1933-064
Nansemond Co (Suffolk) Chancery Causes: Sallie P Waff vs Bain & Co] et al

74

Joyner, Porter, Birdsong, Everett

$700.00

On demand I promise to pay unto P. M. Lee his Heirs, Executors, Administrators or Assigns the just and full sum of Seven Hundred Dollars, and ---cents, current money of the United States secured by deed of trust on 6½ real-estate at Holland, Va., for value received with interest from date; for the payment of which I bind myself, my Heirs, Executors and Administrators firmly by these presents; and I hereby waive the benefit of my Homestead Exemption as to this debt, obligation or contract.

As witness my hand and seal this 28th day of March, in the year of our Lord One thousand eight hundred and ninety eight.

E. Joyner (SEAL)

_____ (SEAL)

Witness:_____

"Exhibit E"

Sept. 25-96

By int. paid to Date $21.00
Mch. 25-99
By int. paid to Date $21.00
Sept. 25th, 1899, paid to Date -
$21.00 -
March 25 1900 " " 21.00
Sept. 25,1900 " " 21.00
March 25,1901, " " 21.00
March 25,1902, " " 42.00

For value received I hereby transfer and assign the within bond to [illegible] & Co. together with deed of trust securing same without recourse to me or my estate.
June 10,1903.

F. H. Lee.

$550.00

On demand we promise to pay unto E. H. Lee, Heirs, Executors, Administrators or Assigns, the just and full sum of Five hundred and fifty Dollars and ---- cents current money of the United States, for value received. with interest from date; for the payment of which we bind ourselves, our Heirs, Executors and Administrators firmly by these presents; and we hereby waive the benefit of our exemption as to this debt, obligation or contract.

As witness our hands and seals this 21st day of Feby, in the year of our Lord One Thousand eight hundred and ninety-nine.

Interest at 6% semi annually.

Elihu Joyner (SEAL)

Sallie Joyner (SEAL)

Witness_____

"Exhibit F"

Aug 21-09 Paid $16.50
Feby.21,1900"- $16.50
Aug. 21,1900- Paid $16.50
Feby. 21, 1901-paid $16.50
Feby. 21, 1902- Paid $33.00

For value received I hereby transfer and assign the within bond to Bain & Co. together with deed of trust securing same, without recourse to me or my estate.
June 10, 1905.

E. M. Lee.

$ 2000. On demand after date, with legal interest from date until paid, payable

I bind my self, my heirs, executors and administrators, jointly and severally, to pay to Mrs. Sallie P. Waff, or heirs or assigns, the sum of Two thousand ($2000) 100 DOLLARS, for value received; and I hereby waive the benefit of my Homestead Exemption as to this debt, obligation and contract.

Secured by deed of trust on real estate in Nansemond County, Va., S. E. Everett, Trustee.

Witness my hand and seal this day of June 190 0

WITNESS:

J. A. Luke

Elisha Joyner SEAL

Sallie C. Joyner SEAL

SEAL

Exhibit G.

Recd one hundred and twenty dollars interest on within note
Jan. 1901 — S. P. Hoff

Dec 23. 1902. Recd Eighth hundred dollars part payment on within note.

July. 3. 1903. Paid Eighth Hundred and twenty four dollars on this bond. S. P. Hoff

Dec. 16. 1909. Recd one hundred and fifty dollars
S. P. Hoff

A True Copy

$2500.00.

On demand we owe and promise to pay unto Bain & Co. of Courtland, Va., the just and full sum of Twenty-five Hundred Dollars, with interest from date. We hereby waive the benefits of our homestead exemptions as to this debt.

Witness our hands and seals this 23rd day of Dec. 1903.

Elihu Joyner (SEAL)

.....(SEAL)

"Exhibit H."

By Cr. $918.87
Dec. 28, 1905.

By. Cr. $812.89
Feb. 4, 1905.

By Cr. $10.55
Feby. 7, 1905,

By Cr: (s/c)n 49.32
June 11, 1906.

By Cr: (s/c) $24.85
Jany. 24, 1906.

By cash $5.00

Mch 28, 1906.

By cash $ .50
Sept. 24, 1906

By Cr: (s/c) $205.65
M. L. & Co.
May 21, 1907

By Ins. $1826.75
Jan. 27, 1910.

By rent 1909 $240.00
Jany. 27, 1910.

THIS DEED, Made this 22nd day of March in the year one thousand eight hundred and ninety-eight between Elihu Joyner and Sallie Joyner, his wife, of Nansemond County, Virginia, of the first part, and F. H. Everett chosen as trustee, of Nansemond County, Virginia, of the second part-

WITNESSETH: That said parties of the first part do grant unto the said party of the second part the following property, to-wit:

All that certain piece, parcel, or lot of land in Holland, Nansemond County, Virginia, bounded and described as follows, to-wit, On the South by the Atlantic and Danville Railroad and running a distance of three hundred and ten feet from the land of E. T. Holland to South Quay Road along the land of the Atlantic & Danville Railroad Company, thence running from the said railroad along the county road, known as South Quay road, to a ditch, known as persimmon tree branch ditch, a distance of one hundred and ninety feet, thence along the said ditch two hundred and fifty feet to the land of E. T. Holland, the point of the beginning. It being known as the Store lot of T. E. Porter.

