1910-004
Nansemond Co (Suffolk)

Chancery Causes : George T. McClenny vs J.A. Duke

Stallings

Copy of Costs
Taxed in the Suit of:

J. H. Corbitt p. q.

George T. McClenny

vs.

J. A. Duke

IN THE CIRCUIT COURT OF NANSEMOND COUNTY, VIRGINIA.

Writ Tax	paid Apl 3/08 -	1 50
Clerk		9 24
Sheriff		1 50
Attorney		1500
Commissioner		✓
Printer, for Order of Publication, etc.		✓
Depositions - Plaintiff (?)		
" Defendant (?)		
		$27 24

Date of Judgment or Final Decree 191

TO THE CLERK OF THE CIRCUIT COURT OF NANSEMOND COUNTY.

George T. McClenny,

v.

J. A. Duke.

Issue summons in Chancery to Rules Third Monday of October, 1907.

James H. Corbitt
p. q.

Geo F McClenny

23 Chancery

& A Duke.

TO THE CLERK OF THE CIRCUIT COURT OF NANSEMOND COUNTY:

George T. McClenny

v.

J. A. Duke.

Issue summons to answer an ammended and supplemental bill in Chancery to Rules 3rd Monday in December, 1907.

James H. Corbitt
p.q.

VIRGINIA, ~~IN VACATION~~, IN THE CIRCUIT COURT OF NANSEMOND COUNTY, OCTOBER 16, 1907.

George T. McClenny,----------Complainant,

v. IN CHANCERY.

J. A. Duke, ----------Defendant.

On motion of Complainant an injunction is granted in accordance with the prayer of the Bill, enjoining and restraining the Defendant, J. A. Duke, his agents, employees and all other persons, from cutting, removing, selling or otherwise interfering or dealing with the timber on the land in the Bill mentioned and described as: all that certain tract or parcel of land, situated and being in the County of Nansemond, State of Virginia, and bounded and described as follows: Starting at a fork of the Road in front of Piney Grove (colored) Baptist Church, thence running along the County Road towards Buckhorn to the center of a ditch, boundary line between this property and Alfred C. Butler, thence along said ditch in a Northwardly direction to the end thereof to a sweet gum stump, thence continuing in about the same direction along the line of Alfred C. Butler to the lands of Abram Duke, a corner for this property and A. C. Butler and Abram Duke, thence along Abram Duke's line in an Easterly course to a bridge on the County Road leading from Buckhorn to Windsor, thence along the County Road and the lands of W. E. Stallings to the County Road in front of Pine Grove (colored) Baptist Church as aforesaid, the point of beginning, said tract of land supposed to contain about sixty-five (65) acres, more or less, and is the same property purchased by the said George T. McClenny from W. E. Stallings by deed of July 10, 1901, and recorded in Nansemond County Clerk's Office in Deed Book 50, page 178, to which deed reference is

hereby made for a better description of said property.

And enjoining and restraining the said Defendant, his agents and employees and all other persons, from removing, selling or otherwise disposing of any timber that may have been cut from the said land and left thereon, or removed therefrom; and the said Defendant is also enjoined and restrained from committing any trespass of any kind upon said real property, ~~and from carrying timber to same~~, until the further order of this Court.

But before this injunction shall take effect, the said George T. McClenny, or some one for him, shall enter into and acknowledge a bond, with good security, before the Clerk of the Circuit Court of the County of Nansemond, in the penalty of $ 500 ~, conditioned to pay all such costs as may be awarded against the Complainant, and All such damages as may be incurred in case the injunction shall be dissolved.

All of which is hereby certified to the Clerk of the Circuit Court of Nansemond County, to be entered in the Chancery Order Book.

James L. W. Lemore

A Copy Teste:

R. B. Smith Clerk

By A. P. Gomey D.C.

I, A P Gomer, Deputy for R R Smith, Clerk of the Circuit Court of Nansemond County, do hereby certify that the bond required by the within order has been given with surety deemed sufficient to me.

Teste:

R R Smith Clerk
By A P Gomer DC

CHANCERY SUMMONS

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF NANSEMOND COUNTY—Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON J. A. Duke

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 October 1907, to answer a Bill in Chancery, exhibited against him in the said Court by George T. McClenny

And have then and there this summons.

Witness, R. R. SMITH, Clerk of our said Court, at his office, this 14th day of October, 1907, in the 132nd year of the Commonwealth.

A copy—Teste:

_____, CLERK.

Teste: R. R. Smith, CLERK.

By L. D. Toney D.C.

Executed this the 4th day of Oct 1907 by delivering a true copy
of the within process, with a copy of information attached, to
J A Duke in person

O W Baker, Sheriff
By J. F. DeBerry, deputy

J. R. Corbett, p. q.

George T. McCleary

vs. } In Chancery.

J. A. Duke

1907

October Rules.

Third Monday.

Nansemond Circuit Court.

Process Book No._____

Page_____

Rule to Answer by Monday

CHANCERY SUMMONS

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF NANSEMOND COUNTY—Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON J. A. Duke

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 December 1907, to answer amended ~~An~~ Supplemental Bill in Chancery, exhibited against Sun

in the said Court by Geo. T. M. Clenny

And have then and there this summons.

Witness, R. R. SMITH, Clerk of our said Court, at his office, this 14th day of December, 1907, in the 132nd year of the Commonwealth.

A copy—Teste:

_____, CLERK.

Teste: R. R. Smith, CLERK.

By A. D. Gomer D. C.

Due, legal and sufficient service of the within subpoena is hereby accepted.
Dec. 16 1907
J. A. Duke by
Jno. N. Withers, counsel

James N. Corbitt, p. q.

George S. McElenny

vs. } In Chancery.

J. A. Duke

1907---

December--Rules.

---Third---Monday.

Nansemond Circuit Court.

Process Book No. 3

Page 44

CHANCERY SUMMONS.

THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON George P McClenny

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 November 1909, to answer a Cross Bill in Chancery, exhibited against him in the said Court by J A Duke

And have then and there this summons.

Witness, R. R. SMITH, Clerk of our said Court, at his office, this First day of November, 1909, in the 134th year of the Commonweath.

A copy—Teste:

....., CLERK.

Teste:

R R Smith, CLERK.

By A O Gomey D.C

George T. M. Clenny
Executed at this court
Do executed the within
the 10th day of November
delivering a true copy
Teste
J. Griffin D.C.
By A. Whitehurst D.C.

R. W. Withers p. q.

J. A. Duke

vs. } In Chancery.

George T. M. Clenny

1909

November Rules.

Third Monday.

NANSEMOND CIRCUIT COURT.

Process Book, No. 3

Page 77

~~VIRGINIA, IN VACATION, IN THE CIRCUIT COURT OF NANSE-~~
~~MOND COUNTY, OCTOBER 12, 1907.~~

George T. McClenny,----------Complainant,

v. IN CHANCERY.

J. A. Duke, ----------Defendant.

On motion of Complainant an injunction is granted in accordance with the prayer of the Bill, enjoining and restraining the Defendant, J. A. Duke, his agents, employees and all other persons, from cutting, removing, selling or otherwise interfering or dealing with the timber on the land in the Bill mentioned and described as: all that certain tract or parcel of land, situated and being in the County of Nansemond, State of Virginia, and bounded and described as follows: Starting at a fork of the Road in front of Piney Grove (colored) Baptist Church, thence running along the County Road towards Buckhorn to the center of a ditch, boundary line between this property and Alfred C. Butler, thence along said ditch in a Northwardly direction to the end thereof to a sweet gum stump, thence continuing in about the same direction along the line of Alfred C. Butler to the lands of Abram Duke, a corner for this property and A. C. Butler and Abram Duke, thence along Abram Duke's line in an Easterly course to a bridge on the County Raod leading from Buckhorn to Windsor, thence along the County Road and the lands of F. E. Stallings to the County Road in front of Pine Grove (colored) Baptist Church as aforesaid, the point of beginning, said tract of land supposed to contain about sixty-five (65) acres, more or less, and is the same property purchased by the said George T. McClenny from F. E. Stallings by deed of July 15, 1901, and recorded in Nansemond County Clerk's Office in Deed Book 50, page 179, to which deed reference is

hereby made for a better description of said property.

And enjoining and restraining the said Defendant, his agents and employees and all other persons, from removing, selling or otherwise disposing of any timber that may have been cut from the said land and left thereon, or removed therefrom; and the said Defendant is also enjoined and restrained from committing any trespass of any kind upon said real property, ~~and from causing damage to same,~~ until the further order of this Court.

But before this injunction shall take effect, the said George T. McClenny, or some one for him, shall enter into and acknowledge a bond, with good security, before the Clerk of the Circuit Court of the County of Nansemond, in the penalty of $ 500, conditioned to pay all such costs as may be awarded against the Complainant, and all such damages as may be incurred in case the injunction shall be dissolved.

~~All of which is hereby certified to the Clerk of the Circuit Court of Nansemond County, to be entered in the Chancery Order Book.~~

John L. McClenny

Enter. October 12th.
1907. Jellma L. McLemore

Geo. T. McClenny

v. } Injunction Order

J. A. Duke

Entered in Chancery
Order Book No. 4.
Page 183.

James H.
~~McLEMORE &~~ CORBITT
ATTORNEYS AT LAW
SUFFOLK, VA.

Jewell & Co., Phila.

Know All Men by These Presents, That we, George T. McClenny and Robert J. McClenny

are held and firmly bound unto the COMMONWEALTH OF VIRGINIA in the just and full sum of Five Hundred DOLLARS, to the payment whereof, well and truly to be made to the Commonwealth of Virginia, we bind ourselves, our heirs, executors and administrators. jointly and severally, firmly by these presents.

And we waive the benefit of our exemption as to this obligation, and also waive any claim or right to discharge any liability to the Commonwealth arising under this bond, or by virtue of the office, post or trust herein mentioned, with coupons detached from bonds of said State.

Sealed with our seals, and dated this 14th day of October in the year of our Lord one thousand nine hundred and seven, and in the 132ond year of the Commonwealth.

~~In Testimony Whereof, the said has hereto set his hand and seal, and the said has caused its corporate name to be hereto signed, and its corporate seal to be hereto affixed, this day of in the year of our Lord, one thousand nine hundred and , and in the year of the Commonwealth.~~

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That ~~if the above bound~~ whereas an injunction is awarded against the defendant J. A. Duke in a Bill in chancery filed this day in the Circuit Court of Nansemond County in the cause between George T. McClenny Complainant and J. A. Duke defendant enjoining and restraining the defendant J. A. Duke his agents, employees and all other persons from cutting, removing, selling or othewise interfering or dealing with the timber on the land in the Bill mentioned and described. And enjoining and restraining the said defendant his agents and employees and all other persons from removing, selling or otherwise disposing of any timber that may have been cut from the said land left thereon, or removed therefrom, and thesaid defendant is also enjoined and restrained from committting any trespass of any kind upon said real property until the further order of this Court. But before this injunction shall take effect the said George T. McClenny or some one for him shall enter into and acknowledge a bond with good security before the Clerk of the Circuit Court of the County of Nansemond in the penalty of $500. conditioned to pay all such costs as may be awarded against the Complainant and all such damages as may be incurred in case the injunction shall be dissolved.

SEAL

George T. McClenny SEAL

Robert J. McClenny SEAL

SEAL

SEAL

VIRGINIA:

In ~~the Clerk's Office~~ of the Circuit Court of Nansemond County, on the 14th day of October, 1907:

The above bond was executed and acknowledged before me by the obligors to the same (the security justifying), and ordered to be recorded.

Teste:

A. P. Gomer, D. C.

A Copy Teste A P Gomer D C

George T. McClenny

To } Injunction Bond

The Commonwealth.

1907
Oct 14th

Recorded in
Official Bond
No 2. Page 41

A Copy

George T. McClenny ----------Complainant,

v. DECREE:

J. A. Duke ----------Defendant.

By the consent of plaintiff and defendant in this case, by counsel, in term time entered of record, it is hereby ordered, adjudged and decreed that this cause be submitted to the Judge of this Court for such decision and decree, judgment, or order therein in vacation as might be made in term.

Geo. T. McClenny
v.
J. A. Duke

Entered this 30th day
of July 1908
James L. Edmonds

We consent to the within decree.
Robt. N. Withers, atty for
J. A. Duke
James H. Corbitt, atty for
Geo. T. McClenny.

Entered in Chancery
Orders Book No. 4 Page 468.

EDWARD E. HOLLAND
ATTORNEY AT LAW
SUFFOLK, VA.
BOTH PHONES BOOTHE BUILDING

$400.00

April 30, 1910.

Received of Geo. T. McClenny the sum of Four Hundred Dollars in full settlement, satisfaction and discharge of all claims growing out of or involved in the suit of Geo. T. McClenny vs. J. A. Duke, and in consideration of said payment the said suit is to be dismissed upon the payment of the costs by the said Geo. T. McClenny.

Catt. N. Withers
for himself and
J. A. Duke

IN THE CIRCUIT COURT OF NANSEMOND COUNTY, VIRGINIA.

George T. McClenny)
)
v.) DECREE.
)
J. A. Duke.)

This day this cause came on to be heard on the papers formerly read and was argued by counsel.

And it appearing to the court that all matters in controversy in this suit have been settled between the parties by the payment on the part of George T. McClenny to J. A. Duke of the sum of Four Hundred Dollars ($400.00) in full settlement, satisfaction and discharge of all claims growing out of or involved in the said suit, and that the said George T. McClenny has paid the costs of the said suit, it is therefore ordered, adjudged and decreed, with the consent of the plaintiff and the defendant, that the said suit be dismissed from the docket.

Examined

Geo. T. McClenny

v. DECREE

J. A. Duke.

Enter Aug. 6. 1910.

J. Allen L. McLemore

Assent to this decree

Robt. N. Miles
Counsel for Duke

Attys for Complt McClenny

E. S. Hurlbut

Jas. H. Corbett

Entered in Chancery Order Book No. 4. Pg. 429.

George T. McClenny - - - - - - - - - - - Complainant.

v.

J. A. Duke - - - - - - - - - - - - - - - Defendant.

TO THE HONORABLE JAMES L. MCLEMORE, JUDGE OF THE CIRCUIT COURT OF NANSEMOND COUNTY:

Your petitioner, Nannie L. McClenny, respectfully represents that she is the wife of George T. McClenny, the plaintiff in the Chancery suit in the Circuit Court of Nansemond County entitled George T. McClenny, Complainant v. J. A. Duke, Defendant; that on the 20th day of April, 1907 there was, and there now is a bond for One Thousand Nine Hundred Forty-six & 00/100 Dollars ($1946.00) signed by George T. McClenny, her husband, payable to her and secured by Deed of Trust on property in said County then belonging to her said husband, and described in the bill in the proceedings mentioned, which said property her said husband agreed to sell to J. A. Duke; that she has been able, ready and willing at all times, and is now able, ready and willing to release the said property from the lien held by her aforesaid upon request of the said J. A. Duke or her said husband so that a perfect and clear title might be given to said J. A. Duke for said property in accordance with the agreement between the said Duke and her said husband; that on the 20th day of April, 1907 she joined with her said husband in a Deed of Bargain and Sale with General Warranty, containing the usual covenants of title, conveying the said property to the said J. A. Duke, which deed was left with the attorney drawing

same for delivery to the grantee upon compliance on his part with his contract with her said husband; that she has been at all times and is now able, ready and willing to release the said lien whenever the said J. A. Duke performs his part of his agreement with her said husband; and that she is now willing to do whatever the Court may direct to perfect said title, and begs that she may be made a party defendant to the proceedings above mentioned so that she may be subject to all orders of this court.

And your petitioner will ever pray, etc.

Nannie L. McClenny.

STATE OF VIRGINIA,
To-wit:
COUNTY OF NANSEMOND.

This day Nannie L. McClenny appeared before me, a Notary Public in and for the State and County aforesaid, and made oath that the statements made in the foregoing bill are true.

My commission expires 5 day of Jan, 1910
Given under my hand this 6 day of July, 1909.

J. Wallace Norcum
Notary Public.

Geo. T. McClenny

v.

J. A. Deese

Petition of Nannie L. McClenny

James H. McLEMORE & CORBITT

ATTORNEYS AT LAW

SUFFOLK, VA.

Jewell & Co., Phila.

IN THE CIRCUIRT COURT OF NANSEMOND COUNTY, VIRGINIA.

October 23rd, 1909.

J. A. Duke -Defendant.

ads.

George T. McClenny - - - - - - - - - - - - - - - - -Complainant.

ANSWER AND CROSS BILL .

The answer of J. A. Duke, defendant, to the second amended bill of complaint filed against him in the Circuit Court of Nansemond County, Virginia, by George T. McClenny.

This respondent, reserving to himself the benefit of all just exceptions to the said bill, for answer thereto, or to so much thereof as he is advised that it is material he should answer, answers and says:-

True it is that George T. McClenny calimed to be the owner of the real property mentioned and described in his said bill; that on the 20th day of April, 1907 your respondent, then believing that said George T. McClenny was the owner of the said land and knowing of no encumbrances thereon, entered into negotiations with him for the purchase thereof. Your respondent was at this time boarding with the said complainant on the said property. Your respondent emphatically denies that he concluded a contract of purchase of said land with the said complainant containing the terms and conditions set forth in his said bill, or any other terms or conditions, but, on the contrary, at the time aforesaid your respondent believed he had only negotiated with said complainant for the purchase of said land and that if any agreement was ever made between said parties the terms of said purchase were as follows, to-wit, the purchase price of said land was $3500.00, of which amount $1000.00 was to be, and was paid in cash, on the said 20th of April, 1907, and the complainant then and there promised to deliver to said defendant a deed for said property, conveying a good title to said land, within ten (10)

days from said 20th day of April, 1907, and accept a deed of trust from him on said land to secure his bond for $2500.00, the balance of the purchase price; that the time said bond should become payable was not then decided and agreed upon, but that only 4% interest per annum was to be paid thereon by your respondent was decided and agreed upon.

Your respondent denies that he was put into possession of said property by complainant because of or in execution of any such verbal agreement, as alleged in the amended bill, but, on the contrary, your respondent "was living on the said property, he having prior to said date rented said property from your complainant and moved thereon," as is alleged in the complainant's original bill.

Your respondent admits receiving from the said George T. McClenny certain personal property mentioned in the original bill, and he is ready and willing, and has many times offered, to pay to said George T. McClenny whatever said property may have been reasonably worth.

Your respondent denies that George T. McClenny did, within ten (10) days after April 20th, 1907, or at any other time before or since, tender him a good and valid deed to said land.

Your respondent avers that during the negotiations between him and the complainant the complainant fraudulently represented to your respondent, and your respondent then and there relied upon said representations then and there made by complainant, thatthe tract of land in the bill mentioned contained sixty-five (65) acres of land and also contained a large quantity of standing cord-wood timber, to-wit, five hundred (500) cords; and that he, the said complainant, then had and could give a clear and good title to the said land and would do so within ten (10) days from April 20th, 1907. Your respondent avers that he did not know and had never been over the said land and had made no examination of the title thereto, but relied solely upon the representations of the complainant.

Your respondent avers that after waiting a reasonable length of time after the 20th of April, 1907, to-wit, sixteen (16) days, the complainant still failing to tender to him a good and sufficient deed for said sixty-five (65) acres of land, that he caused an examination of the title to said land to be made and he himself went over said land with a view to ascertain the quantity of cord-wood timber thereon; that as a result of said examination and inspection, to his surprise he found that said complainant's deed to said land, from F. E. Stallings, called for only fifty (50) acres of land, more or less, and furthermore the complainant did not have a good title to even fifty (50) acres of land, there being grave doubt if F. E. Stallings, complainant's grantor, could convey a good title thereto, and also thee being at that time, and your respondent is advised there still is, upon said land the lien of a deed of trust amounting to $1946.00 in favor of Nannie L. McClenny; and he also discovered that there were not more than fifty (50) cords of wood on said land; whereupon your respondent, on June 26th, 1907, wrote to the complainant, reported the condition of the title, refused to go on with the negotiations, offered to redeliver to him the said personal property abd possession of the said land and demanded the return of the One Thousand Dollars ($1000.00) which had been paid by defendant to the complainant. In response to these demands, the complainant, instead of perfecting his title and offering compensation for the deficiency in the said land and the cord-wood timber, demanded of your respondent $500.00 more in cash, making $1500.00 in all, as a cash payment on said land; your respondent declined to change the terms of his negotiations and continued to demand the return of the One Thousand Dollars ($1000.00) already paid complainant.

From this time, to-wit, the 26th day of June, 1907, the said McClenny has insisted upon your complainant paying him $500.00 and executing his bond or bonds, note or notes, sometimes one and sometimes another, secured by a deed of trust on the land, for $2000.00

but the time when complainant expected or claimed said bonds or notes to be executed or to mature was not known to respondent until the depositions of complainant were filed in this case, complainant claiming that to be the real oral agreement between the parties, until sometime in August or September, 1907, when the complainant in person, and through one F. W. Lloyd, his agent, abandoned his said alleged contract of sale and proposed to your respondent that he carry out the terms originally contended for by your respondent as being the only terms of a supposed contract of sale he had ever agreed to, to-wit, that the cash payment should be $1000.00 and your respondent execute his bond for $2500.00, secured by a deed of trust on the land. This also your respondent declined to do, he having long since declined to go on with the negotiations or the said supposed contract of purchase, because the complainant did not have a good title to said land, and because of his gross misrepresentations concerning the cord-wood thereon and for other reasons hereinafter set out.

Your respondent denies that said complainant has ever been ready to, or ever did, tender to your respondent a good deed conveying a good title to said sixty-five (65) acres of land to your respondent, he denies further that he has ever refused to deliver said land to the complainant, but, on the contrary, he has many times offered to deliver possession of said land to complainant, who has refused to accept the same, until, at last, the defendant, on the 1st day of November, 1908, abandoned said land, which is well known to complainant, and it is now without occupant, so far as this respondent knows, and subject to the disposal of complainant.

Your respondent avers that conditions have materially changed since the 20th of April, 1907, and that the value of all land in that vicinity,and particularly the land in question, has materially decreased in value since that time, so that this said land is

not now worth more than $2000.00, and it would be most inequitable to force an unwilling purchaserof such land at $3500.00 to take the same.

Your respondent is advised that an oral contract for the sale of land, such as is set up in complainant's bill, cannot be enforced in this state, under the circumstances of this case; and he relies upon the statute in such case made and provided.

Your respondent is advised that even if the facts set out in complainant's bill were true, he would not be entitled to the relief sought in his bill, for the reason that he does not allege such a contract as will be enforced in a court of equity, and the alternative relief sought is one that is unknown in such cases, is not in accordance with well recognized chancery practice, and is not the true measure of damages for the breach of such a contract as is set up in the bill, for these and other reasons the respondent prays that this answer be treated as a demurrer to complainant's bill.

Your respondent further alleges that, to-wit, on April 20th, 1907 he paid to complainant One Thousand Dollars ($1000.00) as a part of the consideration for the sixty-five (65) acres of land he was then negotiating to buy, that the said negotiations never concluded in a completed contract, that, although often requested so to do, the complainant has refused, and still refuses, to return said sum to your respondent, as in equity he is bound to do. Your respondent therefore prays that this answer may be treated as a cross bill, and the said George T. McClenny may be required to answer the same, though not under oath, that your honor enter a decree again st complainant in favor of your respondent, having the force of a judgment for the sum of One Thousand Dollars ($1000.00), and interest thereon from April 20th, 1907 until paid, subject to a credit for whatsoever may be decided to be the reasonable value of the personal property which is shown to have been delivered to your respondent by complainant, and further subject

to a credit of a fair rental, to-wit, Ten Dollars ($10.00) per month, for the farm land from the first day of May, 1907 to the 26th day of June, 1907, the date when defendant offered to re-deliver said property to complainant, that said decree may be made a lien on the said land until paid and that your honor will adjust these accounts between the parties at the bar of your court without a reference to a commissioner, as is often done in such cases, as the amounts are small and all of the facts are, or can be, made known to this court by the testimony already filed or hereafter taken in this case.

And now having fully answered, your respondent prays to be hence dismissed with his proper costs, etc.

J. A. Duke
By Counsel

Matt. G. Wickes
P. d.

Duke

ads

McClenny

Answer to Amended Bill

Filed Nov. 1-1909
A.B.G. D.C.

ROBT. W. WITHERS,
ATTORNEY AT LAW,
SUFFOLK, VA.
PRACTICING IN ALL COURTS IN
FIRST JUDICIAL CIRCUIT.

JEWELL & COMPANY, PHILADELPHIA.

TO THE HONORABLE JAMES L. MCLEMORE, JUDGE OF THE
CIRCUIT COURT OF NANSEMOND COUNTY.

George T. McClenny ----------Complainant,

v.

J. A. Duke ----------Defendant.

The amended and supplemental bill of your complainant, George T. McClenny, respectfully sheweth to the Court that he heretofore exhibited in this Court his original bill of complaint against J. A. Duke, copy of which bill marked Exhibit "A" is hereunto annexed and prayed to be read as a part of this your complainant's amended and supplemental bill, to which said original bill the said defendant has failed to plead, answer or demur; and your complainant further shews that the terms and conditions mutually agreed upon for the purchase of said property were as follows:

The purchase price of said property was $3,500.00 of which amount $1,500.00 was to be paid in cash, and when paid the complainant was to execute to the defendant a good and valid deed to the property, and take from the defendant his bond for $2,000.00 payable on demand to the complainant, secured by first deed of trust upon the property sold.

And your complainant further shews that said defendant has failed to carry out and perform his part of the agreement with reference to the sale of the said property in the original bill mentioned, and still refuses to perform same in that he has never paid your complainant the cash payment of $1,500.00 as agreed upon, and has refused and still refuses to deliver up to your complainant possession of the said property, although

the possession has been demanded of him by your complainant; that on the contrary the defendant remains in possession of the said property without paying your complainant any rent therefor, without making the necessary repairs to the buildings thereon and is allowing the said real-estate to depreciate by reason of lack of attention thereto;and that the defendant by refusing to deliver and carry out his part of the contract and by withholding the property from your complainant has prevented your complainant of making a sale of said property to other parties at a time when an advantageous sale could have been made; the said defendant has withheld the property from your complainant so long that if now omplainant should even be given possession of said property the complainant would have sustained great loss in being unable to sell same for as much as he could have sold same formerly on account of the general depreciation in value, and of the stringency in the financial world.

Your complainant has always been ready and willing, and is still ready and willing to carry out the agreement as made between him and defendant, and is ready to execute and deliver to the said defendant a good and valid deed for the said property when the said defendant complies with the terms mutually agreed upon, but the said defendant will not comply with said terms, and will not deliver up to your complainant the possession of the said property as aforesaid to the damage of your complainant; to the end therefore that the said J. A. Duke may answer all and every the matters and things herein charged by way of amendment and supplement your complainant prays that the said J. A. Duke be made a party to this amended and supplemental bill and be compelled to answer same, but not under oath, the oath being expressly waived, and that h e

be required to deliver up possession of said property, real and personal to your complainant, and to pay your complainant damages for the retention thereof and due to lack of attention thereto; and that your complainant may have full and general relief in the premises, such as the nature of his case may require.

And your complainant will ever pray, etc.

James H. Corbitt, p.q.

M^c Clenny

v.

Deane

TO THE HONORABLE JAMES L. MCLEMORE, JUDGE OF THE
CIRCUIT COURT OF NANSEMOND COUNTY.

George T. McClenny----------Complainant,

v.

J. A. Duke ---------- Defendant.

The amended and supplemental bill of your complainant, George T. McClenny, respectfully sheweth to the Court that he heretofore exhibited in this Court his original bill of complaint against J. A. Duke, a copy of which bill marked Exhibit "A" is hereunto annexed and prayed to be read as a part of this your complainant's amended and supplemental bill, to which said original bill the said defendant has failed to plead, answer or demur; your complainant further shews that the terms and conditions mutually agreed upon for the pruchase of the said property were as follows:

The purchase price of said property was $3,500.00 of which amount $1,500.00 was to be paid in cash, and when paid the complainant was to execute to the defendant a good and valid deed to the property, and take from the defendant his bond for $2,000.00 payable on demand to the complainant, secured by first deed of trust upon the property sold.

And your complainant further shews that he forthwith upon the making of the said agreement put the defendant into possession of the said property and the defendant still holds possession of same, and your complainant has always been able, ready and willing and is still able, ready and willing to carry out the agreement as made between him and the defendant and has tendered and still tenders to the said defendant a sufficient deed with general warranty and the usual covenants of title for such property, but the said defendant has refused

and still refuses to perform his part of the said contract of sale of the said property in the original bill mentioned as aforesaid and to accept the deed for the property and to pay your complainant a cash payment of $1,500.00 as agreed upon, and to execute his bond for the balance secured by deed of trust as aforesaid, nor will he deliver to your complainant possession of the said property to the damage of your complainant; that on the contrary the defendant remains in possession of the said property without paying your complainant any rent therefor, without making the necessary repairs to the buildings thereon and is allowing the said real estate to depreciate by reason of lack of attention thereto; and that the defendant by refusing to deliver and carry out his part of the contract and by withholding the property from your complainant has prevented your complainant from making a sale of said property to other parties at a time when an advantageous sale could have been made; the said defendant has withheld the property from your complainant so long that if now complainant should even be given possession of said property the complainant would have sustained great loss in being unable to sell same for as much as he could have sold same formerly on account of the general depreciation in value, and of the stringency in the financial world.

To the end therefore that the said J. A. Duke may answer all and every the matters and things herein charged by way of amendment and supplement, your complainant prays that the said J. A. Duke may be made a party to this amended and supplemental bill and be compelled to answer same, but not under oath, the oath being expressly waived; that he may be compelled on his part to perform and comply with his contract aforesaid, to accept the deed tendered to him, to pay the cash and to execute the bond and deed of trust contracted for.

And your complainant further prays that in the

event the said purchase money shall not be paid when decreed by this Court to be paid and the bond and deed of trust contracted for shall not be executed as and when decreed by this Court to be executed, that the said land be directed to be sold by a commissioner duly appointed by the Court and the net proceeds of the sale thereof remaining after satisfying the expense of sale and costs of this suit shall be applied to the payment of said unpaid purchase money and interest and the taxes as long as the defendant has been in possession of the land, and that judgment be entered in favor of your complainant against said defendant for any sum that may still then be due; and that your complainant shall have such further and other general relief in the premises as to your honor shall seem meet and this case may require.

And your complainant will ever pray, etc.

James H. Corbitt, p. q.

"Exhibit A"

TO THE HONORABLE JAMES L. McLEMORE, JUDGE OF THE CIRCUIT COURT OF NANSEMOND COUNTY.

Geo. T. McClenny,----------Complainant,

v.

J. A. Duke,----------Defendant.

Humbly complaining your Complainant, George T. McClenny, sh weth unto the Court that he was heretofore: to-wit, the 20th day of April, 1907, and still is, the owner of all that certain tract or parcel of land, situated and being in the County of Nansemond, State of Virginia, and bounded and described as follows: Starting at a fork of the Raod in front of Piney Grove (colored) Baptist Church, thence running along the County Road towardsBuckhorn to the center of a ditch, boundary line between this property and Alfred C. Butler, thence along said ditch in a Northwardly direction to the end thereof to a sweet gum stump, thence continuing in about the same direction along the line of Alfred C. Butler to the lands of Abram Duke, a corner for this property and A. C. Butler and Abram Duke, thence along Abram Duke's line in an easterly course to a bridge on the County Road leading from Buckhorn to Windsor, thence along th e County Road and the lands of F. E. Stallings to the County Road in front of Pine Grove (colored) Baptist Church as aforesaid, the point of beginning, said tract of land supposed to contain about sixty-five (65) acres, more or less, and is the same property purchased by the said George T. McClenny from F. E. Stallings by deed of July 15, 1901, and recorded in Nansemond County Clerk's Office in Deed Book 50, page 179, to which deed reference is hereby made for a better

description of said property.

That heretofore, to-wit: on the 20th day of April, 1907, he entered into an oral agreement with the defendant, J. A. Duke, to sell the said land and certain personal property as follows:

One bay mare named "Daisy," one top buggy and harness, one cow and one calf, two hogs, one cart and wheels and cart harness, and all farming utensils on the farm above mentioned at the time said agreement was made, such as ploughs, hoes, pitchforks, drags, harrows, etc., to the said defendant. And the said Defendant agreed to purchase the said land and the said personal property from your Complainant upon certain terms and conditions then mutually agreed upon; that at the time of the said agreement the said Defendant was living on the said property, he having prior to the said date rented said property from your Complainant and moved thereon; and that the said Defendant has been in possession of the said property ever since the date of the said agreement, at which time your Complainant also delivered to the said Defendant the said personal property above mentioned. That the said Defendant failed to carry out and perform his part of the agreement, and still refuses to perform same. That your Complainant has always been ready and willing, and is still ready and willing, to carry out the agreement as made between them on the said date, on to-wit: the said date above mentioned; and is ready to execute and deliver to the said Defendant a good and valid deed for the said property when the said Defendant complies with the terms mutually agreed upon. That the said Defendant not only has refused and still doth refuse to carry out and perform his said agreement, but remains in possession of the said real estate and has, as your Complainant is advised and

believes, and therefore charges, disposed of a greater part, if not all, of said personal property heretofore mentioned; that said Defendant refuses, has refused, and still doth refuse, to pay your Complainant rent for the said property, or to make any payment whatsoever for the use of same. Your Complainant avers and charges that notwithstanding the ownership and title to the said real estate, the said Defendant being in possession of same has, within the past few weeks, himself and by his agents and employees, unlawfully and without authority, permit, leave or license, upon the said land, cut and felled a quantity of valuable timber trees, and has also wrongfully and unlawfully cut, or had them cut, into wood, and is still engaged in cutting down the timber trees on the said land and cutting same up into wood, for the purpose, as your Complainant is advised and therefore charges, of removing said wood and selling same, the property of your Complainant. That such illegal and wrongful cutting of your Complainants timber trees as hreinabove complained of is a continued trespass, and is causing your Complainant to suffer irreparable injury to his freehold, and unless his rights are protected by an injunction, he will be helpless to preserve or enjoy the said timber and property rights. That the property in question has thereon not a great quantity of timber, but timber sufficient and necessary for the proper enjoyment of the said property, and if said timber is so cut and destroyed, your Complainant will suffer irreparable injury in the enjoyment of his property, or in making sale of same, should he so desire.

That the said cutting has already resulted in loss incapable of adequate compensation and damages, and unless checked by the strong arm of this Court will result in irreparable damage to your Complainant.

In tender consideration whereof and forasmuch as your Complainant is without adequate remedy save by the aid of a Court of Equity where such matters are alone properly cognizable, to the end, therefore, that justice may be done, he prays that J. A. Duke be made Defendant to this Bill and required to answer same, but not under oath, the oath being expressly waived. That the said Defendant, his agents and employees, be enjoined and restrained from the further cutting of any timber now standing on the property hereinabove described, and from removing, selling or in any way disposing of any timber that may have been cut and left upon the said land, or removed therefrom. That he may be required to render a full and accurate account of the timber cut by him, his agents and employees, from the said tract of land, and for what purpose the same was used; that he be required to compensate your Complainant in treble damages for all of the timber cut from the said land, and for all of the damages sustained by reason of the violation of his rights; and that the said Defendant be also required to compensate your Complainant for the personal property above referred to delivered by him to the said Defendant, and in the hands of, or disposed of by the said Defendant; that all such orders and decrees may be entered, inquiries made, accounts taken, and all such further general and special relief may be granted your Complainant as the nature of his case may require or to equity shall seem meet.

And your Complainant will ever pray, etc.

description of said property.

That heretofore, to-wit: on the 20th day of April, 1907, he entered into an oral agreement with the defendant, J. A. Duke, to sell the said land and certain personal property as follows:

One bay mare named "Daisy," one top buggy and harness, one cow and one calf, two hogs, one cart and wheels and cart harness, and all farming utensils on the farm above mentioned at the time said agreement was made, such as ploughs, hoes, pitchforks, drags, harrows, etc., to the said defendant. And the said Defendant agreed to purchase the said land and the said personal property from your Complainant upon certain terms and conditions then mutually agreed upon; that at the time of the said agreement the said Defendant was living on the said property, he having prior to the said date rented said property from your Complainant and moved thereon; and that the said Defendant has been in possession of the said property ever since the date of the said agreement, at which time your Complainant also delivered to the said Defendant the said personal property above mentioned. That the said Defendant failed to carry out and perform his part of the agreement, and still refuses to perform same. That your Complainant has always been ready and willing, and is still ready and willing, to carry out the agreement as made between them on the said date, on to-wit: the said date above mentioned; and is ready to execute and deliver to the said Defendant a good and valid deed for the said property when the said Defendant complies with the terms mutually agreed upon. That the said Defendant not only has refused and still doth refuse to carry out and perform his said agreement, but remains in possession of the said real estate and has, as your Complainant is advised and

believes, and therefore charges, disposed of a greater part, if not all, of said personal property heretofore mentioned; that said Defendant refuses, has refused, and still doth refuse, to pay your Complainant rent for the said property, or to make any payment whatsoever for the use of same. Your Complainant avers and charges that notwithstanding the ownership and title to the said real estate, the said Defendant being in possession of same has, within the past few weeks, himself and by his agents and employees, unlawfully and without authority, permit, leave or license, upon the said land, cut and felled a quantity of valuable timber trees, and has also wrongfully and unlawfully cut, or had them cut, into wood, and is still engaged in cutting down the timber trees on the said land and cutting same up into wood, for the purpose, as your Complainant is advised and therefore charges, of removing said wood and selling same, the property of your Complainant. That such illegal and wrongful cutting of your Complainants timber trees as hreinabove complained of is a continued trespass, and is causing your Complainant to suffer irreparable injury to his freehold, and unless his rights are protected by an injunction, he will be helpless to preserve or enjoy the said timber and property rights. That the property in question has thereon not a great quantity of timber, but timber sufficient and necessary for the proper enjoyment of the said property, and if said timber is so cut and destroyed, your Complainant will suffer irreparable injury in the enjoyment of his property, or in making sale of same, should he so desire.

That the said cutting has already resulted in loss incapable of adequate compensation and damages, and unless checked by the strong arm of this Court will result in irreparable damage to your Complainant.

In tender consideration whereof and forasmuch as your Complainant is without adequate remedy save by the aid of a Court of Equity where such matters are alone properly cognizable, to the end, therefore, that justice may be done, he prays that J. A. Duke be made Defendant to this Bill and required to answer same, but not under oath, the oath being expressly waived. That the said Defendant, his agents and employees, be enjoined and restrained from the further cutting of any timber now standing on the property hereinabove described, and from removing, selling or in any way disposing of any timber that may have been cut and left upon the said land, or removed therefrom. That he may be required to render a full and accurate account of the timber cut by him, his agents and employees, from the said tract of land, and for what purpose the same was used; that he be required to compensate your Complainant in treble damages for all of the timber cut from the said land, and for all of the damages sustained by reason of the violation of his rights; and that the said Defendant be also required to compensate your Complainant for the personal property above referred to delivered by him to the said Defendant, and in the hands of, or disposed of by the said Defendant; that all such orders and decrees may be entered, inquiries made, accounts taken, and all such further general and special relief may be granted your Complainant as the nature of his case may require or to equity shall seem meet.

And your Complainant will ever pray, etc.

STATE OF VIRGINIA,
To-wit:
COUNTY OF NANSEMOND.

This day George T. McClenny appeared before me, a Notary Public in and for the State and County aforesaid, and made oath that the statements made in the foregoing bill are true. My commission expires March 19, 1910.

Given under my hand this 12th day of October, 1907.

_____
Notary Public.

1907 Decr 2nd Filed
A. P. G. S. C.

McLEMORE & CORBITT
ATTORNEYS AT LAW
SUFFOLK, VA.

Jewell & Co., Phila.

IN THE CIRCUIT COURT OF NANSEMOND COUNTY, VIRGINIA.

George T. McClenny,----------Plaintiff,

v.

J. A. Duke, ----------Defendant.

The answer of George T. McClenny to the answer of the said defendant, J. A. Duke, prayed by him to be treated as a cross-bill and exhibited by him against George T. McClenny in the Circuit Court of Nansemond County, Virginia.

This respondent, reserving to himself the benefit of all just exceptions to the said cross-bill, for answer thereto, or to so much thereof as he is advised it is material he should answer answers and says, that save and except the admissions made by the said J. A. Duke of the allegations in this respondent's original bill and his amended and supplemental bill, and save and expept the admissions expressly made by this respondent in this his answer to th e said cross bill, he denies all the allegations set up and made by the said J. A. Duke, and demands strict proof of same, and especially denies that he has at any time represented to the defendant, J. A. Duke, that the said tract of land in the original bill mentioned contained a large quantity of standing cord wood timber, to-wit, 500 cords, or that he made any representations to him of that or of a similar nature. This respondent admits that he agreed with the defendant to deliver to him a good and sufficient deed to the real-estate and personal property as s on as the defendant complied with the terms of sale, but denies that he agreed to deliver to the defendant a deed to said property before the terms of sale were complied with, a nd denies further that the terms of sale were as set forth by the defendant and states that the terms were as set forth by the respondent

in his amended and supplemental bill. This respondent admits that the defendant paid to him $1,000.00 upon the purchase price of the said property, but denies that the defendant thereupon demanded of the said plaintiff a good and sufficient deed to the said property, but on the contrary states that the defendant did not then demand such a deed, but promised to pay the additional $500.00 due on the cash payment of $1,500.00 agreed upon within ten days or two weeks at the most, and execute a deed of trust securing a bond for $2,000.00 as set forth in the original bill, at which time the defendant was to have delivered to him a good and sufficient deed for the property conveying clear title. This respondent admits that he demanded of the said J. A. Duke $500.00 more in cash, making $1,500.00 in all as the balance of the cash payment on the said farm, but denies that the said J. A. Duke raised any objection at that time or until sometime long after the agreement had been entered into, but on the contrary the said J. A. Duke promised to make the additional payment of $500.00 as agreed, and this respondent was not notified by the said J. A. Duke until a long time after the making of the said agreement that he, the said Duke, would not perform his part of same. This respondent admits that he has all the time insisted upon the defendant, J. A. Duke, complying with the terms of the agreement of sale as stated in this respondent's original bill and amended and supplemental bill. This respondent also denies that said J. A. Duke has suffered any wrong or injury at this respondent's hands, and states that the said defendant, J. A. Duke, should not now in equity be permitted to ask that the agreement of sale made with this respondent should be rescinded and cancelled.

And now having fully answered the cross-bill of said J. A. Duke this respondent prays to be hence dismissed with his reasonable costs by him in this behalf expended.

Geo. T. McElevey

STATE OF VIRGINIA,
COUNTY OF NANSEMOND. To-wit:

George T. McClenny, being duly sworn, says that he has read the foregoing answer, and that the statements therein contained are true.

Geo. T. McClenny

Taken sworn to and subscribed to before me D. W. Lloyd, a Notary Public in and for the County and State aforesaid, in my County aforesaid this 6th day of March, 1909.

My term of office expires March 19, 1910.

D. W. Lloyd
Notary Public.

IN THE CIRCUIT COURT OF NANSEMOND COUNTY, VIRGINIA.

NOVEMBER 29TH, 1907.

J. A. DUKE..... .....DEFENDANT.

ADS.

GEORGE T. MCCLENNY.....COMPLAINANT.

ANSWER AND CROSS BILL.

The answer of J. A. Duke, defendant, to a bill of complaint filed against him in the Circuit Court of Nansemond County, Virginia, by George T. McClenny. This respondent reserving to himself the benefit of all just exceptions to the said bill, for answer thereto, or to so much there of as he is advised that it is material he should answer, answers and says that true it is that George T. McClenny is the owner or reputed owner of the real property mentioned and described in his said bill but it is also true that sometime in April, 1907, he entered into an oral agreement with your respondent to sell to your respondent the said land and certain personal property.

Your respondent alleges that at the time of and preceding the formation of the said oral contract, the complainant represented to your respondent and your respondent then and there relied upon the said representations then and there made by the said complainant, that the said tract of land in the bill mentioned contained a large quantity of standing cord-wood timber, to-wit, five hundred cords, that he, the said complainant then had a clear and good title to the said land and the said complainant then and there promised your respondent to make him a good and sufficient deed to said real and personal property within ten days from said 20th day of April, 1907. Your

respondent avers that he did not know and had never seen the land in question and had never made an examination of the title to said land in the records at the Clerk's Office of this county; that he took possession of said farm land and personal property on or about the 1st day of May, 1907, that he then and there paid to the said comp ainant One Thousand Dollars upon the purchase price of the real and personal property and thereupon demanded of the said complainant a good and sufficient deed to the said real and personal property.

Your respondent further avers that the consideration for the said purchase as agreed upon orally between complainant and your respondent was the payment by your respondent of One Thousand Dollars in cash and Twenty Five Hundred Dollars to be thereafter paid within one year, the said balance to be secured by a deed of trust upon the land.

Your respondent avers that upon an examination it was found that the said land did not have growing upon it large quantities of growing pine cord-wood timber, to-wit, five hundred cords, or anything like that amount, but, on the contrary, it was found that the whole of said farm did not have more than fifty cords of wood standing upon it. Upon examination it was also found that the said George T. McClenny did not have a good title to the said land there being at that time, and your respondent is advised there still is upon said land a lien of a deed of trust amounting to $1, 946.00 in favor of Nannie L. McClenny.

Your respondent demanded of said McClenny a good and sufficient deed within ten days from the 20th day of April, 1907, and before he had had an opportunity to examine the said title

of the said land or the said land with respect to the cord-wood thereon. The said complainant declined to give to your respondent a good and sufficient deed to the said property but, on the contrary, demanded of your respondent $500.00 more in cash making $1500.00 in all as a cash payment on the said farm / Your respondent declined to change the terms of his purchase and after learning of the defect in the title of the said McClenny and his misrepresentations with reference to the cord-wood on the said land notified the said McClenny that he would not go on with the contract and demanded of him the return of $1000.00 heretofore paid the said McClenny upon the purchase price of the said property and offered to redeliver to him all of the personal property and possession of the said real property received under said contract.

From this time, to-wit, the 26th of June, 1907, the said McClenny has insisted upon your complainant paying him $500.00 and executing his notes secured by a deed of trust upon the land for Two Thousand Dollars ($2000.00) and your respondent has continued to refuse so to do and has repeatedly demanded of the said MCClenny the return to him of the $1000.00 paid by him to said complainant and offering to return the said real and personal property, which the said McClenny has refused to accept. Thereupon your respondent , in order to recoupe himself against loss ,has kept possession of the said farm land and has sold a part of the personal property delivered to him by the said McClenny and was endeavoring to recoupe himself by the sale of the cord-wood upon the said land when he was stopt by the injunction of this court.

Your respondent avers that he had cut down only a small quantity of wood, to-wit, ten cords, worth about seventy-five cents or $1.00 a cord; that said wood is still upon the premises and that he has expended about $10.00 in having said wood cut and ranked. That he has sold a horse and buggy delivered to him by the complainant for $130.00; that he has sold one cow delivered to him by complainant for $20.00 and that one other cow delivered to him by complainant has been killed by accident and without fault of his; that he has had possession of the said land from on the 1st day of May, 1907, and that said land is reasonably worth $10.00 per month rent.

Your respondent is ready and willing and anxious to recind and cancel the said contract of sale and hereby offers to return to said McClenny the possession of the said land and all of the personal property which has not been disposed of, or killed, and to pay him such sums as the personal property so disposed of by your respondent is reasonably worth. Your respondent insists that the said McClenny should lose the value of the cow which was killed without fault of either party since he, your respondent, has been anxious to re-deliver said cow to the complainant who would not accept it.

Your respondent prays that this answer may be treated as a Cross Bill and that your Honor will dissolve the injunction heretofore issued against him in this cause unless the said George T. McClenny pays to your respondent or confesses a judgment in favor of your respondent for a sum equal to $1000.00 with inteest thereon from the 20th day of April, 1907, subject to a credit of a fair rental value for the farm land from the

1st day of May, 1907, up to the time of the entry of said judgment or re-delivery of said real property to the complainant and such sums of money as the personal property delivered to your respondent by the said McClenny and which remains in his possession is reasonably worth. Your respondent further prays in the alternative that this court will enter a personal decree against the said George T. McClenny for the sum above mentioned and described in favor of your respondent.

And this respondent denies all fraud, unlawful combination and confederacy; and having fully answered the complainant's bill, prays to be hence dismissed with his reasonable cost by him in this behalf expended, and he will ever pray etc.

J. A. Duke

J. A. DUKE

ADS.

GEORGE T. MCCLENNY

ANSWER AND CROSS BILL.

1907 Dec 4th Filed
A. P. Ly Cl

ROBT. W. WITHERS,

ATTORNEY AT LAW,

SUFFOLK, VA.

PRACTICING IN ALL COURTS IN
FIRST JUDICIAL CIRCUIT.

JEWELL & COMPANY, PHILADELPHIA.

TO THE HONORABLE JAMES L. McLEMORE, JUDGE OF THE
CIRCUIT COURT OF NANSEMOND COUNTY.

Geo. T. McClenny,----------Complainant,

v.

J. A. Duke,----------Defendant.

Humbly complaining your Complainant, George T. McClenny, sheweth unto the Court that he was heretofore: to-wit, the 20th day of April, 1907, and still is, the owner of all that certain tract or parcel of land, situated and being in the County of Nansemond, State of Virginia, and bounded and described as follows: Starting at a fork of the Road in front of Piney Grove (colored) Baptist Church, thence running along the County Road towardsBuckhorn to the center of a ditch, boundary line between this property and Alfred C. Butler, thence along said ditch in a Northwardly direction to the end thereof to a sweet gum stump, thence continuing in about the same direction along the line of Alfred C. Butler to the lands of Abram Duke, a corner for this property and A. C. Butler and Abram Duke, thence along Abram Duke's line in an easterly course to a bridge on the County Road leading from Buckhorn to Windsor, thence along th e County Road and the lands of F. E. Stallings to the County Road in front of Pine Grove (colored) Baptist Church as aforesaid, the point of beginning, said tract of land supposed to contain about sixty-five (65) acres, more or less, and is the same property purchased by the said George T. McClenny from F. E. Stallings by deed of July 15, 1901, and recorded in Nansemond County Clerk's Office in Deed Book 50, page 179, to which deed reference is hereby made for a better

description of said property.

That heretofore, to-wit: on the 20th day of April, 1907, he entered into an oral agreement with the defendant, J. A. Duke, to sell the said land and certain personal property as follows:

One bay mare named "Daisy," one top buggy and harness, one cow and one calf, two hogs, one cart and wheels and cart harness, and all farming utensils on the farm above mentioned at the time said agreement was made, such as ploughs, hoes, pitchforks, drags, harrows, etc., to the said defendant. And the said Defendant agreed to purchase the said land and the said personal property from your Complainant upon certain terms and conditions then mutually agreed upon; that at the time of the said agreement the said Defendant was living on the said property, he having prior to the said date rented said property from your Complainant and moved thereon; and that the said Defendant has been in possession of the said property ever since the date of the said agreement, at which time your Complainant also delivered to the said Defendant the said personal property above mentioned. That the said Defendant failed to carry out and perform his part of the agreement, and still refuses to perform same. That your Complainant has always been ready and willing, and is still ready and willing, to carry out the agreement as made between them on the said date, on to-wit: the said date above mentioned; and is ready to execute and deliver to the said Defendant a good and valid deed for the said property when the said Defendant complies with the terms mutually agreed upon. That the said Defendant not only has refused and still doth refuse to carry out and perform his said agreement, but remains in possession of the said real estate and has, as your Complainant is advised and

believes, and therefore charges, disposed of a greater part, if not all, of said personal property heretofore mentioned; that said Defendant refuses, has refused, and still doth refuse, to pay your Complainant rent for the said property, or to make any payment whatsoever for the use of same. Your Complainant avers and charges that notwithstanding the ownership and title to the said real estate, the said Defendant being in possession of same has, within the past few weeks, himself and by his agents and employees, unlawfully and without authority, permit, leave or license, upon the said land, cut and felled a quantity of valuable timber trees, and has also wrongfully and unlawfully cut, or had them cut, into wood, and is still engaged in cutting down the timber trees on the said land and cutting same up into wood, for the purpose, as your Complainant is advised and therefore charges, of removing said wood and selling same, the property of your Complainant. That such illegal and wrongful cutting of your Complainants timber trees as hreinabove complained of is a continued trespass, and is causing your Complainant to suffer irreparable injury to his freehold, and unless his rights are protected by an injunction, he will be helpless to preserve or enjoy the said timber and property rights. That the property in question has thereon not a great quantity of timber, but timber sufficient and necessary for the proper enjoyment of the said property, and if said timber is so cut and destroyed, your Complainant will suffer irreparable injury in the enjoyment of his property, or in making sale of same, should he so desire.

That the said cutting has already resulted in loss incapable of adequate compensation and damages, and unless checked by the strong arm of this Court will result in irreparable damage to your Complainant.

In tender consideration whereof and forasmuch as your Complainant is without adequate remedy save by the aid of a Court of Equity where such matters are alone properly cognizable, to the end, therefore, that justice may be done, he prays that J. A. Duke be made Defendant to this Bill and required to answer same, but not under oath, the oath being expressly waived. That the said Defendant, his agents and employees, be enjoined and restrained from the further cutting of any timber now standing on the property hereinabove described, and from removing, selling or in any way disposing of any timber that may have been cut and left upon the said land, or removed therefrom. That he may be required to render a full and accurate account of the timber cut by him, his agents and employees, from the said tract of land, and for what purpose the same was used; that he be required to compensate your Complainant in treble damages for all of the timber cut from the said land, and for all of the damages sustained by reason of the violation of his rights; and that the said Defendant be also required to compensate your Complainant for the personal property above referred to delivered by him to the said Defendant, and in the hands of, or disposed of by the said Defendant; that all such orders and decrees may be entered, inquiries made, accounts taken, and all such further general and special relief may be granted your Complainant as the nature of his case may require or to equity shall seem meet.

And your Complainant will ever pray, etc.

George T. McClenny

James H. Corbitt, p.q.

STATE OF VIRGINIA,

COUNTY OF NANSEMOND. To-wit:

This day George T. McClenny appeared before me, a Notary Public in and for the State and County aforesaid, and made oath that the statements made in the foregoing bill are true. My commission expires March 19, 1910.

Given under my hand this 12th day of October, 1907.

F. N. Lloyd

Notary Public.

Geo. J. McClenny

v. } Bill

J. A. Duke

James H.

McLEMORE & CORBITT

ATTORNEYS AT LAW

SUFFOLK, VA.

Jewell & Co., Phila.

George T. W. Cleary
vs. In Chancery
J. A. Duke

1907 Oct 14th. Process issued returnable to Oct Rules 3rd Monday
" " 21. Process returned executed on defendant and decree nisi
" Nov 4. Decree nisi confirmed and Cause set for hearing.
" Dec. 4 Cross Bill filed
" " 14. Process issued returnable to Dec Rules 3rd Monday
" " 16 Process returned executed
1908 Jany 6th. Decree nisi confirmed and Cause set for hearing.

Chancery

Notes.

I. A. Corbitt pg.

George T. McClenny

vs

Chancery

I. A. Dike.

1910 Aug. 6.

Final Decree

Costs:

Tax- paid	1.50
Clerk	9.24
Sheriff	1.50
Atty.	15.00
Depositions	$27.24

by Plaintiff
Defendant