforesaid tract piece or parcel of land to enable the said Alex L Duke to convey a complete

title by bargain and sale unto the said Mrs Emeline E Raby: and do, in order to do so sign this deed.
Now therefore, this deed made this 22nd day of April 1884, between the said Alex L Duke of the County of Nansemond and State of Virginia, and the said Dr Henry A Morgan of the County of Gates and State of North Carolina and the said Mrs Emeline E Raby of the County of Nansemond and State of Virginia and John N Wright Trustee, residing in the town of Suffolk Va, of the one part, and the said Mrs Emeline E Raby of the County of Nansemond and State of Virginia of the other part, Witnesseth: that the said Alex L Duke in consideration of the sum of One thousand dollars, to him in hand, the receipt whereof is hereby acknowledged, hath sold and by these presents doth sell unto Mrs Emeline E Raby and grant with general warranty unto her, her heirs and assigns, forever, the aforesaid described land, together with all and singular the appurtenances belonging to the same. And the Alex L Duke covenants that he has the right to convey the said land to the grantee; that the said grantee shall have quiet possession of said land; that he has done no act to encumber the said land: and he will execute such further assurances of the said land as may be requisite.
Witness the following signatures and seals.

A L Duke Seal
Seal
Seal
Seal

State of Virginia }
County of Nansemond } To wit

I, Peter B Prentis, a Commissioner in Chancery of the Circuit Court in and for the said County, in the State of Virginia, do certify that A L Duke whose name is signed to the writing above, bearing date the 22nd day of April 1884 has acknowledged the same before me in the County aforesaid.

Given under my hand this 21st day of May 1884

Peter B. Prentis

Commr in Chy.

I, Peter B. Prentis, Clerk of the County Court of Nansemond County, do hereby certify that the foregoing is a true copy from the original now on file in the Clerk's Office of said Court.

Certified under my hand, this 7th day of April, 1885.

Peter B. Prentis. Clerk

A. L. Duke
vs. } In Chy
Morgan Tal

Exhibit No. 10
filed with the
answer of H. A.
Morgan.

Statement

showing the balance due of the debt of $275.00 of Alex. L. Duke to Henry A. Morgan and secured by deed of trust executed by said Alex. L. Duke on the 27th. day of January 1880. to wit:

To amount of Bond secured by said deed of trust for—	$275 00
" Interest from 27 Jan. 1880 to 11 Dec. 1882.— 2y. 10m. 14ds.	47 45
	322 45
Paid 11 Dec. 1882	100 00
	222 45
To Interest on $222.45 from 11 Dec. 1882 to 29 Jan. 1883.— 1m. 18ds.	1 75
	224 20
Paid 29 Jan. 1883	60 20
	164 00
To Interest from 29 Jan. 1883 to 8 Mar. 1884.— 1y. 1m. 9ds. on $164.	10 86
	174 86
Paid 8 Mar. 1884	100 00
Balance due with interest from 8 Mar. 1884 till paid	$ 74 86

A. L. Duke

vs. } In Chy

Morgan & al

Exhibit No. 9 filed with the answer of H. A. Morgan

A L Duke

Vs

Henry A Morgan et als

It appearing that there has been no order or proceeding for five years in this cause, it is ordered that it be stricken from the docket with leave to re-instate with good cause within one year from this date.

25

A L Duke

vs

H A Morgan & c

Oct 12th to 11 94

Docketed

CMS

Entered in Chancery
Order Book No. 2
Page 591.

In the Circuit Court of Nansemond County. Virginia

A. L. Duke

vs. } In Chancery

Henry A. Morgan & al.

The answer of Henry A. Morgan one of the defendants to the Bill of Complaint exhibited against him and others in the Circuit Court of Nansemond County by Alex. L. Duke;

This defendant saving to himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and insufficiencies in the said Bill contained, for answer thereto says.

That it is true as stated in said Bill that the said Alex. L. Duke executed his deed of trust on the 27th. day of January 1880 on the land in said Bill mentioned to secure to this defendant the payment of the sum of $275.00 but utterly denies that the sum thus secured has been paid in full and

that upon a settlement of accounts between said Alex L. Duke and this defendant it will appear that this defendant is in debt to said Alex L. Duke for money paid by him to this defendant for which he has never received credit.

On the contrary this defendant says that for all sums of money paid by said Alex L. Duke or by any person for him on account of said debt of $275.00 the said Alex. L. Duke has had proper credit and that after allowing him credit for all sums of money so paid there is still due this defendant ~~some~~ seventy four and 86/100 ~~eighty~~ dollars with interest thereon from the 8th. day March 1884 as will appear by the statement hereunto filed as part of this answer and marked exhibit No. 9. And that the said Alex. L. Duke has refused and still refuses to pay the balance still due by him on account of said indebtedness.

It is also true as stated in the said Bill that this defendant directed the trustee named in said deed of trust to sell said land for the satisfaction of the balance due on account of said debt. but before so doing he had repeatedly re-

quested, urged and demanded payment of the balance due him and been met with the refusal of said Alex. L. Duke to pay the same.

This Respondent claims the right by virtue of said deed of trust to have said land sold for the satisfaction of the balance still due him on account of said indebtedness.

And this defendant says that when about to exercise his rights under said deed and to have said land sold for the purpose stated, the said Alex. L. Duke without any right whatever to do so, obtained an injunction in pursuance of the prayer of the bill in this cause of the Honorable Judge of Nansemond County Court restraining the said trustee from selling said land and realizing what is justly due on account of said indebtedness.

This defendant denies the right of said Alex. L. Duke to bring or maintain this suit or to file said bill, or to sue out said injunction, because this defendant says, the said Alex. L. Duke by his deed of

bargain and sale dated the 22nd, day of April 1884, more than six months before the institution of this suit, in consideration of the sum of $1000. sold and conveyed with general warranty unto Emeline E. Raby, all the aforesaid land subject to said deed of trust for the benefit of this defendant, as will appear by a copy of said deed of bargain and sale herewith filed as part of this answer and marked Exhibit No. 10 so that when said suit was instituted and said injunction awarded, the said Alex. L. Duke had no interest whatever in said land and could not be hurt by a sale thereof, and had no right to institute said suit, or to sue out said injunction.

This defendant hereby gives notice that the said Court will be asked to allow a fee to his counsel, such as may be reasonable for services in behalf of this defendant herein, to be paid out of such moneys as may come under the control of the Court in this suit.

And this defendant now prays, that this suit may be dismissed and said injunction dissolved and that he may be

hence dismissed with his reasonable costs in this behalf expended, and he will ever pray etc.

Henry A. Morgan
By Counsel

Wilbur J. Kilby p.q.
10 April 1885

Alex. L. Duke

vs. } In Chy

Morgan Tel.

Answer of
Henry A. Morgan

TRUSTEE'S SALE

—OF A—

Valuable Farm

By virtue of a deed of trust to me from A. L. Duke, dated January 27th, 1880, and duly recorded, and being directed thereto by the beneficiary, default having been made in payments required, I shall offer for sale by public auction

On Monday, November 10th, 1884,

(court day), before the Courthouse door in Suffolk, that certain farm conveyed by said deed, on which A. L. Duke now resides, situated near Nurneyville, in Nansemond county, and bounded by the Somerton road, the lands of C. F. Savage, King & Bro., and others.

TERMS AT SALE.

JOHN H. WRIGHT, Trustee.

Exhibit No. 2
with Bill of
A. L. Dula
v.
Morgan et al.

This Deed. made this 27th day of January 1880
between alexander L. Duke of the County of
Nansemond and State of Virginia of the first part and
John W. Wright. Chosen as Trustee for the purposes
herein after named of the said County & State of
the other part. Witnesseth, that the said alexander
L. Duke doth grant with general warranty unto
the said Jno. A. Wright Trustee, the following property
to wit: One Hundred and twenty five acres of land
more or less a part of the farm occupied by A.
J. Raby, on the Somerton Road in said, this day
Conveyed to said alexander L. Duke by A. J. Roby
& others and bounded as follows: On the North by
the lands of Jno: W King & Bro., On the East by the
new Somerton Road. On the South by Duke's
Swamp and the lands of E. F. Savage and on the
west by the main Channel of what is known as
Deserch Branch, the said A. J. Raby reserving from
the western boundary to the Eastern boundary of the
said land a Space of land measuring Two hundred
and fifty feet in width: together with all and singular
the appurtenances belonging to the said land. In Trust
to secure first and in full the payment of the sum of
Two hundred and twenty five Dollars ($225.00)
evidence by a bond of even date with this Deed payable
twelve months after date to Dr H. A. Morgan his heirs
Executors administrators or assigns with interest
thereon from date. Second, and after the payment
of the above mentioned bond with the interest thereon, in
full, to secure to Mars Emeline E. Raby, in her own
right the payment of a bond of even date with this
Deed for the sum of Nine hundred and seventy
five dollars ($975.00) and payable in twelve months
after date with interest, to the said Emeline E. Raby
her heirs Executors administrators or assigns. And
it is Covenanted and agreed between the said parties
that in the event of default in the payment of the said
Bonds according to their priority together with the interest

Xmas

A. L. Duke

To Copy Deed of Trust

Jno. H. Wright Trustee, for

Use H. A. Morgan et al

Exhibit No. 1.

with Bill of

A. L. Duke

v.

H. A. Morgan

thereon within the said County, which said lands, after advertising, the time, place and manner of sale, as aforesaid, shall be made, the said Trustee shall execute a deed to the purchaser or purchasers thereof, and out of the proceeds of such sale, shall pay the costs and charges of executing this trust, including a commission of five per cent to the Trustee, and the amount of principal and interest due and unpaid upon the said Bonds and the residue, if any, shall be paid to the said Alexander L. Duke, or his legal representatives. And the said Duke doth hereby covenant and agree to and with the said Trustee, that he will execute such further assurance of the premises as may be requisite.

Witness the following signature and seal

A. L. Duke (Seal)

Virginia:

In the Clerk's Office of the County Court of Hanover County, the 11th day of February 1880. This Deed of Trust was produced to me in my said office and admitted to record.

Teste:

John B. Pemberton, Clerk

Virginia:

Hanover County, to wit:

I, M. T. Tinnea a Notary Public for the County aforesaid, do certify that Alexander L. Duke whose name is signed to the writing above dated the 27th day of January 1880 has acknowledged the same before me in my said County.

Given under my hand this 9th day of February 1880

M. T. Tinnea N.P.

In the Clerk's Office of Hanover County Court, the 11th day of February 1880. This Deed of Trust was produced and admitted to record.

Teste:

John B. Pemberton, Clerk

A Copy

Teste:

John B. Pemberton, Clerk

By D.C.

A. L. Duke

vs

2 Exhibits
filed
with the Bill

Henry A. Morgan et al:

A. L. Duke

v.

Henry A. Morgan, John S. Wright, Trustee, A. J. Raby and Emeline E. Raby his wife.

To the Honorable George Blow, Judge of the Circuit Court of Nansemond County.

Humbly complaining showeth unto the Court your orator A. L. Duke of Nansemond County Virginia,

1. That on the 27. day of January 1880 your orator executed and delivered a deed of trust conveying 125 acres of land more or less to John S. Wright, Trustee, in order to secure to Henry A. Morgan the payment of a bond of $275., and to Emeline E. Raby the payment of a bond for $975, both of which bonds were dated the 27. day of January 1880, and were payable one year after date. A copy of the said deed of trust is herewith filed marked Exhibit No. 1. and and your orator prays that it may be read as a part of this bill.

2. That since the execution of the said deed of trust the said debt ~~due to~~

thus secured to Henry A. Morgan has been fully paid off and discharged, indeed your orator avers that upon a just settlement of the account between himself and Henry A. Morgan it will appear that the said Morgan is in debt to him for money paid to him by your orator and for which your orator has never received any credit.

3. But the said Henry A. Morgan most unjustly and inequitably claims that your orator still owes him a balance of $74.$^{85}/_{100}$ with legal interest thereon from the 8. day of March 1884 on account of the said bond for $275.$^{-}$ and claims the right to sell the land conveyed by the said deed of trust in order to satisfy the said alleged balance due. Accordingly John H. Wright, the Trustee named in the said deed of trust, in obedience to the instructions of the said Morgan has advertised the land thereby conveyed, for sale at public auction on Monday the 10. day of November 1884. All of which will be seen from a copy of the advertisement herewith filed marked "Exhibit No. 2" and your orator prays that it

may be read as a part of this bill.

Forasmuch therefore as your orator is without remedy save in a Court of Equity where such matters are properly cognizable and relievable he prays that the said Henry A. Morgan, John H. Wright Trustee A. J. Raby and Eveline E. his wife may be made parties defendant to this bill and required to answer the same (but the complainant waives ~~oath~~ answer under oath); that the said John H. Wright Trustee, his agents attorneys and all other persons may be restrained and enjoined from proceeding to sell the real estate conveyed to the said Wright Trustee by A. L. Duke, by deed of trust dated the 27. day of January 1880; that all proper accounts may be taken; that the said Morgan and Wright Trustee may be required to execute a proper deed of release so as to clear the title to the said land and relieve it from the lien of the said deed of trust; that the said Morgan may be required to pay to your orator the balance that may be found

to be due from him to your orator on an equitable adjustment of their mutual accounts, and for all such other further and general relief ~~and~~ as the nature of the case may require and the principles of equity justify. -
And your orator will ever pray &c
Let a Subpoena go &c

A L Duke

Rob. R. Prentis,
P. Q.

State of Virginia,
County of Nansemond, to wit:
This day A. L. Duke
personally appeared before me and made
oath that the statements made in the
foregoing bill so far as made of his
own knowledge are true, and so far
as made from knowledge & information
derived from others he believes them
to be true. -
Given under my hand this 8 day
of November 1884. -

Robt. W. Parlis
Commissioner in Chancery
Circuit Court of Nansemond.

A. L. Duke

v.

Henry A. Morgan, John H. Wright Trustee, A. J. Raby and Emeline E. his wife.

~~Injunction is awarded~~

On the motion of the complainant an injunction is awarded according to the prayer of the bill to prohibit and restrain John H. Wright, Trustee, his agents, attorneys and all other persons, from proceeding to sell the real estate or any part thereof conveyed to him by A. L. Duke by deed of trust dated the 27. day of January 1880, until the further order of the Circuit Court of Nansemond County.-

But the plaintiff is not to have the benefit of this order until he or some one for him shall execute proper bond with security before the Clerk of the Circuit Court of Nansemond County, in the penalty of $150 conditioned to pay all such costs and damages as may awarded against him in case this injunction shall be dissolved.-

To the Clerk of Circuit Court of Nansemond Co. — R H Reeves
Judge Nansemond County Court

Prentis p. 7

A. L. Duke

N. Bill & 2 Exhibits

H. A. Morgan & Co.

Indianapolis Cir. Ct.

A. L. Dinke

vs

Chy: Notes

Henry A. Morgan et al

1884. Nov: 8th Bill & Sub & order for Injn: issued

" " " Injn: Bond executed & filed

" " " Summons in Chy & rtn'd to Dec: Rules, 1884

" Dec: 1st Decree nisi vs defendants.

1885. Jany: 5th Decree nisi confirmed & cause set for hearing

Phy: Notes

Prentis P.Q.

Chancery Papers

A. L. Duke

against

Henry A. Morgan et al

1894

October 12th

Removed from

Docket