"Exhibit A."

IN TRUST, to secure to F? H. Lee of Nansemond County, Virginia the payment of the sum of Seven Hundred ($700.00) Dollars, evidenced by bond of even date with this deed of trust for that sum executed by the said Elihu Joyner and wife payable on demand to the said F. H. Lee with legal interest from date until paid.

In the event that default shall be made in the payment of the said debt, principal or any instalment of interest, when due and payable, then the Trustee, on being required so to do by the said F. H. Lee executors, administrators or assigns, shall sell the propetty hereby conveyed.

And it is covenanted and agreed between the parties aforesaid, that in case of a sale the same shall be made after first advertising the time, place and terms thereof for twenty days as deemed best by the said trustee and upon the following terms, to-wit: for cash as to so much of the proceeds as may be necessary to defray the expenses of executing this trust, including a trustee's commission of five per centum, the fees for drawing and recording this deed, if then unpaid, and to discharge the amount of money then payable upon the said debt; and if there be any residue of said purchase money the same shall be made payable at such time, and secured in such manner, as the said parties of the first part their executors, administrators or assigns shall prescribe and direct, or in case of their failure to give such direction, at such time and in such manner as the said Trustee shall think fit. The said parties of the first part covenant to pay all taxes, assessments, dues and charges upon the said property hereby conveyed so long as they or their heirs or assigns shall hold the same; and further covenant and agree to keep the buildings on the property hereby conveyed insured for the full amount of $700.00 for the further protection of the said F. H. Lee, or assigns; and in the event of their failure to do so, then the Trustee, or the beneficiary under this deed, may effect or renew such insurance from time to time, so long as the said debt, or any part thereof, shall remain unpaid; and the insurance pre-

miums shall constitute a part of the lien created by this deed, to be paid out of the proceeds of the property, if sold, or to be recoverable by all the remedies in law or equity by which the debt aforesaid may be recoverable.

If no default shall be made in the payment of the said debt, or insurance premiums, then, upon the request of the parties of the first part, a good and sufficient deed of release shall be executed to them at their own proper cost and charges.

Witness the following signatures and seals.

Elihu Joyner (SEAL)

Sallie Joyner (SEAL)

STATE OF VIRGINIA.
County of Nansemond. To-wit:

I, Wm. T. Holland, a Notary Public for the county aforesaid, in the State of Virginia, do certify that Elihu Joyner and Sallie Joyner, his wife, whose names are signed to the writing hereto annexed, bearing date the 22nd day of March, 1898, have acknowledged the same before me in my county aforesaid.
Given under my hand this 28th day of March, 1898.

Wm. T. Holland, N. P.

County of Nansemond, To-wit:

In the office of the Clerk of the County Court of Nansemond the 26th day of April, 1898, this deed was presented, and, with the certificate annexed, admitted to record.

Teste:

R. R. Smith, Clerk.

"Exhibit B."

THIS DEED, Made this 21st day of February, in the year 1899 between Elihu Joyner and Sarah C. , his wife, of Holland, Virginia, party of the first part and H. H. Holland, of Suffolk, Va. chosen trustee, party of the second part:-

WITNESSETH: That the said party of the first part do grant unto the said party of the second part, the following property, to-wit, All of a lot of land, with all its appurtenances situate at Holland, Virginia, lying on the north side of the A. & D. Railway fronting the South Quay Road and bounded on the north by the residential lot of Thos. E. Porter embracing all the lands and appurtenances of the said parties of the first part lying between the lines of the said Railway the said County Road and the line of the said Thos. E. Porter.

IN TRUST, to secure to Patrick H. Lee his heirs, & c. the payment of the sum of five hundred and fifty dollars evidenced by bond bearing even date with this deed of trust with interest thereon and executed by the said Elihu Joyner and Sarah C. his wife.

In the event that default shall be made in the payment of the above mentioned bond and interest when it becomes due and payable, then the said trustee on being required so to do by the said Patrick H. Lee, executors, administrators or assigns shall sell the property hereby conveyed.

And it is covenanted and agreed between the parties aforesaid that in case of a sale the same shall be made at _____ after first advertising the time place and terms thereof for 30 days and in such manner as to give due notice thereof and upon the following terms, to-wit: for cash as to so much of the proceeds as may be necessary to defray the expenses of executing this trust including a trustee's commission of five per centum, the fees for drawing and recording this deed, if then unpaid and to discharge the amount of money then payable upon the said bond and if thereby any residue of said purchase money the same shall be made payable at such time and secured in such manner as the said parties of the first part, their executors, administrators or assigns shall prescribe and direct, or in case of their failure to give such directions at such time and in such manner as the said trustee shall think fit. The said parties of the first part covenant to pay all taxes, assessments dues, and charges upon the said property hereby conveyed so long as they or their heirs or assigns shall hold the same, and further covenant and agree to keep the buildings on the property hereby conveyed insured for the full amount of $750 for the further protection of the said Patrick H. Lee or assigns and in the event of their failure to do so, then the trustee or the beneficiary under this deed may effect or renew such insurance from time to time so long as the said debt or any part thereof remains unpaid and the insurance premiums shall constitute a part of the lien created by this deed, to be paid out of the proceeds of the property if sold or to be recoverable by all the remedies in law or equity by which the debt aforesaid may be recoverable.

If no default shall be made in the payment of the above mentioned bond or insurance premiums, then upon the request of the party of the first part a good and sufficient deed of release shall be executed to them at their own proper cost and charges.

Witness the following signature and seal.

Elihu Joyner (SEAL)
Sarah C. Joyner (SEAL)

STATE OF VIRGINIA,
COUNTY OF NANSEMOND, to-wit:

I Wm. T. Holland, a Notary Public for the County aforesaid in the State of Virginia, do certify that Elihu Joyner and Sarah C. Joyner whose names are signed to the foregoing writing bearing date on the 21st day of February, 1899, have acknowledged the same before me in my county aforesaid.

Given under my hand this 21st day of February, 1899.

Wm. T. Holland, N. P.

Nansemond County, to-wit:

In the office of the Clerk of the County Court for the County of Nansemond the 1st day of March, 1899, this deed was presented, and, with the certificate annexed, admitted to record.

Teste: A. P. Comer, Deputy
for R. H. Smith, Clerk.

A copy,

Teste: R. H. Smith, Clerk.
By A. L. Twitty, D. C.

"Exhibit C"

THIS DEED, Made this 20th day of June, in the year One thousand nine hundred, between Elihu Joyner and Sallie C. Joyner of Nansemond County, Virginia, parties of the first part, and S. L. Everett of the same county and state, chosen trustee, party of the second part-

WITNESSETH: That said parties of the first part do grant unto the said party of the second part, the following property, to-wit:

FIRST: A certain lot of land in Holland, Nansemond County, Virginia, and described as follows: lying on the south side of the A. & D. Railroad, commencing at the corner of Duke Street and running along said street, seventy yards, thence an easterly course, thirty five yards, thence north back to what is called Clair Street seventy yards, thence along said street thirty five yards to the beginning and containing one-half of an acre. It being the same land conveyed to the said E. Joyner by deed duly executed by J. G. Holland and wife and recorded in Deed Book No. 26, page 326.

SECOND: All that lot of land in said town and state and described as follows: Fronting on South Quay County Road fifty two feet and running back from said road seventy yards and bounded on the north, by the land of S. W. Holland, on the east by T. G. Jones, on the South by T. E. Porter, and on the north by the said road.

THIRD: A certain lot of land in said town and state and described as follows: Bounded on the south by the A. & D. Railroad and running three hundred and ten feet from the land of E. T. Holland to South Quay road along the land of the A. & D. Railroad, thence running from the said railroad along the county road to a ditch one hundred and ninety feet, thence along said ditch two hundred and fifteen feet to the land of E. T. Holland the point of the beginning. It being the same land conveyed to the said E. Joyner by deed duly executed by the said T. E. Porter and wife and recorded in Deed Book No. 40, page 427.

FOURTH: All the standing timber on the land of Williams T. Holland, deceased. Adjoining the lands of A. A. Holland, E. T. Holland, Abram Holland, Mrs. W. T. Parker and others. It being in Nansemond County, Virginia near Holland and containing three hundred acres, more or less.

IN TRUST, to secure to Sallie P. Waff the payment of the sum of two thousand ($2000) Dollars, evidenced by a bond of even date with this deed of trust for that sum, executed by the said Elihu Joyner, and payable on demand to the said Sallie P. Waff, with legal interest from date until paid. The homestead waived.

In event that default shall be made in the payment of the said debt, principal or any instalment of interest when due and payable then the Trustee on being required so to do by the beneficiary, executors, administrators or assigns, shall sell the property hereby conveyed.

And it is covenanted and agreed between the parties aforesaid, that in case of a sale the same shall be made after first advertising the time, place and terms thereof for fifteen days as deemed best by the said trustee and upon the following terms, to-wit: for cash

as to so much of the proceeds as may be necessary to defray the expenses of executing this trust, including a trustee's commission of five per centum, the fees for drawing and recording this deed, if then unpaid, and to discharge the amount of money then payable upon the said debt; and if there be any residue of said purchase money the same shall be made payable at such time, and secured in such manner as the said parties of the first part their executors, administrators or assigns shall prescribe and direct or in case of their failure to give such direction, at such time and in such manner as the said Trustee shall think fit. The said parties of the first part covenant to pay all taxes, assessments, dues and charges upon the said property hereby conveyed so long as they or their heirs or assigns shall hold the same; and further covenant and agree to keep the buildings on the property hereby conveyed, insured for the full amount of $1500.00 for the further protection of the said beneficiary or assigns, and in the event of their failure to do so, then the Trustee, or the beneficiary this deed may effect or renew such insurance from time to time, so long as the said debt or any part thereof, remains unpaid, and the insurance premiums shall constitute a part of the lien created by this deed, to be paid out of the proceeds of the property if sold, or to be recoverable by all the remedies in law or equity by which the debt aforesaid may be recoverable.

If no default shall be made in the payment of the said debt or insurance premiums, then, upon the request of the parties of the first part a good and sufficient deed of release shall be executed to them at their own proper cost and charges.

Witness the following signatures and seals.

Elihu Joyner (SEAL)
Sallie C. Joyner (SEAL)

STATE OF VIRGINIA,
COunty of Nansemond, To-Wit:-

I, I. A. Luke, a Notary Public, for the county aforesaid, in the State of Virginia, do certify that Elihu Joyner and Sallie C. Joyner whose names are signed to the writing hereto annexed, bearing date the 20th day of June, 1900, have acknowledged the same before me in my county aforesaid.

Given under my hand this 20th day of June, 1900.

I. A. Luke, N. P.

County of Nansemond, to-wit:

In the office of the Clerk of the County Court for the County of Nansemond the 25th day of September, 1900, this deed was presented, and, with the certificate thereto admitted to record. The amount of fifteen cents in revenue stamps affixed to bond and cancelled.

Teste: R. R. Smith, Clerk.

A Copy,

Teste: R. R. Smith, Clerk,
By I. L. Smithy, D. C.

"Exhibit D"

THIS DEED, Made this 23rd day of December in the year one thousand nine hundred and two between Elihu Joyner and Sarah C. Joyner, his wife, of Nansemond County, Virginia, parties of the first part, and James L. McLemore, Trustee, of said county and state, party of the second part-

WITNESSETH: That said parties of the first part do grant unto the said party of the second part, with general warranty, the following property, to-wit:

All that certain lot of land in Holland, Virginia, known as the store house and ware rooms occupied by the grantor, bounded and described as follows: One Lot including all its appurtenances, in the town of Holland, Virginia, situated on the Southern Railway and bounded by said railway on the South, and runs from the county road on Main Street along said road three hundred and ten (310) feet to the land of E. P. Holland eastward; thence Northward along the line of said E. P. Holland two hundred and fifty (250) feet to the said county road; thence along said road South-west one hundred and ninety (190) feet to the beginning.

And. Six mules and one horse, now located at Holland, Va. and four wagons.

IN TRUST, to secure to T. L. Bain, F. D. Bain and T. E. Birdsong, partners trading as Bain & Company, the payment of the sum of TWENTY-FIVE HUNDRED ($2500.00) DOLLARS, evidenced by bond of even date with this deed, executed by the grantors, E. Joyner, herein and payable unto the said Bain & Company or order on demand, interest payable semi-annually.

And also to secure any note or notes, bond or bonds that may hereafter be given by the said grantorx by way of curtailment or renewal of the debt herein secured, or any part thereof.

In the event that default shall be made in the payment of the said debt, principal or any instalment of interest when due and payable, then the Trustee, on being required so to do by the beneficiary herein its executors, administrators, or assigns, shall sell the property hereby conveyed;

And it is covenanted and agreed between the parties aforesaid, that in case of a sale the same shall be made after first advertising the time, place and terms thereof for at least fifteen days by posters or in such manner as the said trustee shall deem expedient and upon the following terms, to-wit: for cash as to so much of the proceeds as may be necessary to defray the expenses of executing this trust, including a trustee's commission of five per centum, the fees for drawing and recording this deed, if then unpaid, and to discharge the amount of money then payable upon the said debt; and if there be any residue of said purchase money the same shall be made payable at such time, and secured in such manner, as the said parties of the first part their executors, administrators, or assigns shall prescribe and direct, or in case of their failure to give such direction, at such time and in such manner as the said Trustee shall think fit.

The said parties of the first part covenant to pay all taxes, assessments, dues and charges upon the said property hereby conveyed so long as they or their heirs or assigns shall hold the same; and further covenant and agree to keep the buildings on the property hereby conveyed insured for the full amount of $2000 for the further protection of the said beneficiary or assigns and in the event of their failure to do so, then the

Trustee, or the beneficiary under this dee, may effect or renew such insurance from time to time, so long as the said debt, or any part thereof, remains unpaid; and the insurance premiums shall constitute a part of the lien created by this deed, to be paid out of the proceeds of the property, if sold, or to be recoverable by all the remedies in law or equity by which the debt aforesaid may be recoverable.

If no default shall be made in the payment of the said debt or insurance premiums, then, upon the request of the parties of the first part, a good and sufficient deed of release shall be executed to them at their own proper cost and charged.

Witness the following signatures and seals.

Elihu Joyner (SEAL)
Sarah C. Joyner (SEAL)

STATE OF VIRGINIA,

County of Nansemond To-wit:

I, I. A. Luke, a Notary Public for the county aforesaid, in the State of Virginia, do certify that Elihu Joyner and Sarah C. Joyner whose names are signed to the writing hereunto annexed, bearing date the 23rd day of Dec. 1902, have acknowledged the same before me in my county aforesaid.

Given under my hand this 12th day of Jany. 1903.

I. A. Luke, N. P.

My term of office expires ~~on Jan.~~ June 1903.

County of Nansemond, To-wit:

In the office of the Clerk of the County Court for the County of Nansemond the 13th day of January 1903 this deed was presented, and, with the certificate annexed, admitted to record.

Teste:

R. R. Smith, Clerk.
By S. M. Lawrence. D. C.

R. H. RAWLES
Attorney at Law and Notary Public
SUFFOLK, VA.

Apl 20. 1911

Dear Mr. Watkins:

In D.B. No. 46 page 622 you will find a deed of trust made by E. Joyner & wife: (or S.C. Joyner & husband) to S.E. Everett Trustee for S.P. Wolff. Kindly make me a copy of it and charge to charge acct of S.P. Wolff as Basic Sh. stock now pending. Send copy to me.

Very truly

R H Rawles

JAMES H. CORBITT
ATTORNEY AND COUNSELLOR AT LAW
SUFFOLK, VIRGINIA
LONG DISTANCE PHONE 98

Feb . 4th, 1911.

Mr. R. R. Smith, Clerk,
Suffolk, Va.

Dear Sir:

In re S. P. Wolf v. Bain & Co. et als:
Judge Rawls is bringing the above suit.

I represent E. L. Bain, P. D. Bain and T. H. Birdsong, partners trading as Bain & Co., and I consent for them that the case be docketed in open Court.

Very truly,

James H. Corbitt

We like wise consent:

S. P. Wolff
Esther Joyner
Sarah C. Joyner
By R H Reuter Counsel

H E Everett, Trustee

IN THE CIRCUIT COURT OF NANSENOND COUNTY:

S. P. WAFF,

VS. IN CHANCERY.

BAIN & CO., ET ALS. (Injunction)

By consent of all parties, plaintiff and defendants, entered of record, it is ordered that ~~the bill in~~ this cause may be placed upon the record in open court ~~ready for a hearing~~; and also by like consent of all parties entered of record, it is further ordered that the papers in this cause may be presented to the judge of this court, in vacation, for such decrees, orders, and decisions therein, in vacation, as might be made in term.

S. P. Waff-
vs. Decree
Bain & Co., et als.,

Enter Feb. 4. 1911.

James L. McKinney
J.

Entered in Chancery Order Book
No. 4-Page 459.

We consent to this decree. R H Rawls Counsel
for S P Waff
E. Lyon
& E. Lyon

St. Corbitt, Atty for
T. L. Bain
P. D. Bain &
T. W Binderup
W E Ewing, Trustee

Virginia In Vacation

IN THE CIRCUIT COURT OF NANSEMOND COUNTY. April 18th. 1912.

Sallie P. Waff,

v.

T. L. Bain, P. D. Bain and T. H. Birdsong, partners trading as Bain & Company, et als.

This day came the defendants, T. L. Bain, P. D. Bain and T. H. Birdsong, partners trading as Bain & Company, and by leave of Court filed their demurrer to the complainant's bill; and thereupon this cause, which by decree hereinbefore entered may be submitted to the Judge of this Court for such decision or decree, judgment or order therein in vacation as might be made in term, came on further in vacation this 18th day of April, 1912 to be heard upon the bill, the demurrer of the defendants T. L. Bain, P. D. Bain and T. H. Birdsong, partners trading as Bain & Company, to the said bill and joinder therein, and was argued by counsel; whereupon the court is of the opinion that the said demurrer is good. Therefore it is decreed that the said demurrer be sustained and the bill of complainant be dismissed and that the complainant pay to the defendants T. L. Bain, P. D. Bain and T. H. Birdsong, partners trading as Bain & Company, their costs by them about their defense sustained.

All of which is hereby certified to the Clerk of this Court to be entered in the chancery order book.

James L. Whitmore.

Sallie P. Waff,

v.

Bair & Company et als.

D E C R E E.

1912. April 18th.
Enter.
James L. D. Lowe.

Entered in Chancery Order
Book No. 4- Page 512.

IN THE CIRCUIT COURT OF NANSEMOND COUNTY:

S. P. Waff, Plaintiff.

vs. In Chancery.

Bain & Co., et als. Defendants.

The answer of Elihu Joyner, and Sarah C. Joyner, to a bill in Chancery, exhibited against them and others, in the Circuit Court of Nansemond County, by S. P. Waff.

For answer to the said bill, or to so much thereof, as it is necessary that they should answer, these defendants answering saith that the facts as stated in said bill are practically and substantially true, and correct so far as they know, believe or are informed. The said defendant Elihu Joyner says that at and before the time of the desfruction of the buildings by fire on lot No. 1, as mentioned in said bill he was, and had been for some time keeping insurance, in order th protect the beneficiaries who held certain deeds of trust, on said real estate; that the two first named deeds of trust on said real estate, were formerly held by P. H Lee, but that on or about the 10th day of June, 1903, the bonds secured by said two deeds of trust, and payable to said P. H. Lee, were by him assigned and transferred to Bain & Co., and were held by them at the time of the fire; that the said Bain & Co., were therefore the first lien holders on said property, on lot No. 1. mentioned in said bill for the first two said debts; that the 3d deed of trust on said real estate was made to secure a debt due by said E. Joyner and Sarah C. Joyner, to S. P. Waff, for cash which she loaned them, and that her deed of trust stipulated that the property or buildings on said lot should be kept insured for her benefit and protection. She therefore held the 3d lien on said property; he further says that on the 23d, day of December, 1903, he gave a 4th deed of trust on said property to secure to Bain & Co. the sum of $2,500.00 it being a debt that the said Elihu Joyner already owed them at that time, for past transactions, and that this deed of trust also provi-

ded that the property should be kept insured for the benefit of said beneficiary.

The said Elihu Joyner further says that he at all times paid the premiums on said insurance, that when credit was extended by the insurance agents for said payments, said credit was given to him, and was charged to him by said agents, that at the time of the said fire the property was still insured, and while there was a balance due on the premium to the said agents, Woodward & Elam, it was charged to him, and was paid out of this money, when the loss was adjusted, said money being collected by Bain & Co., this premium ~~being first~~ deducted and then the balance retained by said Bain & Co., so that at all times as a matter of fact, the said Elihu Joyner kept the property insured at his own cost for the beneficiaries, in the various deeds of trust according to their respective priorities.

He further says that it was his intention, wish and desire, that in case of fire, and loss thereof, that the insurance collected should be applied to the different debts secured by deeds of trust, as aforesaid, according to their respective priorities, just as the purchase money would have been applied in case the property had been sold at private or public sale, that this was his wish and desire, that when the insurance was collected by Bain & Co., from Woodward & Elam agents, that the same should have been applied by them. 1st. To the payment of their first two deeds which were assigned to them by P. H. Lee, 2d. To the payment of the debt due by deed of trust to the said S. P. Waff; and 3d. That it there was any balance left, then it might have been applied to the debt of $2,500.00, due by 4th lien on said property, to said Bain & Co., he further says that it was not at any time his intention, wish or desire that the said Bain & Co., should collect said insurance and pay same over to their 4th mortgage on said property.

These defendants therefore join in the prayer of the bill and respectfully ask that the court will apply the insurance money now in the hands of Bain & Co., to the mortgage debts on said property according to their priority, and having fully answered, these de-

fendants pray, to be hence dismissed with their reasonable cost in this behalf expended, znd they will ever pray, etc.

E. Joyner

Sarah E. Joyner

Answer of
E. Joyner & S. C.
Joyner.

S. P. Waff

vs.

Bain & Co.,

In Chancery.

By leave of court, the plaintiff is allowed and permitted to amend her bill in this case, so that said bill shall contain the following allegations, and prayer.

1st. The insurance company or companies which carried the policy or policies of insurance on the building of E. Joyner, mentioned in the bill , by the terms of their contract of insurance, reserved the right to rebuild in case the buildings were destroyed by fire.

2d. The loss clause in said policy was made payable to Bain & Co., as their interest might appear.

3d. The said E. Joyner took out and contracted for all the insurance he could obtain on said building and all that the insurance companies would grant him thereon. The insurance upon said building was effected by Joyner by contract with the insurance company and the insurance was at all times carried at the expense of said E. Joyner.

4th. It was the intention and expressed desire of the said E. Joyner that in case of loss of the said building by fire, the money coming from the insurance policy should be applied to the mortgage on the said property, in the order of their priority, and it was his direction that it should be done.

It is also ordered that this amendment to said bill may be read as a part of said bill in this form, without rewriting the entire bill.

The said S. P. Waff in any event prays that the court will grant her a judgment against the said E. Joyner, and S. C. Joyner, for the amount due her by them on the bond, filed as an exhibit in this case.

Attempt to
Bird

IN THE CIRCUIT COURT OF NANSEMOND COUNTY.

Sallie P. Waff, Plaintiff,

v.

T. L. Bain, P. D. Bain and T. H. Birdsong, partners trading as Bain & Company, et als, Defendants.

The demurrer of T. L. Bain, P. D. Bain and T. H. Birdsong, partners trading as Bain & Company, defendants to the bill of complaint exhibited against them and others in the Circuit Court of Nansemond County by Sallie P. Waff.

These defendants, by protestation, not confessing or acknowledging all or any of the matter or things in the said bill of complaint to be true in the manner and form as the same are therein and thereby set forth and alleged, do demur thereto and for cause of demurrer show thatthe said bill is insufficient in law for the following reasons and others apparent upon the face thereof:

1. The complainant has no interest in the insurance money, the application of which is the subject matter of this suit, and has no right to institute a suit concerning its application.

2. As appears from the bill and exhibits made part thereof, the insurance money derived from the insurance policies held by Bain & Company was less than the debts due Bain & Company, secured by the deeds of trust, and less than the total amount of insurance the makers of the said deeds of trust agreed therein to carry for the benefit of the beneficiaries therein, viz., P. H. Lee and his assigns (who are Bain & Company) and Bain & Company, wherefore the said insurance money belonged absolutely to the said T. L. Bain, P. D. Bain and T. H. Birdsong, partners trading as Bain & Company, to be applied on the said

debts due them, and they were entitled to have and demand from the insurance companies checks payable to them solely and they had the right to apply the said insurance money as they saw fit on the debts due them secured by the deeds of trust.

WHEREFORE, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto, and they pray the judgment of this Honorable Court whether they shall be compelled to make any further or other answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

James H. Corbett, Counsel
for Bain & Co's.

Sallie P. Haff

v.

Bain & Co. et als

Demurrer

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

Your complainant, Sallie P. Waff, respectfully represents that-

1. On March, 22d, 1898, E. Joyner was seized and possessed in fee simple of the following real-estate, to-wit:

A lot situated in Holland in Nansemond County, Virginia, and bounded and described as follows:

On the South by the Atlantic and Danville R. R. Co. and running a distance of 310 feet from the land of E. T. Holland to the South Quay County Road along the line of the said Atlantic and Danville Railroad Co., thence running from said railway along the said county road to a ditch known as "Persimmon-tree Branch Ditch" 190 feet; thence running along said ditch 250 feet to the land of E. T. Holland, the point of beginning, and known as the T. E. Porter lot. It being the same land conveyed to the said E. Joyner by T. E. Porter by deed recorded in the Clerk's Office of Nansemond County, in D. B. 40, page, 427.

2. By deed dated March, 22d, 1898, admitted to record April, 26th, 1898, and recorded in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, in D. B. 41, page 470, the said E. Joyner and Sarah C. Joyner, his wife, conveyed to S. E. Everett, Trustee, the said real estate in trust to secure to P. H. Lee the sum of $700.00, evidenced by a bond for that ~~date~~ sum executed by Elihu Joyner and wife payable to P. H. Lee, in which said deed the said E. Joyner covenanted to keep the buildings on said lot insured for the sum of $700.00 for the further protection of the said P. H. Lee or assigns. Copy of said deed of trust is hereto annexed, marked "ExhibitA", and made a part of this bill.

3. On January 26th, 1899, the said E. Joyner took out two policies of insurance on the buildings on said lot with Woodward & Elam Agents, Suffolk, Virginia, for the sum of $1,400.00, with the loss payable to P. H. Lee, or his assigns, as his interest might appear. This insurance was continued on force by said E. Joyner by renewal of said policies in same companies by same agents from date until the

date of the fire hereinafter mentioned, the said E. Joyner paying all the premiums except the premiums for the last three or four years preceding the fire, the said last premiums amounting to $173.05, being paid to the said Woodward & Elam, Agents, by Bain & Company, on January, 13th, 1910, out of the insurance money they had collected after the fire.

4. By deed dated the 21st day of February, 1899, admitted to record 1st day of March 1899 and recorded in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, in D. B. 43 page 492, the said E. Joyner and wife conveyed to E. E. Holland, Trustee, the same property in trust to secure to P. H. Lee, his heirs, etc., the payment of the further sum of $550.00 evidenced by bond of same date executed by Elihu Joyner and wife. This deed also contained a clause requiring that the buildings on the property should be kept insured for the sum of $750.00 for the further protection of P. H. Lee, or assigns. A copy of said deed marked "Exhibit B". is hereunto annexed and made a part of this bill.

5. By deed dated the 20th day of June, 1900, admitted to record 25th day of September 1900, and recorded in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, in D. B. 46, page 622, the said E. Joyner and wife conveyed to S. E. Everet, Trustee, the same property and two other lots or parcels of land in Holland, Virginia, and certain standing timber in trsut to secure Sallie P. Waff, the payment of the sum of $2,000.00, and evidenced by a bond of even date with said deed. This deed contained a clause that the said E. Joyner should keep the property insured for the sum of $1,500.00 for the further protection of the beneficiary or her assign. a copy of said deed is herewith filed marked Exhibit C. Your oratrix says that when she made this loan of $2,000.00 she was well acquainted with the first mentioned lot, she believed it to be true, and it was a fact that that lot if kept insured was ample security not only for this said debt of $2,000.00 but also for the prior debt of $1,200.00, though the said lot, if it had at that time been a va-

cant lot would not have been any good security whatever, for her said loan, nor would she have made said loan, if the lot had been vacant, but she says that the said loan was made upon faith of the fact that there were valuable buildings on said lot, and that they should be kept insured for the benefit of the prior lien-holder, and of herself, according to their respective priorities.

6. Your oratrix further says that after this the said Elihu Joyner had business dealings and transactions with T. L. Bain, P. D. Bain, and T. L. Birdsong, trading as Bain & Company, and that the sai E. Joyner had by misfortune become indebted to the said Bain & Company, in the sum of $2,500.00 which he was unable to pay, and for which he had but little if any security to offer them. But that by deed, dated December, 23d, 1903, and recorded in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, in D. B. 52 page 519, the said Elihu Joyner and wife, conveyed to James L. McLemore, Trustee, the first mentioned lot and six mules, one horse, and four wagons, in trust to secure to Bain & Company, the payment of the sum of $2,500.00 evidenced by a note of even date with said deed given for the said debt aforesaid. At the time this deed was given the security offered so far as the real estate was concerned amounted to scarcely nothing as the prior deeds of trust securing debts due on the same to the amount nearly or quite equal its value, and the said Bain & Company, taking this deed of trust, it being about the only security which they could get, took it for what it might be worth, if the same be much or little. Copy of the said deed of trust marked "Exhibit D" is hereunto annexed and made a part of this bill.

7. By deed dated December, 20th, 1902, and admitted to record December, 30th, 1903, in said Clerk's Office, in D. B. 54 page 136, (in which Sallie P. Waff, and S. E. Everett, Trustee join for the purpose of releasing) E. Joyner and wife, conveyed to P. H. Lee, for the sum of $----1000.00----, one of the tracts of land mentioned in

"Exhibit C" the said P. H. Lee, paying cash for the said property, and that the said P. H. Lee being at that time the beneficiary in both of the first two named deeds of trust.

8. On or about June, 10th, 1903, the bonds, described in Exhibit A. & Exhibit B. were assigned to Bain & Company, by P. H. Lee, and about the same day, June 13th, 1903 the loss clause in the insurance policy was directed to be made payable to Bain & Company, as their interest might appear.

9. By deed dated January, 13th, 1903, and admitted to record, July, 3d, 1903, in said Clerk's Office, in D. B. 54 page 642, (in which Sallie P. Waff, and S. E. Everett, joined for the purpose of releasing) the said E. Joyner and wife conveyed to T. A. Whitfield, one of the tracts of land, described in Exhibit C. for the sum of $---950.00---, the said T. A. Whitfield paying cash for th said property. The timber mentioned in Exhibit "C" was cut and removed by said E. Joyner without the knowledge or consent of said S. P. Waff.

10. On the first day of January, 1910, all the buildings on the said lot in paragraph 1. hereinabove described, and also described in "Exhibits A-B-D" were destroyed by fire.

11. After the destruction of the said buildings on said first mentioned lot by fire, a check for the sum of $650.00 of the Georgia Home Insurance Company, payable to E. Joyner and Bain & Co., was delivered by said Insurance Company, to Woodward & Elam, their agents, and while in possession of said agents, said check was endorsed by said E. Joyner, and on January, 13th, 1910, at the request of said E. Joyner, was delivered by said Woodward & Elam to be credited to Bain & Company, on the mortgage debts aforesaid, according to their priority; on the same day the said Bain & Company, paid Woodward & Elam agents, from the insurance collected on account of said fire loss $173.05 covering premiums unpaid by said E. Joyner, due to said agents; and also after the said fire another check of the Etna Fire Insurance Company, for $750.00 payable to E. Joyner, and Bain & Company, was delivered by said insurance company to Woodward & Elam, their agents, and while in the possession of the said Woodward

& Elam the same was endorsed by said Elihu Joyner, and at his request was delivered on January, 27th, 1910, to Bain & Company, to be applied to his mortgage debts according to law, and according to their priority. On said latter datethe said Bain & Company applied the net proceeds amounting to $1,226.95 after deducting the $173.05 for premiums paid Woodward & Elam, agents, from the gross amount of $1,400.00 received, as a credit on said E. Joyner's note for $2,500.00 due said Bain & Company, dated December, 22d, 1903, and secured by a deed of trust, known as "Exhibit D." it being the last trust on said property, instead of the first trust.

12. Copies of the bonds or further evidences of debt described in "Exhibit A. & B. & C. & D. showing the credits applied thereon, and payments made thereon, are filed herewith marked "Exhibits E. & F. & G. & H. respectively and made a part of this bill.

13. Your oratrix further says that it was a great wrong committed by the said Bain & Company, as to her rights in the premises; that by this act they practically destroyed the value of her lien and her security for the amount on said property, which up to that time was perfectly good and valid, when at the same time they converted what was at that time to them a practically worthless security, to-wit: their $2,500.00 into a perfectly valid and good security, contrary to law and contrary to the intention of the said E. Joyner, and said S. P. Waff. Because she says that, that left the vacant lot subject to their first lien or first deed of trust, formerly held by P. H. Lee, and that the said vacant lot after the buildings thereon were destroyed by fire, was not worth enough to pay off their first lien. ahead of her lien

14. Your oratrix further says that on the 26th of February, 1910 S. E. Everett, Trustee, in Exhibit C. being the deed of trust for the benefit of your oratrix, sold the said vacant lot mentioned in paragrah 1. at public auction, after due advertisement, and it was purchased by the Holland Supply Company, for the sum of $1600.00, which said sum is still in the hands of the said S. E. Everett, Trustee,

for distribution, but he refuses to pay any part of the amount to your complainant because the said Bain & Company are claiming the proceeds in the hands of said S. E. Everett, Trustee to be due to them on the debt secured in the deeds of trust marked Exhibit A. and Exhibit B. being the two deeds of trust on said property formerly held by P. H. Lee.

15. Your oratrix is informed and believes and therefore charges that the said Bain & Company made a missapplication of the payment of the amount of insurance which they collected of Woodward & Elam, agents, on the two policies aforesaid; amounting to the sum of $1,226.95, the net proceeds after paying the premiums then due thereon; that they should have credited the amount so collected from said insurance on their first two bonds, being the debt secured in Exhibit A. and Exhibit B., and that if any was left it should have been paid to your oratrix, who was the next lien-holder. But if the amount so collected from the said policies did not pay in full the first two bonds and liens held by the said Bain & Company, then that the said S. E. Everett, Trustee, from the amount in his hands, from the sale of the said lot should be directed to pay the remainder due on said two first bonds, formerly held by P. H. Lee, and assigned to Bain & Company, and after paying these two first liens, to pay the remainder, if any, still in his hands, to your oratrix.

In tender consideration whereof, and forasmuch as your oratrix is remediless in the premises, save by the aid of a court of equity, where such matters are alone and properly cognizable, your oratrix prays that the said T. L. Bain, P. D. Bain, and T. H. Birdsong partners, trading as Bain & Company, S. E. Everett, Trustee, and Elihu Joyner and Sarah C. Joyner, may be made parties defendant to this bill, and required to answer same, though an answer under oath is hereby waived; that proper process may issue; that all proper accounts may be taken; and that the said T. L. Bain, P. D. Bain, and T. H. Birdsong, partners, trading as Bain & Company, may be required to credit the amount of insurance which they collected of Woodward

& