1899-018
Nansemond Co (Suffolk) Chancery Causes: Tygert-Allen Fertilizer Co vs Helen M. Brinkley et al

Bruce, Holland, Reid, Upshur, Norfolk Fertilizer Co I, Rawls, Everett

Positions
in hours of
Jane Kelly by
Miss Sept 19 1890
Taken in
Kinder by
A Hastie

Poor Quality Original. Best Possible Capture

Circuit Court.

Tuesday after the Second Monday in April and October.

HON. ROBERT R. PRENTIS, Judge.
AZRA P. GOMER, Clerk.

County Court.

Second Monday in each mouth.

HON. WILBUR J. KILBY, Judge.
ROBERT R. SMITH, Clerk.
E. E. HOLLAND, Commonwealth's Attorney.
ALEX. H. BAKER, Sheriff.
SYDNEY T. ELLIS, County Treasurer.
JOHN B. PINNER, Commissioner of Accounts.

Nansemond County Clerks' Office.

Suffolk, Va., ... 189....

76. Va 278
18 Amer. St Rpts 142
53 " " " 553
34 " " " 396

RICH'D WALKE. WM. W. OLD.
WALKE & OLD,
Attorneys and Counsellors at Law,
OFFICES, 1, 2 & 3 LOWENBERG BUILDING,
No. 72 MAIN STREET,
NORFOLK, VA.

Jany 16. 1897.

Mr. A. R. Gomer,
Seaford, Va.

Dear Sir:

You will please send us a copy of the bill in the suit of the Tyson-Allen Fertilizing Co. vs Helen M. Brinkley and others, if the bill has been filed.

Yours very truly,
Walke & Old.

CHANCERY SUMMONS.

The Commonwealth of Virginia,

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

YOU ARE HEREBY COMMANDED TO SUMMON Helen M. Brinkley, Jesse W. Brinkley, her husband, William N. Brinkley, William A. Bruce and Edward E. Holland, 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 Third Monday in February 1897, to answer a Bill in Chancery, exhibited against them in the said Court by The Tyger-Allen Fertilizer Company (a corporation)

and have then and there this summons.

Witness, A. P. GOMER, Clerk of our said Court, at his office, this 14th day of January, 1897, in the 121st year of the Commonwealth.

~~A copy—Teste~~:

_____, ~~CLERK~~.

Teste:

A P Gomer, CLERK.

Executed Jany 26-97.
by serving a copy of the
within summons on
Wm A Brumley
Accomm'd $1
By Jessie Day

January 26

Wilbur J. Kilby p. q.

The Tygert-Allen Fert
Co. a Corporation

vs. } In Chancery.

Helen M Brumley
Jesse W Brumley & others

1897--

Feby ---- Rules.

Third --- Monday.

Nansemond Circuit Court.

Process Book No. 2

Page 145

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE ~~SHERIFF~~ Sergeant OF ~~NANSEMOND COUNTY~~ the City of Norfolk —GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON Nelan M. Brinkley, Jesse W. Brinkley, her husband, William H. Brinkley, William A. Bruce and Edward E. Holland, 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 Third Monday in February 1897, to answer a Bill in Chancery, exhibited against them in the said Court by The Pygett-Allen Fertilizer Company (a Corporation)

and have then and there this summons.

Witness, A. P. GOMER, Clerk of our said Court, at his office, this 14th day of January, 1897, in the 121st year of the Commonwealth.

~~A copy—Teste~~:

, ~~CLERK~~.

Teste:

A. P. Gomer, CLERK.

Executed this 16th day of January A.D. 1897. by serving copies hereof on William H. Brinkley & Jesse W. Brinkley, and not finding Helen M. Brinkley at her usual place of abode this 16th day of January A.D. 1897 I served a copy hereof for her on Jesse W. Brinkley he being there, and a member of her family above the age of sixteen years and gave information of the purport to him.

Sch's fee 1.50 Paid

J. T. Lawler Clerk
City of Suffolk
by W A Thompson Dep'ty

Wilbur J. Kilby p. q.

The Pygett-Allen Bert Co. (a Corporation)

vs. } *In Chancery.*

Helen M. Brinkley
Jesse W. Brinkley & others

1897--

----Ruby----*Rules.*

----Third--*Monday.*

Nansemond Circuit Court.

Process Book No. 21---

Page 145

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON Allen M Brinkley Jesse W Brinkley her husband William N Brinkley, William A Bruce and Edward E Holland 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 Third Monday in February 1897, to answer a Bill in Chancery, exhibited against them in the said Court by The Rygert-Allen Fertilizer Company (a Corporation)

and have then and there this summons.

Witness, A. P. GOMER, Clerk of our said Court, at his office, this 14th day of January, 1897, in the 121st year of the Commonwealth.

A copy—Teste:

_____, CLERK.

Teste: A P Gomer, CLERK.

Wilbur J Kilby p. q.

The Tygert-Allen Port. Co. (a Corporation)

vs. } In Chancery.

Nelen M Brinkley
Jesse W Brinkley & others

1897--

Feby ---------- Rules.

Third ---------- Monday.

Nansemond Circuit Court.

Process Book No. 2

Page 145

Executed this 1st day July 1897
by delivering in Suffolk
to Jesse W Brinkley
the within Summons
Sheriff's fees $1.00
Copy fee 10
Commissioner's fee 10
Total $1.20
W A Bell Deputy Sheriff

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON Helen M Brinkley Jesse W Brinkley her husband William N Brinkley, William A Bruce and Edward E Holland Truste

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 Third Monday in February 1897, to answer a Bill in Chancery, exhibited against them in the said Court by The Pygert-Allen Fertilizer Company (a Corporation)

and have then and there this summons.

Witness, A. P. GOMER, Clerk of our said Court, at his office, this 14th day of January, 1897, in the 121st year of the Commonwealth.

A copy—Teste:
A P Gomer, CLERK.

Teste:
A P Gomer, CLERK.

Walbur J Kilby p. q.

A Copy for
Jesse W Brinkley

vs. } In Chancery.

1897--

Feby Rules.

Third Monday.

Nansemond Circuit Court.

Process Book No. 2

Page 145

Nat Spruill
Sub pet 1877
W H Stevens

Nansemond County

The Clerk of the Circuit Court of Nansemond County will issue process as follows:

The Tygert-Allen Fertilizer Company (a corporation)

Against

Helen M. Brinkley, Jesse W. Brinkley her husband, William H. Brinkley, William A. Bruce, and Edward E. Holland, Trustee.

Summons in Chancery.

To Rules on Third Monday in February 1897

Wilbur J. Killy, p. q.

14 January 1897
Tax $1.50 paid

The Tygart Valley Fuel Co
Pt Pleasant
Below Mr from Kleydoctrin

Virginia:
Circuit Court for the County
of Nansemond, to wit;

The Pygert-Allen Fertilizer Company

Against } In Chancery

Helen M. Brinkley, Jesse W. Brinkley and others.

To Honorable Robert R. Prentis,
Judge of the Circuit Court for the
County of Nansemond;

In pursuance of the decree pronounced by Your Honor in vacation on the third day of February 1899 in the cause in Chancery in said Court depending between The Pygert-Allen Fertilizer Company, Complainant, and Helen M. Brinkley, Jesse W. Brinkley and others, defendants, the undersigned, Alexander H. Baker, sheriff of said County, respectfully reports to Court as follows:

That he has received and taken into his custody and possession the personal property, mentioned in said decree, belonging to said Helen M. Brinkley and Jesse W. Brinkley and has made

an inventory thereof as follows:

Inventory

First.

The personal property in the dwelling of said Helen M. Brinkley, and Jesse W. Brinkley, her husband, No. 270 Bute Street, in the City of Norfolk:

Lower floor

1 onyx stand and brass lamp	5	
1 upholstered corner chair	2	
1 set of portiere curtains	4	
1 Piano and stool	150	
1 marble slab center table	3	
1 Brussels parlor carpet - 41 yards	15	
3 skin rugs		75
1 small center stand		25
2 cane rocking chairs	5	
2 plush seat rocking chairs	5	
1 cane rocking chair	1	
1 covered-seat rocking chair	1	
32 yards of straw matting	4	50
3 lace curtains @ 1,50	4	50
2 rugs		75
2 flower vases		25
1 base rocking chair	1	
20 yards of hall carpet	8	
10 yards of stair-steps carpet	4	
1 Hall tree $6: 1 Picture in the hall 75¢	6	75
1 set of portiere curtains in the hall	1	50
carried on	223	25

brought on				223 25
2 cane back chairs				50
1 side-board			20	
3 sets of lace curtains in the dining-room @ 1.50			4	50
12 oak dining-room chairs			12	
1 small center table				25
1 dinner and tea set			12	
1 doz. plated knives and forks.			5	
2 1/2 doz. plated spoons			2	
1 glass set. 2 doz. tumblers, 2 water bottles, 6 berry bowls and saucers, 1 celery stand and 2 pickle dishes			5	
1 carpet, 1 rug, and 2 strips of oil cloth			2	
2 pictures				25
1 kitchen table				75
1 old stove of no value				
				28750
Upper-floor. Chamber No. 1.				
1 Chamber ~~set~~ of ten pieces		12		
1 oak wardrobe		3		
1 folding bed		7		
1 carpet on the floor - 40 yards @ 25c		10		
3 rugs			75	
5 shuck mattrasses @ $1.50		7	50	
3 pairs of bed blankets	2.00	6		
3 " of ditto	1.25	3	75	
8 counterpanes	40c	3	20	
8 bed sheets		4		
8 feather pillows		2		
4 " bolsters		2		
2 " beds		14		7520
Carried on				36270

brought on			36270
Chamber No. 2			
1 set of Chamber furniture - 10 pieces	10		
9 yards of Straw matting	50		
17 yards of hall carpet	170		
1 wardrobe in the hall	5		
12 yards of Stair-steps carpet	120		1840
Chamber No. 3			
1 Chamber suit of 10 pieces and a wardrobe	15		
1 Carpet and 3 rugs	440		1940
Chamber No. 4			
1 suit of furniture - 10 pieces	15		
1 Carpet and 3 rugs	450		
1 set of portiere Curtains	150		
1 wardrobe in hall on 3d. floor	2		2300
1 bedstead, 1 bureau, 1 wash-stand, 1 table, and 4 chairs in the possession of Wm. H. Brinkley, cost $85. worth	50	50	
Total in Norfolk			473.50

Second

The personal property of the said Helen M. Brinkley and Jesse W. Brinkley on their farm in Crawford County;

1	feather bed	13	50
1	mattrass	1	50
2	bedsteads @ 1.50	3	
1	pair of bed blankets		50
1	ditto ditto	1	50
2	pair of sheets	1	00
1	old shuck mattrass		25
2	bed quilts 75¢	1	50
1	clock	1	00
1	old shot gun	1	50
1	table		25
4	plates		20
3	cups and saucers 15¢; 1 sugar dish 10¢;		25
1	butter dish 10¢; 4 knives and forks 15¢		25
2	window shades		06
+ 1	top buggy	35	
+ 1	set of buggy harness	5	
+ 1	set of harness	2	
1	old mowing machine	5	
1	bean planter	2	50
+ 1	spinach planter	2	
1	hoe		25
+ 1	saddle and bridle	1	50
1	hay rake	3	50
2	sets of cart harness 80¢	1	60
2	sets of plow harness 25¢		50
	carried on	85	11

	brought on	85	11
	1 mule with lame foot	25	
	1 mule	55	
	1 bay mare	52	50
	1 mule sold by Jesse W. Brickley to Jno. R. Gaskins for	50	
	1 old buggy sold by Jesse W. Brickley for	6	
	100 hot-bed sash 3×6	20	
+	1 double horse plow	2	50
+	3 single horse plows @ 1.25	3	75
	2 harrows @ 25¢		50
	3 old harrows		25
	1 cabbage cart	3	
	1 Truck cart	9	
+	1 Barrel cart	12	
	Total on said farm.	324	61

There were no "oysters and shells on the flats belonging to the said farm" of any value.

Recapitulation

Total value of property in Norfolk,	473	50
Total value of property on said farm,	324	61
Grand total	798	11

The "corn and forage" mentioned in the deed declared by said decree to be fraudulent and void, could not be found, the same having been used or disposed of by

said Jesse W. Brinkley.
At the date of this
report, however, there
was on said farm be-
longing to him —

30 Bbls. of corn worth	60
and fodder and hay worth	60
Total value	$ 120

and the same is esti-
mated to be of no great-
er quantity and no great-
er value, than the "corn
and forage" belonging to
said Jesse W. Brinkley
and on said farm on
the 3d. day of December
1896 when said deed
was made.

In addition to the fore-
going property covered by
said deed, the following
property acquired by said
Jesse W. Brinkley and Helen
M. Brinkley since the 3d.
day of December 1896 was
found in their possession
as of the date of this re-
port

First

On said farm

1 stove	125
1 Bureau	250
1 Washstand	125
carried on	500

brought on			500	
1 Cooking Stove			250	
2 sets of cart harness	1.50		3	
1 horse			50	
2 shovels	40		80	
2 five-prong forks	50		1	
4 small weeding hoes	25		1	
6 large ditto	25		150	
1 grubbing hoe			40	
2 hay forks	25		50	
1 harrow			1	
1 Truck cart			27	
Fodder and hay (see above)			60	
36 bbls. of corn @ $2.00 "			60	21370

Second

In the dwelling No.
270 Bute Street, Norfolk.

4 fine lace curtains and rods		8	
2 parlor rugs		3	
2 easels		1	
1 Cabinet		250	
1 Clock		2	
1 extension dining table		12	
1 Cooking Stove		10	
2 window shades in chamber		25	3875
			25245

The valuation at the above figures of all of said property in the dwelling house No. 270 Bute Street in Norfolk was made by

the said Helen M. Brinkley, Joseph F. DeBerry, and the undersigned; that in the possession of said Wm. H. Brinkley was valued by said Joseph F. DeBerry and the undersigned: and that as said farm was valued by said Jesse W. Brinkley, Joseph F. DeBerry and the undersigned.

Respectfully submitted this 7th. day of February 1899.

A. J. Bagley
Sheriff and Receiver.

Tygert-Allen Fert. Co.

vs. } In Chy

Brinkley & al.

Report of Alex. H. Baker, Shff and Receiver under decree of 3d. Feby. 1899

Circuit Court of Nansemond County in vacation, on the 3rd day of February 1899.

The Pigert-Allen Fertilizer Company (a corporation), Complainant

Against } In Chancery.

Helen M. Brinkley, Jesse W. Brinkley, her husband, William H. Brinkley, William A. Bruce and Edward C. Holland, Trustee, and George C. Reid and Robert L. Upshur, partners doing business under the name and style of The Norfolk Fertilizing Company, Defendants.

This cause regularly matured and set for hearing at Rules came on this day, in vacation, to be heard on the Complainant's Bill taken for confessed as to the defendants, William A. Bruce and Edward C. Holland, Trustee, upon whom process had been duly served, and they still failing to appear and plead, answer and demur to said Bill; on the exhibits filed with said Bill; on the joint and separate demurrers and the

~~and the~~ joint and separate answers of the defendants, Helen M. Brinkley and Jesse W. Brinkley, her husband, this day filed on their motion and by leave ~~of the Court~~ granted them; on the answer of the defendant, William H. Brinkley; on the joint and separate demurrers and the joint and separate answers of the defendants, George C. Reid and Robert L. Upshur, partners doing business under the name and style of The Norfolk Fertilizing Company, heretofore filed on their motion and by leave ~~of the Court~~ granted them; on the Petition of said George C. Reid and Robert L. Upshur partners doing business as aforesaid, heretofore filed, with the exhibit "A" therein mentioned, on their motion and by leave granted them; and on the examinations of witnesses with the exhibits therewith filed, with the joinder of the complainant in said demurrers and its general replications to said answers, and was argued by counsel.

An consideration whereof, it is adjudged, ordered and decreed that said demurrers be over-ruled, ~~and order and decree that the Complainant The Tygert Allen Fertilizer Company recover against the defendants, Jesse W. Brinkley and Helen M. Brinkley, the sum of One thousand and ninety five dollars and fourteen cents the debt in said Bill mentioned, with interest on one thousand and fifty-seven dollars and ninety seven cents, part thereof, from the first day of July 1895 till paid, and its costs by it about its suit in this behalf expended~~

And it appearing from the papers herein that the deed of bargain and sale mentioned in said Bill, made on the third day of December 1896 by said Jesse W. Brinkley and Helen M. Brinkley his wife to their son William J. Brinkley (a copy of which deed is filed with said Bill and marked "Exhibit C") ~~conveyed~~ so far as it undertakes to convey the personal property therein described to said Son the ~~such personal~~ property therein mentioned (a

~~copy of which deed is filed with said Bill and marked "Exhibit C"~~), was made without consideration deemed valuable in law and with intent on the part of the said Jesse W. Brinkley and Helen M. Brinkley, his wife, to delay, hinder and defraud the Complainant, the said The Pygert-Allen Fertilizer Company and from that to which it was and is entitled to wit, the ~~said~~ sum of money due it as alleged in said Bill with notice on the part of said William H. Brinkley of such fraudulent intent, it is, therefore, adjudged, ordered and decreed that said deed ~~so far as it conveys such personal property, but no further~~ is void and that it be cancelled annulled and set aside as to said Complainant ~~as to such personal estate~~.

~~And~~ It also appearing that the parcel of land mentioned and described in said deed was inherited by said Helen M. Brinkley from her father and uncle prior to the enactment

of any statutes regulating and defining the character of the estates of married women in Virginia, and fixing the liability of such estates for the debts of such women, and that said land is subject only to the rules of the common law governing the estates of married women prior to the enactment of such statutes, it is therefore adjudged, ordered and decreed that said deed is valid so far as it affects such land, and that such land ~~deed~~ can not be subjected to the satisfaction of, and is in no wise liable for, the indebtedness of said Helen M. Brickley ~~aforesaid~~ by virtue of the contracts made by her as alleged in said Bill ~~which said judgment is founded~~.

But It also appearing that ~~certain~~ such personal property was conveyed by said deed and that such property is liable for, and may be subjected to the satisfaction of the debt and the Complainant as claimed in said Bill ~~debt aforesaid~~, it is adjudged, ordered, and decreed

that Alexander H. Baker, Sheriff of Nansemond County, (who is hereby appointed Receiver for that purpose), do receive and take into his custody ~~and hold until the further order of Court,~~ and possession the personal property aforesaid and make an inventory ~~and appraisement~~ thereof, and return the same with his report which he will make to court of his transactions hereunder, and sell the same as if it were a sale under an execution of fieri facias (except such part thereof as is exempt under the poor debtor's exemption law), ~~for cash~~ unless the debt of the complainant shall be paid within sixty days from this date.-

Robert Lewis.

To the Clerk of the
Circuit Court of
Nansemond County.-

The Tygert-Allen Fert. Co.
vs. } In Chy.
Brinkley & al.

Circuit Court of Crawford County, to wit:
In Vacation
3rd Feby. 1899
Decree
To be entered

Robert E. Davis.

Entered in Chancery Order Book No 3. Page 192.

In the Circuit Court of Nansemond County, in vacation, on the 3rd. day of November, 1898.—
The Pygnt. Aller Fertilizer Co.

v

Helen M. Buckley and others.

In vacation, on the 4th day of November, 1898

On the motion of George C. Reid and Robt L. Upshur, partners doing business under the name and style of The Norfolk Fertilizing Company, by their Attorneys they are allowed to file their petition in this cause to be made defendants, and are thereupon made defendants therein: and upon the like motion of the said defendants, they are allowed to file their demurrer and answer in said cause, which is accordingly done.

Robert R. Prentis.

To the Clerk, ~~Standard~~.
of the Circuit Court of
Nansemond County.—

Tygert - Allen Fertilizer
Co.
v
Brinkley Tolbert.

Order allowing de-
murrer Ransom to
be filed.

Entered Nov. 3, 1898

Robert R. Hawkins

Entered in Chancery
Order Book No 3
Page 180—

The Tygert-Allen Fertilizer Company (a Corporation)

Against } In Chancery

Helen M. Brinkley, Jesse W. Brinkley, her husband, William H. Brinkley, William A. Bruce, and Edward E. Holland, Trustee

With the consent of parties, here entered of record, it is ordered that this cause may be submitted to the Judge of this court for such decision and decree herein in vacation as might be made in term

The Pygert-Allen
Fertilizer Company

vs. } In Chy.

Brinkley et al.

In the Circuit
Court for the County
of Nansemond
April 1898

Order
To be entered

We consent to this order.
W. J. Kilby. Atty. for Plaintiff
E. E. Holland Master
E. E. Everett Atty for ~~Brinkley~~ Jesse W. Allen Jr. + W. H. Brinkley
~~Wade~~ Does also for
Norfolk Publishing Co.

1. Why should there be a decree against Mr. Arthur Brinkley for the debts claimed £1095. 14, interest & costs., especially against Mrs. Brinkley, who is a married woman, who is not charged in the bill with having any separate estate, and is not shown in the proceedings to have any such estate.

The statute, Acts 1893-4, p. 614, provides that if the gift &c. be declared void, the court may make a decree against the debtor &c. for the amount of such claim or for the balance due thereon after applying thereto the share of the proceeds of sale of the estate &c.

Before this statute, this power was doubtful, although it was frequently exercised, to prevent a multiplicity of suits, but as I understand it, the court can give judgment for only the balance of the debt after applying in this suit the proceeds of sale of the property, the deed for which has been set aside.

But I do not think any decree in any case can be entered against Mrs. Brinkley or the debts mentioned, because of her coverture, and certainly, if the proceeds of the sale of the personal property are applied to the debts, even assuming that a part of that property was held by her as a separate estate, then all of that estate which could possibly be

subjected to the payment of the debts, which have been applied, and there can be no further claims or demands against her or the notes signed by her.

I think therefore the decree should be against Mrs L. M. Brinkley only for the balance of the debts after crediting the proceeds of sale of the personal property.

2. I think the decree should not charge Mrs. Brinkley as having committed fraud with her husband. See Wm & Mary College vs Powell, 12 Gratt. 372 - read p. 387 - Taylor vs Moore, 2 Ran. 563, p. 580. my idea is about this:

"And the Court being of opinion that the conveyance made on the 3rd day of December, 1896 &c. — so far as the personal property conveyed by said deed is concerned was made with the intent on the part of the said Jesse W. Brinkley delay, hinder and defraud the plaintiff, the Court doth adjudge, order and decree &c - canceling said deed and directing the Sheriff's taking possession, and so much of the provisions about the Sheriff's taking possession, and so much of the decree as directs the sale of the personal property.

And being further of opinion that the said deed, so far as the real estate thereby conveyed is concerned, is a conveyance of a tract of land which was inherited by the said Helen M. Brinkley prior to the enactment of any statutes in this State providing ~~for that~~ separate estates of married women, and is held by her as her Common law estate, the Court doth further adjudge, and decree that the said real estate cannot be subjected to the ~~debt~~ Claim of the plaintiff, and that the conveyance of the said real estate in said deed be unaffected by this decree.

Demurrer to bill.

GROUNDS FOR DEMURRER and
AUTHORITIES.

First read the bill stating the amount of indebtedness.
A demurrer must lie because no where in the bill it is avered that she was made competent by the statute to make the contract.
The bill states that the notes mentioned in the bill were signed by Mrs. Brinkley, the then wife of Mr. Brinkley , but does not aver the existence of facts showing that she had the right or power to make such a contract.
The common law as to the disabilities of married women to make contracts remains in full force in Va. except so far as it has been modified by the statute. In order to maintain an action on a contract made by a woman during coverture under her statutory power to contract, it is necessary for the bill or declaration to aver that her contract was such a one that she had power to make under the statute.
It also states that she intended to charge her separate estate when she signed the notes.
At Common law a married woman could not contract and charge her estate if she can charge her estate now it must be stated in the bill.
AUTHORITIES.--
McDonald and wife v. Hurst, Purnell & Co .
86 Va. 885
Where a bill against husband and wife to subject her separate estate to judgments against them, fails to charge that, at the time she signed the notes whereon the judgments were had, she had separate property, and that she signed them with the intent, expressed or implied, to charge it, held, a demurrer lies.
Duval and Wife v. Chelf & Co.
92 Va. 489. Va. L. R. No. April, '96
In an action against a married woman and husband upon a contract made by them made during coveture in the year, 1886, where it appears upon the face of the declaration shall aver not only that the wife made the contract sued on, but also to aver such a state of facts as will show that her promise was such a one that as by the statute she had the power to make.

Va. Law Register
April 1886 page 885 - Duval
Nov. 1898 page 460 Duval

Sygert-Alamo Fertilizer Co. V . Jesse W. Grinkley and others.

D. The facts of record.

a. The deed was made to W. H. Grinkley the 5th. day of Dec. 1896

b. The suit was instituted th 18th. day of Jan. 1897.

c. The deed of trust was given the 9th. Feb. 1897 and recorded Mch. 3.

2. The testimony in the case.

1. In order that the deed might be set aside there must be an intent on the part of J. W. Grinkley and wife to defraud and delay theircreditors.
2. The purchaser must have notice of thatIntent and actually participate in the fraud..
3. He must have paid the purchase money before he has notice of the fraud.

The law as to the admissibility
Point First. Intel. P. 1.

As to the Intent of Mr. and Mrs Grinkley.

The conversation that S. E. Everett had with Mr. J. W. Grinkle.

See the statement marked No. 1.

Mr. Jesse W. Grinkley's testimony.

See the statements marked No. 1. Page 34,35, 36,37, 38, 69, 70, to x. 71, 73, to x on 74,75, 78, 80, 81,

The conversation that he had with Geo. T. Rawles

See the statement marked No. 1.

Conversation that he had with N. L. Upshur.

See the statement marked No.1.

The intent of mrs. Grimsley

that cannot have anything to do with this deed, because she did what she had a right to do by law and no Court can set this deed aside as to her. Clark's Seperate Estates, page 4. 4

At law the wife could not bind either herself or her property. Her contracts were simply void.

Page 81. It should be observed that the capacity to contract is only excluded to married women who have a separate estate. The common law disability is not entirely removed, and it believed that the contracts of married women who have a separate estate at the time the contract is made are still void as at commonlaw, unless, perhaps, a contract for the acquisition of a separate estate may be deemed an exception. 76 Va. 390, 85 Va. 240:

As to the communications made to her by her husband. These cannot be disclosed. See my Legal notes three and four. (No 1)

12 Grant 372-84

As to the intent of Mr. William H. Brinkley.

See statement marked No. 1.

pages 29.30,31.32.33. 34, 45,50 and cross examination on torough.

This and the testimony of the witness.

Recapitulation of the law and facts

1. There was a fair and adequate consideration.

11 Grat. 32.

It is not the consideration, but the intent with which a conveyance is made, that makes it good or bad as against creditors.

page 33. If made for a valuable and adequate consideration consideration, there can be no presumption against the fairness of the transaction, and there must be satisfactory evidence of the fraudulent intent.

80 Va. 103.

Where the grantee has denied that he had notice of fraud and denied that he participated in it on oath, it cannot be held that his denial is overcome by mere circumstances of suspicion against him.

76 Va. 218.

A debtor may satisfy or secure one creditor in preference to another, and a creditor may take payment or security for his debts, though he may

now that to repy other creditors may ll se their debts.
In same case, page 273. To Waterbury v Sturtevant, 18 wend. N. P.353
t was held thata debtor has an unquestionable right to prefer one
creditor to another or set of creditors to amount. In that two days after
a verdict against the debtor for $5000.00, but before judgment, he sold and
conveyed his real estate to his father, in satisfaction to a bona fide
debtor owed him. It was held by a majority of the court that if the debt
of the father was bone fide, and real estate was conveyed at it fair
value, although the grantor intended to prevent the lien of the anticipated
judgment, and to give his father a preference as a creditor the conveyance
was valid.
65 am. St. Rept. 550. and note page 553.

A creditor may receive payment of an honest debt or property of his insolvent debtor, although he may know at the time that debtor's intent in making the payment is, and the necessary effect of his taking the property will be to place the property beyond the reach of other creditors.
34 Am. St. Rept. 390.

When preference is given by an insolvent debtor to one or more creditors who receives goods in satisfaction of a bona fide debts, actual participation in the fraud is necessary to render the acceptance of the goods fraudulent. Knowle is not sufficient.

He has endorsed notes and he would be left without property to pay them if this property was taken away from him.

$3000 00/11

Suffolk, Va., Dec 31st 1896

On Demand ~~days after date~~ I promise to pay unto J. W. Brinkley and Helen Br. Brinkley, or order, negotiable and payable without offset, at the FARMERS BANK OF NANSEMOND Suffolk, Virginia, Three Thousand Dollars, for value received; and it is agreed upon by the parties that the interest on this Note shall be payable in advance; and we, principal and endorsers, hereby waive the benefit of our Homestead Exemption as to this debt

Credit the Maker:

W. W. Brinkley

2-22-96-10m

Jan. 1894.
Paid $763.83
J. W. Barkley

(Note 1) page 1.

Hygert-Allen Fertilizer Co. v. Brinkley and others.

Whether the evidence of Geo. T. Rawles and R. E. Everett is admissible to show the intent of the parties of the deed. They are declarations made by Mr. Brinkley and Mrs. Brinkley at the time the deed was made and signed.

It is objected to on the grounds of hearsay.

Greenleaf on Evidence, Sec. 108.

Res gestae. There are other declarations which are admitted as original evidence, being distinguished from hearsay by their connection with the principle facts under investigation. The principle points of allegation are, whether the circumstances and declarations offered in proof were contemporaneous with the main fact under investigation, and whether they were so connected with it as to illustrate its character. See also the notes to this sec.

Sec. 53. Exception to hearsay. These are cases in which the knowledge or intent of the party is a material fact. Note 3.

Roscoe Crim. Evidence. Sec. 99

Whenever the intent of the intent of the party forms a part of the matter in issue, upon the pleadings, evidence may be given of other acts not in issue, provided they tend to establish the intent of the party in doing the acts in question.

27 Gratt. 921.

Statements of prisoner just after the homicide are admissible in his favor.

The husband and Wife testifying for and against eachother.

McKelvey on Evidence page. 288.

Confidencial communications cannot be disclosed.

Greenleaf on Evidence Sec. 334. and Gilmore's notes 175. Sec. 329 A. Ev.

Fraudulent conveyances continued. Allen v. Brinkley.

Husband and wife testifying for and against each other.

Acts '97-'98.

The husband and wife can testify for and against each other in all civil cases, except in two cases, and this is one of the cases. The husband and wife neither shall be competent to testify for or against each other in any proceedings by a creditor to avoid or impeach any conveyance, gift, or sale from one to the other on the ground of fraud or consideration.

Same page 754.

Neither husband nor wife shall, without the consent of the other, be examined in any case as to any communication made by one to the other while married, nor shall either of them be permitted, without such consent, to reveal in testimony after the marrixage relations ceases any such communication made while the marriage subsisted: x x

This Deed, Made this 3rd day of December, in the year one thousand eight hundred and ninety six, between Jesse W. Brinkley and Helen M. his wife, of Nansemond County, Virginia of the first part, and W. H. Brinkley of Norfolk County Virginia of the second part- Witnesseth: That in consideration of the sum of Three Thousand ($3000-00) Dollars, the said Jesse W. Brinkley and Helen M. Brinkley, his wife doth grant unto the said W. H. Brinkley with General Warranty, "all that certain tract of land in Sleepy Hole District in Nansemond County, Virginia, containing fifty (50) acres, more or less, and bounded and described as follows, to-wit: On the North and West by the Nansemond River; on the South by the lands of Thos. R. Gaskins; and on the East by the lands of Willis J. Lee:" subject to a Deed of Trust, dated the 13th day of November, 1891, to secure a certain bond payable to W. A. Bruce and executed by the said Jesse W. Brinkley and also all personal property of the

said J. H. and Helen M. Brinkley;
1st. All personal property on the above named farm including two buggies, one bay mare, three mules, all farming implements and hot-bed sash now on the premises, all corn and forage, all oysters and shells on the flats belonging to the said farm, and all household and kitchen furniture now in the house on said farm.
2nd. All household and kitchen furniture in the residence in the city of Norfolk, Virginia, occupied by the said J. H. and Helen Brinkley, including all beds, bedsteads, pictures, clocks, chairs, sofas, bureaux, wardrobes, carpets, curtains, and piano; all stoves, safes, all crockery, and china and silver ware, and it is distinctly understood that this deed is to convey all personal property now owned by the said Jesse H. Brinkley and Helen M. Brinkley. The said Jesse H. Brinkley and Helen M. Brinkley covenant that they have the right to convey the said land and personal property to the grantee;

that they have done no act to encumber the said land and personal property; that the grantee shall have quiet possession of the said land and personal property free from all encumbrances, and that they, the said parties of the first part, will execute such further assurances of the said land as may be requisite.

Witness the following signatures and seals.

J. W. Brinkley (Seal)
Helen M. Brinkley (Seal)

State of Virginia, } To wit:
City of Norfolk }

I, Tazewell Taylor a Notary Public for the city aforesaid, in the State of Virginia, do certify that J. W. Brinkley and Helen M. Brinkley, his wife whose names are signed to the writing hereto annexed, bearing date the 3rd day of December, 1896, have acknowledged the same before me in my county aforesaid.

Given under my hand this 3rd day of December, 1896.

Tazewell Taylor, Notary Public.

County of Nansemond, To wit:

In the office of the Clerk of the County Court for the County of Nansemond the 19th day of December, 1896, this deed was presented, and, with the certificate annexed, admitted to record.

Teste:

A. P. Gomer Deputy
for A. R. Smith, Clerk.

A copy.
Teste: R. R. Smith Clerk

The Sygent-Allen Fertilizer Company
vs. In Chy.
Brinkley Hals.

Exhibit C.
filed with the Bill

1897 Jan. 15. Fee for this Copy 75 cents.
Paid by W. J. Kilby
R. R. Smith Clerk

This Deed made the ninth day of February in the year eighteen hundred and ninety seven between W. H Bunkley of the City of Norfolk in the State of Virginia of the one part and S. E Everett of the Town of Suffolk in the State of Virginia of the other part

Witnesseth that the said W.H. Bunkley doth grant unto the said S. E Everett the following property to wit: That certain tract of land which was conveyed to the said W.H Bunkley by Jesse H. Bunkley and Helen M his wife by their deed dated the 3rd day of December 1896 and duly of record in the Clerks office of the County Court of Nansemond County in which said deed the said property is bounded and described as follows to wit:

All that certain tract of land in Sleepy Hole District of Nansemond County Virginia containing fifty (50) acres more or less, and bounded and described as follows to wit; on the north and west by the Nansemond River

on the south by the lands of Thomas R. Gaskins and on the east by the lands of Willis J. Lee subject to a deed of trust dated the 13th day of November 1891 to secure a certain bond payable to H. A Bruce and executed by the said Jesse H. Brinkley

Second To secure the payment of two notes as follows / a note for the sum of fifteen hundred and seventy two dollars and sixty eight cents made by Jesse H. Brinkley and Helen M Brinkley his wife bearing date on August 1. 1896 payable to the Norfolk Fertilizing Company at the Citizens Bank of Norfolk Va on July 10 th 1897 with interest thereon from July 10th 1896 and containing a waiver of the homestead exemption

2. a note dated even with this deed for the sum of six hundred dollars made by the said H H Brinkley payable to the said Norfolk Fertilizing Company at the Citizens Bank of Norfolk Va on July 1st 1897 and containing a waiver of the homestead exemption

and upon the further trust the said W S Bunting shall remain in quiet and peaceable possession of the above granted and described premises and take the profits thereof to his own use until default be made in the payment of the notes aforesaid in whole or in part and upon such default ~~having~~ being made the said trustee shall as soon thereafter as he shall be requested by the said Norfolk Fertilizing Company so to do sell the above granted property at public auction at such time and place and upon such terms and conditions as he may deem expedient having first given notice of such time and place of sale for at least ten days by advertisement in one or more newspapers published in the city of Norfolk and out of the proceeds of such sale after paying all the expenses attending the execution of this trust including commissions on said proceeds of sale to the said

trustee shall pay to the Norfolk Fertilizing Company the notes aforesaid with interest thereon or so much thereof as may remain unpaid and the balance if any to the said Lostbenkley or his assigns.

And the said H. H Brinkley covenants that he will during the continuance of this lease and at his own proper costs and charges keep insured the buildings upon the aforesaid tract of land against casualties by fire in some good insurance company in a sum not less than one thousand dollars and assign the policy of insurance thereof to the said trustee who shall hold the same as additional security for the payment of the debt aforesaid and that if the said H. H Brinkley shall fail to keep the said buildings insured as aforesaid then the trustee may cause the same to be insured

at the expense of the said W.H Binkley and the premium of such insurance shall if not paid by the said grantor, upon the request be a charge upon the trust property aforesaid.

The said H. H Binkley covenants that he will warrant generally the property hereby conveyed. and will pay all taxes liens and assessments upon said property so long as he or his assigns shall hold the same. And the said grantor hereby waives the benefit of his homestead exemption as to the aforesaid debt and obligation and as to this contract.

Witness the following signature and seal

H. H Binkley (Seal)

City of Norfolk, to wit:

I. Edward Burkenmeyer a notary Public for the city of Norfolk in the state of Virginia do certify that H. H Binkley whose name is signed to the writing hereto annexed bearing date on the 9th day of February

in the year 1897 has acknowledged the same before me in my city aforesaid.

Given under my hand this first day of March A D 1897.

Edward Buckingham
Notary Public

In the Clerks office of Nansemond County ~~County~~ Court the 3rd day of March 1897 This Deed was presented with the certificate annexed and admitted to record.

Teste: A.P. Gomer Deputy
for R. R. Smith Clerk.

A Copy
Teste: R. R. Smith Clerk

W. H. Binkley

To } Deed of Trust

S. E. Everett
trustee for
Norfork Fert Co

Exhibit A.
filed with the
Petition of The
Norfolk Fertil-
izing Company.

A Copy

Recorded in
DB 39 Page 240

12149

July 18

$646 45/100

719 C3719

Norfolk, Va. Aug 19th 1893

On July 15th 1894 days after date we promise to pay to the order of The Tyger-River Fertilizer Co.

Six Hundred Forty Six 45/100 Dollars

at the Norfolk National Bank Norfolk Va

without defalcation for value received, and we maker and endorser, do hereby waive the benefit of our Homestead Exemption as to this debt. Nelson Vk Brinkley

No. 3079 Due July 15/18th 1894 J. W. Brinkley

Wesley R. Hosier, Stationer, Norfolk, Va.

July 18

Exhibit A.

$411 92/100

Norfolk July 18th 1894

On July 1st 1895 after date we or either of us promise to pay to the order of **The Tygert-Allen Fertilizer Co.,**

Four Hundred & Eleven 92/100 Dollars,

at the Norfolk National Bank.

994 7/4 504

without defaleation, for value received. And we, maker and endorser, do hereby waive the benefit of our Homestead Exemption as to this debt. And it is agreed upon by the parties, that the interest on this Note be at the rate of per centum per annum.

No. 4130 Due July 1st 1895

J. W. Brinkley

Helen M. Brinkley

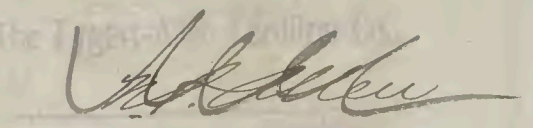

Exhibit "B."

Jesse W. Brinkley
and Helen M. Brinkley
To
The Tygert-Allen Fert. Co. Dr.

1893 Aug. 19	To Principal of note due 15 July 1894		64645
	" Int. on $646.45 from 15 July 1894 to 1 July 1895 - 11 m. 15 ds.		3717
			68362
1894 July 10	To Principal of note due 1 July 1895		41152
	Amount due 1 July 1895 with interest on $1057.97 part thereof from 1 July 1895 till paid		109514

In the Circuit Court of Nansemond County.
The Tygart-Allen Publishing Co.

vs

Helen M. Brinkley and others.

To the Hon. R. R. Prentis, Judge of said Court.

The petition of Geo. C. Reid and Robert L. Upshaw, partners doing business under the name and style of The Norfolk Publishing Co. respectfully sheweth unto your Honour:

That the above named, The Tygart-Allen Publishing Co. on Feb. 15. 1897, at Rules then held, filed its bill in this Hon. Court against Helen M. Brinkley and Jesse W. Brinkley her husband, Hon. H. Brinkley, Hon. R. Bruce and E. E. Holland, trustee, setting forth &c. (Here copy the bill & the prayer), and praying &c. (Here set forth the prayer): and on March 1. 1897, at Rules then held, the said cause was set for hearing: and since that time the defendants Helen M. Brinkley and Jesse W. Brinkley have filed their joint and separate demurrer and also their answer, and the said W. H. Brinkley has filed his separate answer, and certain depositions have been taken, but said cause is yet undetermined.

Your petitioners respectfully represent that on February 9. 1897 the said Hon. H. Brinkley conveyed to E. E. Everett, trustee, the land in the said bill described and set forth, in order to secure to your petitioners two notes, one

for the sum of $15.72.68, and the other for the sum of $600 - which said deeds were duly recorded on March 3. 1897 therein described, - a copy of which said deeds with bills, marked Exhibit A on a part of this petition.

Your petitioners say that they are interested therein in the subject matter of the said suit; and pray that they may be made parties thereto and be allowed to appear and make defence thereto.

And your petitioners will ever pray &c.

The Norfolk Publishing Co.

by Wallace Old,

its attorneys.

Tyger-Allen Fertilizer Co.

v

Brinkley Holmes.

Petition of Norfolk

Fertilizer Co.

VIRGINIA,

Circuit Court of Nansemond County To wit:

TYGART. ALLEN FERTILIZER CO

Against

Brinkley and others

The depositions of Geo T. Rawles and others taken at the times and places mentioned herein to be read as evidence on behalf of the defendants in the Chancery suit of the Tygert. Allen Fertilizer Co against Helen M. Brinkley and others, pending in the Circuit court for the County of Nansemond.

Present as stated herein,

W.J. Kilby Counsel for Plaintiff,

S.E. Everett and E.E. Holland Counsel for defendants

The defendants having called Geo T. Rawles to testify in their behalf and having had him sworn, counsel for plaintiff objects to his testimony for the reason that the said Rawles knows nothing of his own knowledge concerning the matters in dispute, in this suit, that what he knows is purely from hearsay and what he proposes to state is a mere matter of opinion surmised, ~~suspicioned~~ supposition and hearsay on his part.

The plaintiff therefore objects both to the compitency of the witness and the legality of his testimony, and asks that said testimony be not considered

Geo T. Rawles called and sworn in behalf of defendant * * * * * * * *

State your name, age, residence and occupation

A George T. Rawles, Nansemond county, Va, farmer

Q 2 Do you reside near J.W. Brinkley?
A Yes

Q 3 Were you present or not when J.W. Brinkley gave instructions to his attorney to prepare a deed conveying his property to his son, W.H. Brinkley

A Yes, I came with him and the consideration mentioned in the deed was $3000, subject to a deed of trust of about $1600 or $1700

Q 4 State what you think is a fair consideration for the property conveyed

A I know but little of the property in Norfolk but consider the farm in Nansemond county is worth $3000, and the chattle property is worth about $500

Q 5 Do you think that the amount that it was sold for is a fair consideration or not.

A I think it was.

Q 6 You said that you were in the office when Mr Brinkley gave instructions for his Attorney to prepare a deed from himself and wife, conveying his property to his son, please state why you were there

A Mr Brinkley was talking to me about it, but don't remember, but I came with him and he ask his attorney to read the law to him as he did not want to defraud any one. I think that I stated the case to the lawyer, myself.

Q 6 If you stated the case to the attorney did you do it at the request of Mr Brinkley, as you and he had been talking it over?

A yes

Q 7 State in full your understanding as to why the transfer was made?

A Mr Brinkley said that he owed his son, Willie and that he owed the Norfolk Fertilizer Co, and that he wanted to secure them, so he made a bonafide sale to Willie, with the understanding that he, W.H. Brinkley would secure the Norfolk Fertilizer Co

Mr J.W. Brinkley had to make some arrangements to pay his debts so he sold to his son Willie, so as to secure the Norfolk Fertilizer Co

Q 9 How was W.H. Brinkley to secure the Norfolk Fertilizer Co

A I think that he was to give them a lien on the farm

Q 10 Do you know whether the Norfolk Fertilizer Co was making Mr J.W. Brinkley any advances about that time

A Yes, they were furnishing him, had been and are still furnishing him with fertilizers

Q 11 Do you know whether any other firm was furnishing him at the time

A I don't know positively, but think that some other firm was furnishing him at the time but don't know the firm or the amount furnished

Q 12 Was the Tygert-Aleen Fertilizer Co furnishing him at the time

A I don't think that they were at that time.

Q 13 Do you know that Mr J.W. Brinkley owed the Norfolk Fertilizer Co at the time the deed was written and acknowledged

A Yes, Mr Brinkley told me all about it while on the way to get his attorney to write the deed

Q 14 State if you know why this deed was prepared, at this time, conveying his property to his son, W.H. Brinkley

A The Tygert-Allen Fertilizer was pushing Mr Brinkley for money and from what he stated to me, they, the Tygert-Allen Fertilizer Co wanted Mr Brinkley to give them a mortgage, but Mr Brinkley, owing Norfolk Fertilizer Co and his son, so if any one was to be prefered he had rather prefer the Norfolk Fertilizer Co and his son first

Q 15 Do you think it was his intention to fraud the Tygert-Allen Fertilizer out of anything?

A No, surely not.

Q 16 Why was it that he wanted to secure the Norfolk Fertilizer Co and not the Tygert-Aleen Co

A Because they would furnish him with what he wanted to go ahead with.

Q 17 Then he sold to Willie with the understanding that it was an absolute sale and that Willie was to become responsible for the debt he, J.W. Brinkley owed the Norfolk Fertilizer Co, and when he had paid said debts the property was W.H. Brinkley's. Ans. And the way I understood It was Willie's and he could sell or do whatever he chose with it

Q 18 Do you think that J.W. Brinkley would have conveyed to his son W.H. Brinkley if he, W.H. Brinkley had not agreed to pay these debts?

A No sir, I do not. What I have said in my deposition above was derived from Mr. Jesse W. Brinkley and conversations with him,

And further this deponent saith not.

Geo T. Rawles

VIRGINIA,

Nansemond County To wit:

I, J. Walter Hosier, a Notary Public in and for the county and state aforesaid do certify that the foregoing depositions of George T. Rawles were duly taken before at the office of E.E. Everett in Suffolk Va, pursuant to an agreement entered into between Judge W.J. Kilby and the said E.E. Everett. That these depositions were taken in the afternoon of Sept 30th.

Given under my hand this 30th of Sept, 1898

J. Walter Hosier

Notary Public.

/

R. L. Upsur being duly sworn deposeth and says as follows:

Q 1 What is your name, age, residence and occupation?

A R. L. Upsur, 35, Norfolk Va, manager of Norfolk Fertilizer Co

Q 2 Do you know J. W. Brinkley?

A Yes

Q 3 Do you know W. H. Brinkley

A Yes

Q 4 What has been you business connection with them, if any

A I have sold them fertilizer for the past two years.

Q 5 Mr J. W. Brinkley and wife made a deed to their son, W. H. Brinkley for a consideration, conveying all their property, personal and real to their son, W. H. Brinkley, if you know anything about this transfer state the whole of it.

A J. W. Brinkley came in to see us in reference to his bill and said that he was in an awkward position and that he had to get advances in fertilizers for 1897 and before doing so he said that the Tygert-Allen Fertilizer Co was pressing him for the amount due them and that if we would furnish him, that the present debt, or the debt then owing us, that he would secure us. He also stated that it was not his purpose to get out of paying what he owed to the Tygert-Allen Fertilizer co, but that he was not able to pay them, and that he would have to arrange with some one for supplies for another year. We agreed to make such an arrangement with him.

Counsel for plaintiff objects to the answer of the witness, on the grou ds that it is hearsay testimony, as to the questions involved in this case***

Q 7 Did you know before the deed was written, conveying the property to W. H. Brinkley, that it was to be done? If it was, state the purpose, if you know

A J. W. Brinkley told me that it was to be done for a certain consideration, and one consideration was that he was to accept a debt of

$1500, or thereabouts and the expenses of supplies of 1897. This deed included two notes, one of $1500 and one of $600, so far as I remember but can refer to my books and give the exact amount

***** Question and answer objected to by plaintiff as irrelevant and hearsay***

Q The $1500 and $600 was to be included in a deed, what deed had you reference to?

A A deed W.H. Brinkley gave to us, assuming the $1500 debt and $600 for supplies for 1897. On the strength of that deed we furnished supplies to him amounting to about $600.

Q When the deed was made by J.W. Brinkley and wife, conveying their entire property to W.H. Brinkley did you know then that W.H. Brinkley was to assume these debts?

A Yes, I did

Q Did he assume the debts or not?

*** Question objected to by Plaintiff as leading***

A Yes, he assumed all the indebtedness and we transfered the accounts from J.W. Brinkley to W.H. Brinkley

Q ~~To whom~~ ********** Answer objected to*********

Q To whom do you look ~~to~~ for a settlement of these accounts?

******** Question and any answer thereto objected to by Plaintiff, for reasons stated above****

A To W.H. Brinkley

Q State what time this first deed was written conveying the property to W.H. Brinkley

A I don't know, but it was about three years ago

Q Do you remember when the deed of trust was given by W.H. Brinkley ~~was given~~ to secure the Norfolk Fertilizing Co ~~to secure~~ the amounts above

A About Aug or Sept, three years ago, but I can tell by looking up the deeds

Q Was the deed of trust and the deed of bargain and sale written at the same time, or not

A I don't remember

Q Is the deed of trust on record?

A Yes

***** Counsel for defendants here gives notice that the deed of trust will be filed as evidence****

Q Please state, if you know, whether or not J.W. Brinkley agreed to convey this property to his son and W.H. Brinkley to assume J.W. Brinkley's indebtedness to your Company as a part consideration to said deed before the suit of the Tygart-Allen Fertilizer Co was instituted, and if so was the deed of trust afterwards made by W.H. Brinkley in execution of that agreement?

** Question objected to, as leading***

A It was my understanding, that it was before, as he told me that they were about to bring suit against him and that he would prefer us if we would furnish him, and we agreed to furnish him, and he did make the deed of trust afterwards and as soon as it was done we sent him the goods.

*** Answer objected to***

CROSS EXAMINATION by Counsel for Plaintiff**********

Q 1 You have stated that J.W. Brinkley made the deed of bargain and sale, filed as exhibit "C" with the bill in this case, to his son with the understanding that he, W.H. Brinkley was to assume the indebtedness of J.W. Brinkley, to your Company, and that after W.H. Brinkley got title to the property he, W.H. Brinkley was to secure your Company the amount due your Company, by J.W. Brinkley, please state why this round-about course was pursued by J.W. Brinkley and wife, to secure J.W. Brinkley's indebtedness to your Company?

Why did not J.W. Brinkley and wife make a deed of trust, themselves to secure your Company

A I don't know the reason, but he told me that he owed his son some money and did not have the cash to pay him

Q Then you say that J.W. Brinkley told you that he, J.W. Brinkley owed his son money and either proposed to make or had made the said deed to his son, by way of settling that indebtedness?

A He did not say that he made that deed for that purpose but it is natural to suppose he did.

Q Did Mr J.W. Brinkley state what his indebtedness to his son was

A He did not state and I did not ask him

Q What property was conveyed from the Father to the Son?

***** Question objected to, because the deed is the best answer***

A It was the property on which we now hold a deed of trust from W.H. Brinkley

Q Is that property realestate or personal property

A I suppose it would be called realestate, I mean land

Q When J.W. Brinkley proposed to secure you through his son, had this suit been brought?

A No, not to my knowledge

Q Was it not a fact that the making of the deed of trust that you hold an afterthought of J.W. Brinkley and wife, after this suit had been brought and a scheme concocted by him to find a valuable consideration to defeit this suit which you have stated that J.W. Brinkley told you, the Plaintiff had brought or was about to bring against him.

A I cannot say that it was an afterthought on the part of J.W. Brinkley, for I have the uttermost confidence in J.W. Brnkley and to the best of my knowledge all of his transactions were fair and square, with us. If there was nay intention of Mr Brinkley to defeit or delay his settlement with the Tygert-Allen Fertilizer Co, I don't know it, but to the contrary, stated that it was his purpose to pay them as soon as possible.

Q Wh owned the property conveyed by J.W. Brinkley and wife to their son, Mr Brinkley or wife?

A It belonged to his, wife I understood

Q Did I understand you to say just now that you did not know Mrs. Brinkley and had never seen her

A I don't know her

Q Did you or any member of your company ever have any conversation with her as to the transactions you have related or have any agreement with her in connection therewith?

A I did not and don't know whether any other member of the Company did or not

Q Did you ever have any conversation with her with reference to her intention in making the deed from herself and husband, to her son?

A I had no conversation with her whatever, and I don't know whether any member of the firm did or not

Q When did you first make the acquaintance of W.H. Brinkley?

A Several years, I don't know how long. I suppose four or five years

Q Did you ever hear him say anything about the intention of his mother in making the deed to him?

A I did not have any conversation with him, relative to his mothers intentions

Q Do you know whether or not the deed of trust that you hold covers anything but the farm?

**** Q estion objected to because the deed is the best evidence****

A I cannot answer without I had the deed. I can answer from memory

Q Have the notes or account which you hold against W.H. Brinkley been paid?

A He has paid the $600 note and I think that he has paid all that he owes for 98 or about all for 98. He owes us still a note of $1500 or thereabouts

Q Do you know Mrs J.W.Brinkley?

A I never met her

Q Have you any other estimate of her than that of a perfect lady?

A I have not

Q If she were to say to you"that when she and her husband made the deed, herein refered to, to her son, she and her husband made it to hinder, delay and defraud their creditors, and especially the Plaintiff, and were to make that statement under oath, would you believe her?

*** Question objected to, for the reason that witness has already said that he does not know Mrs Brinkley, and can only answer the above question upon the assumption that she is a truthful woman and therefore has no reason about any statement she might make***

A I don't know her, and would have no reason to doubt her statement

Q To whom and where did you ship the fertilizer that was furnished by you, as stated?

A To J.W.Brinkley, on account of his son and so charged it on our books We shipped it to Gaskin's wharf, and to be used by J.W.Brinkley on the farm that we hold a deed of trust on

Q Who wrote the deed from the father and mother to the son?

A I don't know

Q Who wrote the deed of trust from the son to your benefit?

A I can't state positive, but think that Mr Everett did it, I refer to S.E.Everett.Mr Everett is no Attorney of ours.We wrote him a letter, giving him the amount

Q Who is your counsel in this case?

A Mr W.W.Old

Q Did I understand you to say that Mr J.W. Brinkley told you that his suit had been brought or was threatened?

A He told me that they were about to press him for the amount that he Owed them.

Q How was the amounts paid, which you say have been paid, and by whom?

A The amounts was paid by checks sent in to us by both J.W. Brinkley, W.H. Brinkley and by another son.

REDIRECT*

Have you By consent of Counsel it is agreed that a letter or copy of a letter written by your Company to Mr Everett, giving amount t of Mr Brinkleys indebtedness to your Company and secured by the deed of trust refered to may be filed as a part of the witnesses testimony. Will you furnish such copy? A. Yes,

*** Counsel for Plaintiff except to the said letter as irrevilent and as illegal testimony.

And further the deponent saith not.

R.L. Upshaw

S. E. Everett called and sworn on behalf of the defendants.

I think that the first knowledge I had of this matter was given to me by Mr. Geo. T. Rawles. He delivered to me a message from Mr. Jesse W. Brinkley. That message was concerning the trouble he was having in settling with his creditors or satisfying them at that time. I sent for Mr. Brinkley to come to see me and then we could talk it over more satisfactory. I think this was in the month of November, 1896, or possibly it might have been the latter part of Oct., 1896. He came to see me several times before the deed was written dated the 3rd . day of Dec. ,1896, conveying the property of Jesse W. Brinkley and his wife to their son, W. H. Brinkley. He told me the first time he came to see me all about his business and the people he owed at that time and spoke of the Tygert-Allen Fertilizer Co. giving him trouble at that time and did not know what to do about the matter. His whole idea and intention were to make the Tygert-Allen Fertilizer Co last if any thing had to be done .

I suggested to him to try to borrow a little money on the property and make a small payment to the Tygert-Allen Fertilizer Co and save enough to buy the necessary things that would be needed on the farm the year, 1897. Well he agreed to this and I prepared a deed of trust. He expected to borrow some money from a gentle up the county. After the paper was acknowledged the gentle refused to let him have the money.

After he could not get the money, he had to make some other arrangements.

It was then about Dec. and was getting time then to make some arrangements about his guano for the coming year and he then needed some for his fall crops. He went up to the Norfolk Fertilizer Co after this to see them about the matter. He stated the case to them. Telling them that he owed the Norfolk Fertilizer Co. , the Tygert-Allen Fertilizer Co. and his son.

Mr. Brinkley said that he did not have enough property to pay all of his debts and his son had offered him a fair price for the property and he was going to sell to him with the understanding that he was to assume the

debt that he, Jesse W. Brinkley , owed the Norfolk Fertilizer Co.

After seeing the Norfolk Fertilizing Co. Mr. Brinkley came to me and told me to write the deed conveying the property to his son. W. A. Brinkley This deed was writt en or dated the 3rd . of Dec. , 1895 6.
He said he owed his son about eight hundred dollars and his son was going to assume the debt that Mr. Jesse Brinkley owed the Norfolk Fertilizer Co.

Mr. Brinkley told me that as soon as he made his account out for his fertilizer for the year he would send or get the Norfolk Fertilizer Co. to send me the amount of his indebtedness to the Norfolk Fertilizing Co and then I could write the deed of trust. I had instructions to write the deed of trust before any suit was instituted and as far as I know before a suit was intimated except what was written in the letter of Judge Riley. That was before the first deed was written .

The deed of trust was written though after the suit was instituted, but it was written according to the agreement that Mr. Brinkley had with the Norfolk Fertilizer Co. and his son before the first deed was written.

Mr. Brinkley told me that it was not his intention to defraud or delay any one ,but he did this only to save his son first and then the Norfolk Fertilizing Co. He said at the time that he owed the Rygert-Allen Fertilizer Co. and would pay them as soon as he got able, but he preferred these others because he was dependant on them and the other guano co. had furnished him when the Rigert-Allen Fertilizer Co had left him to sink

Of course what I know about this matter is what Mr. Brinkley told me. These transfers were made and the work was don e by me and I did it as instructed to do by Mr. Jesse W. Brinkley.

I had a conversation with Mrs. Brinkley the day the deed was signed. She had the matter explained to her and she knew at the time that her son was to secure the Norfolk Fertilizing Co. and that was a part of the consideration. She said that she understood it, but di d not know much about business affairs and would leave it to her husband to attend to.

Counsel for Plaintiff ~~ex~~cepts to the foregoing depositions of S.E.Everett who is counsel for the defendants in this suit and who states that his ~~knowledge of the fact his~~ information was derived from the defendants, Jessie W. Brinkley and Helen M. Brinkley, ~~their counsel~~ his clients. This exception is made because the statement of the said Everett is purely hear say and consists of declarations in favor of his clients, which declaration of said Jessie W. Brinkley and Helen M. Brinkley, in their own intersst or favor cant be received as evidence in their behalf, otherwise the said Brinkley and wife would simply be supporting their own statements in favor of themselves by their own ~~sa~~ statement in favor of themselves. Without waving the exceptions above counsel for Plaintiff procee ds to examine the witness

Q 1 Have you the letters that I wrote to Mr Jessie W. Brinkley in the Fall of 96, with reference to the claims of the plaintiff

A I have not.

Q ~~wi~~ have you ever seen them?

A I have not

Q 3 Will you kinfly furnish the note for $3000 given by W.H. Brinkley to Mrs Brinkley as a consideration for the property conveyed by her and her husband to said W.H. Brinkley

A I will send for note and produce it at trial

Q Will you also kindly produce the note for ~~$1572xx$1x500~~ $1572.68 given by Jessie W. Brinkley and Helen M. Brinkley in August 1896 and secured by the deed of trust heretofore mentioned made by W.H. Brinkley

A I will

Q I suppose from what you have said that Mr Brinkley and wife were about to be sued or had been sued by the plaintiffs when he came to consult you

A I only understood that Jessie W. Brinkley had received letters from

attorney for plaintiff, asking for a settlement of the claims

Q Have you not as counsel for the Brinkleys offered to settle the plaintiffs claim since this suit was brought?

****** Question objected to by Attorney for Defendants, as being irrele evant*******

A I did

Q Was it not your opinion in making such offer after the deposition of the three Brinkleys had been taken that their testimony sustained the allegations of the bill in this case ind that it was to their interest to get out of this dilemma on the easiest terms possible.

****Question objected to for the same reasons stated above*****

A We made only a small offer at the time, of a compromise. I was instructed to do that by Mr Brinkley, and I did not think that the case was hopeless

Q Did you not offer to settle on a basis of a payment of from $800 to $1000

A I don't think I have ever been over $600 or $700. We offered to give a deed of trust, at one time, for, I think of $800, but after the attorney for Plaintiffs understood the way it was to be given it was refused, Such deed was to be subject to two prior deeds of trust, one in favor of W. A. Bruce for $1.500 and one in favor of the Norfolk Fertilizing Co for $2.172.68.

***** Question and answer objected to for reason satted above******

Q All offers made were refused, were they not?

A They were, but we expect to compromise soon

Q You have state in ypur examination in chief that Mrs Brinkley knew that at the time she made the deed to her son, he was to give a deed of trust on the property conveyed to him to secure the above debt to the Norfolk Fertilizing Co and that such deed of trust was a part of the consideration for the deed from her to her son.

She has stated in her deposition in this case that she knew nothing whatever about any such agreement. Please explain how it happens that you contradict her on this point?

A I don't think she has ever said or used that language in her deposition. If I have contradicted her in any of the evidence she has given in this case I am satisfied that she did not understand the question that she said "yes" and "no" to

Q If she has made the sataement refered to and upon examination you should find that she has made the statement, what explination could you make of your statement?

A My statement needs no explination and it is only true as I know it

Q Then if you and she don't agree should we prefer her statement to yours or yours to hers

***** Question objected to as being irrelevent *****

A If her answer contardicts mine I am satisfied she did not understand the Questions. A womans word is mighty good, but I think a lot of mine and I leave it to the Court

And further the deponent saith not.

T. E. Emerie

VIRGINIA,

Nansemond County To wit:

I, J. Walter Hosier, a Notary Public in and for the county and state aforesaid di certify that George T. Rawles and others that the foregoing depositions of George T. Rawles and others were duly taken before me at the time and place noted herein and by mutual consent of Counsel.

Given under my hand this 8th of Oct, 1898

J. Walter Hosier
Notary Public

T Y G A R T _ A L L E N F E R-

T I L I Z E R Co,

vs

HELEN M. BR NKLEY and others.

-0--0-*-0-*-0-*-0-*-0-*-0-*-0-*-0

-4-

The Piggott-Allen Fertelizer Company.

Against } In Chancery.

Helen M. Brinkley, Jesse W. Brinkley and others.

All matters in controversy in this cause having been settled, it is ordered, with the consent of the parties, that the cause be ~~dismissed~~ stricken from the docket.

The Tyger-Allen Fertilizer Co.
vs. } In Chy.
Brinkley Sal

In the Circuit Court for the County of Jefferson
October 12, 1899
Order
To be entered
Robert R. Prentiss

Entered in Chancery Order Book No. 3. Page 235.

In The Circuit Court of The County of Nansemond, Virginia.

The joint and separate demurrers of Jesse W. Brinkley and Helen M. Brinkley, his wife, defendants to a bill in equity, exhibited against them and others in The Circuit Court of Nansemond County by The Tygert-Allen Fertilizer Company, (a corporation.)

The defendants say that the bill is not sufficient in law.

Tygert-Allen Fert Co.

vs. } In Chy.

Brinkley & als.

Demurrers of
Jesse W. and Helen
M. Brinkley

In the Circuit Court of Nansemond Co.

The Tygart-Allen Fertilizer Co.

vs

Helen M. Brinkley and others.

The joint and several demurrer and answer of Geo. C. Reid and Robt. L. Upshaw, partners doing business under the name and style of The Norfolk Fertilizer Co. to the bill of complaint in the above entitled cause:

The said defendants say that the said bill is not sufficient in law -

And reserving all exceptions to the said bill, the said defendants answer as follows:

These defendants have no knowledge except what is alleged in the bill or shown by the evidence filed in the cause of the indebtedness of the said Helen M. Brinkley and Jesse W. Brinkley to the said plaintiff, or to the demands for the payment of said indebtedness and its non-payment.

These defendants have no knowledge of the execution of the deed from Jesse W. Brinkley and Helen M. Brinkley to the defendant W. H. Brinkley in the bill and proceedings mentioned, except that the said Jesse W. Brinkley at the time the said deed was made was indebted to these defendants in the sum of $1572.68, for which a note had been given and which was then past due, and wished some advances to be made

for growing his crops in 1897, and proposed to secure the said note for $15.72.68 and also advances to the amount of $600- if these defendants would make said advances, and afterwards the said deed to the said W. H. Brinkley was made, but as these defendants then or shortly afterwards understood, with the understanding, as a part of the consideration, that the said W. H. Brinkley would secure the said note for $15.72.68, and also the advances to be made the said Jesse W. Brinkley amounting to $600, and this was afterwards done by the execution of the deed Exhibit B. filed with the petition of these defendants in this cause, which indebtedness is still outstanding and due, except the note for $600- which has been paid.

These defendants deny that the said deed from the said Jesse W. Brinkley and Helen M. his wife to the said W. H. Brinkley was not upon consideration deemed valuable in law, or that it was made with intent to hinder, delay and defraud his creditors.

These defendants further say that the land conveyed to the said W. H. Brinkley by the said Jesse W. Brinkley and Helen M. Brinkley was the land of the said Helen M. Brinkley, being her estate in fee by inheritance, acquired before the Statutes in this State relating to separate estates of married women, and subject to the common

rules governing the estate of a married woman in this State, and as these defendants believe and claim, the said real estate is subject to the lien in favor of these defendants, superior to the claims of the plaintiff in this suit, and subject only to the prior lien thereof in favor of the defendant Wm. A. Bruce and secured under the deed of E. L. Holland, trustee, mentioned in the bill. And in regard to the said indebtedness to Wm. A. Bruce, these defendants say, that it was and is the debt of the said Jesse W. Brinkley alone, as they are informed and believe, and that as between these defendants and the said Wm. A. Bruce the proceeds of the said Jesse W. Brinkley as tenant initiated by the curtesy as otherwise would first be appropriated to the payment of the debt due the said Wm. A. Bruce.

And now having fully answered these defendants pray to be dismissed with their reasonable costs &c.

The Norfolk Publishing Co.
by Walke & Dey,
their Counsel.

Zygurh. Allen Publishing Co.

v

Brinkley Fathers.

Demurrer &
Answer of the
Norfolk Publishing Co.

In The Circuit Court of The County of Nansemond.

The joint and separate answers of Jesse W. Brinkley and Helen M. Brinkley, his wife, defendants to a bill in Equity, exhibited against them and others in the Circuit Court of Nansemond County by The Tygert-Allen Fertilizer Company, (a corporation).

These respondents reserving to themselves the benefit of all just exceptions to said bill, for answer thereto, answer and say:
It is true as alleged, that the said complainant holds the negotiable notes of the defendants for the respective amounts named in said bill, and that the same have not been paid, although have been requested to do so.

It is also true that these defendants by their certain deed of bargain and sale, as alleged in said complainant's bill, have conveyed to the said W. H. Brinkley, their son, the real and personal estate described in said deed filed as"Exhibit C" with said bill.

It is also true that said deed was made subject to a deed of trust thereon in favor of William A. Bruce, in which said deed E. E. Hollond, is named as trustee.

But it is not true that said deed was made with the intent to hinder, delay, or defraud their creditors; that it was made upon a consideration not deemed valuable in law; that said consideration mentioned in said deed, which is a fair and reasonable one, was not to be or has not been paid; or was not intended to be paid at the time of the conveyance: and it is not true that the said W. H. Brinkley had notice of a fraudulent intent on the part of these defendants, for in fact, no such intent existed. The entire trannsaction was fair and bona fide perfectly free of any and all intent to defraud said complainant or any other creditor.

And for answer to said bill these defendants further say that the real estate conveyed in the said deed was the common law estate of the said Helen M. Brinkley, which she heired partly from her father and partly from her uncle, Joseph Red, prior to the year, 1870, and that as such common law estate she is advised that such cannot be subjected to the payment of the complainants' debts. And further that her said husband, whom she married

in the year 18 has only such interest in such estate as he would have had at common law, if, in, fact, under the law, he has now any interest whatever therein during the life time of the said Helen M. Brinkley, which can be subjected to the payment of said debts.

These respondents again denying any and all charges of fraud or fraudulent intent, and having now fully answered the said complainant's bill, pray hence to be dismissed with their reasonable costs, and they will ever pray, &c.

J. W. Brinkley Sign

Sign

Helen M. Brinkley,

Tygert-Allen Fert. Co.

vs. } In Chy.

Brinkley Pals.

Answers of Jesse W. and Helen M. Brinkley

In the Circuit Court of Nansemond County:

The answer of W.H.Brinkley to a bill in equity exhibited against him and others in the Circuit Court of Nansemond County by the Tygert-Allen Company,a corporation.

This defendant reserving to himself the benefit of all just exceptions to said bill,for answer thereto,answers and says:
That as to the transactions between the other defendants to said bill and the said complainant,or the counsel of said complainant,he is not advised and was in no sense a party thereto,and leaves to them the answer to said allegations in said bill.
That it is true,as alleged,that Jesse W.Brinkley and Helen M.Brinkley, executed to him the deed referred to in said complainants bill and conveyed to him thereby the real and personal estate described therein.It is not true that said deed was made upon a consideration not deemed valuable in law,and it is not true that said consideration mentioned in said deed which is a fair and reasonable price for the said property,has not been paid,and was not intended to be paid at the time of said conveyance.The purchase of said property was made by this respondent in good faith,for a fair and valuable consideration,and without notice or knowledge of any intent on the part of the said Jesse W.Brinkley or Helen M.Brinkley,his wife,to hinder,delay or defraud his or their creditors.This defendant further says that he does not believe that said Jesse W.Brinkley and Helen M Brinkley,his wife,made said conveyance,for the purposes alleged or with the intent alleged,but if he or they had any such intent to hinder,delay and defraud his or their creditors this defendant had no notice or knowledge whatever of any such intent,and having paid the consideration for said property named in the deed,which is a fair and reasonable price for said property,without such notice or knowledge,is entitled to the protection in his purchase which a court of equity can give him.And this defendant deny ing all other allegations in said bill with reference to said purchase in conflict with the foregoing answer to said bill prays that he may be hence dismissed with his reasonable costs,&c,having fully

answered said complainants bill so far as the same relates to him or to his purchase of said property, and he will ever pray, &c.

W. H. Brinkley Sign.

Tygert-Allen Fert. Co.

vs. } In Chy.

Brinkley & als.

Answer of Wm. H. Brinkley.

THE GLOBE LEGAL WRAPPER. Patented Feb. 11, 1890. First Quality.
TIONS.—Elevate the metal points—attach the manuscript—then bend the points down flat—dampen the gummed flap and stick it down—this fastens the papers and h[illegible] the metal.

Virginia:
In the Circuit Court for the County of Nansemond.

The Tygert-Allen Fertilizer Company (a corporation) Complainant,

Against } In Chancery.

Helen M. Brinkley, Jesse W. Brinkley, her husband and others, Defendants.

To the Honorable Robert R. Prentis, Judge of the Circuit Court for the County of Nansemond, Virginia:

Humbly complaining respectfully represents and shows unto Your Honor, Your Complainant, The Tygert-Allen Fertilizer Company (a corporation), the following case;

That Helen M. Brinkley and Jesse W. Brinkley, her husband, are justly indebted to Your

Complainant in the sum of Six hundred and forty-six and 45/100 dollars, as evidenced by their negotiable note for said sum of money dated the 19th. day of August 1893 and payable on the 15th. day of July 1894 at the Norfolk National Bank in the City of Norfolk, Va.

That the said Helen M. Brinkley and Jesse W. Brinkley, her husband, are also indebted to Your Complainant in the further sum of four hundred and eleven and 52/100 dollars as evidenced by their negotiable note for that sum of money dated the 18th. day of July 1894 and payable on the first day of July 1895 at said Bank.

That the said notes are herewith filed as parts of this Bill and marked respectively Exhibit A. and Exhibit B.

That ~~Your Complainant has frequently demanded payment of said indebtedness and notes and that~~ when said notes be-

came due and payable they were presented and shown for payment at said bank, but the said Helen M. Brinkley and Jesse W. Brinkley did not, nor did either of them, nor did any other person pay the same, or said sums of money therein mentioned, to Your Complainant, or otherwise.

That Your Complainant has since frequently demanded payment of said sums of money and notes, but the said Helen M. Brinkley and Jesse W. Brinkley, her husband, have not only not paid, but still refuse to pay the same.

That being indebted to Your Complainant as aforesaid, the said Helen M. Brinkley and Jesse W. Brinkley by their certain deed of bargain and sale, dated the third day of December 1896 and recorded in the Clerk's office of the County Court of Chamberland County on the 19th. day of December 1896, undertook and pretended to

convey for an alleged consideration of three thousand dollars unto their son, William H. Brinkley, all their real estate and personal property as in said deed specified, as will fully appear by a duly certified copy of said deed filed herewith as part of this Bill and marked Exhibit C.

That said deed was made subject to the lien of a deed of trust made by said Helen M. Brinkley and Jesse W. Brinkley on the 13th. day of November 1891 and recorded on the 18th. day of November 1891 in said office conveying said real estate to Edward E. Holland, Trustee, to secure to William A. Bruce of Norfolk County, the payment of the sum of fifteen hundred dollars due and payable by them to said William A. Bruce.

That on the 10th. day of October 1896 Your Complainant placed the said notes in the hands of

their counsel for collection by suit or otherwise as he might deem best; that their said counsel at once placed himself in communication with the said Helen M. Brinkley and Jesse W. Brinkley and requested them more than once to pay said notes, but failed to receive any response whatever; and that said Helen M. Brinkley and Jesse W. Brinkley understood and knew full well that their failure to respond to the requests of ~~Your~~ said counsel would cause suits to be entered against them for the recovery of the amounts of said notes, ~~and that it was~~ Your Complainant alleges that the said pretended deed of bargain and sale was made by the said Helen M. Brinkley and Jesse W. Brinkley while they were under pressure as aforesaid for a settlement of their said indebtedness to your Complainant

Your Complainant further alleges that said pretended deed of bargain and sale dated the third day of December 1896 from said Helen M. Brickley and Jesse W. Brickley to their said son, was made with intent to delay, hinder and defraud their creditors ~~of said Helen M. Brickley and Jesse W. Brickley~~, and especially Your Complainant, of and from that to which they and it ~~and~~ are lawfully entitled; that said deed of bargain and sale was ~~made~~ not made upon consideration deemed valuable in law; and that the said William H. Brickley had, at the time said deed of bargain and sale was made, notice of the fraudulent intent of his said father and mother in the execution thereof.

Your Complainant further alleges that the said consideration of three thousand dollars for said real estate and personal property was not paid

by said William H. Brinkley at the time said pretended deed of bargain and sale was made to him, nor has it since been paid, nor, indeed, was it the intention ~~and~~ or purpose of the parties that it should ever be paid.

Your Complainant further alleges that the property conveyed by said pretended deed of bargain and sale included all the real ~~and~~ estate and personal property of which the said Helen M. Brinkley and Jesse W. Brinkley were seised and possessed at the time said deed was made, as follows:

1. All that certain tract of land in Sleepy Hole Magisterial District in the County of Nansemond in the State of Virginia, containing fifty (50) acres, more or less, and bounded on the North and West by Nansemond River, on the South by the lands of Thos. R. Gaskins, and on the East by the lands of Willis J. Lee

2. All the personal property of the said Helen M. Brinkley and Jesse W. Brinkley on the said land including two buggies, one bay mare, three mules, all farming implements, hot-bed sash, all corn and forage, all oysters and shells on the flats belonging to the said land, all household and kitchen furniture in the house on said land,

3. All the household and kitchen furniture in the residence ~~(No. 132 Bute Street)~~ ~~in Norfolk City~~ occupied by said Helen M. Brinkley and Jesse W. Brinkley in Norfolk City, including all beds, bedsteads, pictures, clocks, chairs, sofas, bureaux, wardrobes, carpets, curtains and piano, all stoves, safes, all crockery and china, and silver-ware, and all other personal property belonging to the said Helen M. Brinkley and Jesse W. Brinkley.

Your Complainant further alleges that the said indebtedness of said Helen M. Brinkley

and Jesse W. Brinkley to it was contracted long before said pretended deed of bargain and sale was made and was a valid, subsisting indebtedness ~~at the time such~~ deed when such deed was made.

Your Complainant further alleges that said Helen M. Brinkley and Jesse W. Brinkley are now seised and possessed of no real estate or personal property of any kind, all such as they held having been conveyed by them to their son as aforesaid.

In consideration whereof Your Complainant, being without remedy save in a Court of Equity where such matters are alone and properly cognizable, prays that the said Helen M. Brinkley, ~~and~~ Jesse W. Brinkley, her husband, William H. Brinkley, William A. Bruce and Edward E. Holland, Trustee, may be made parties defendants to this bill and be required to answer the same, but answer under oath

is ~~hereby~~ waived; that the said pretended deed of bargain and sale dated the third day of December 1896 from said Helen M. Brinkley and Jesse W. Brinkley to their son, the said William H. Brinkley, may be declared illegal, null and void, made with intent to delay, hinder and defraud their creditors and especially your Complainant of and from that ^to which they and it are lawfully entitled, that it was and ^not made upon consideration deemed ^valuable in law; that the real and personal property mentioned in said deed of bargain and sale may be declared subject to a lien in favor of your Complainant for the indebtedness aforesaid of the said Helen M. Brinkley and Jesse W. Brinkley to it in preference to the claims of any other of their creditors, except only the bona-fide claim of said William A. Bruce secured as afore-

said by said deed of trust on said land executed prior to the date of said pretended deed of bargain and sale; that said deed of bargain and sale may be cancelled, annulled and set aside as to Your Complainant and said real estate and personal property sold and the proceeds of the sale applied to the discharge, payment and settlement of the indebtedness aforesaid of said Helen M. Brinkley and Jesse W. Brinkley to it; that all proper and necessary accounts of such indebtedness may be taken and all necessary inquiries directed; that a reasonable fee or compensation may be allowed to Your Complainants counsel, for his services, to be paid out of such money or property as may come under the control of the Court ~~for his services~~ in this suit; and that such other, further and general relief may be granted Your Complainant, as the nature of its case may require and to equity may seem meet and proper.

And Your Complainant will ever pray etc

The Pigert-Allen Fertilizer Company (a Corporation),
By Wilbur J. Kilby,
its Counsel.

14 January 1897

The Tygert-Allen
Fertilizer Co.
vs. } In Chy.
Brinkley et al.

Bill

The Puget Allen Ferl. Co
Vs
Ird Chancery
Helen M Brinkley Jesse O Brinkley & others

Chancery Notes

1897 Jany 14th. Process issued returnable Feby Rules third Monday

" Feby. 15. Process returned executed on each of the defendants. Bill filed and decree nisi against them.

" March 1. Decree nisi confirmed and cause set for hearing.

Chancery
Notes.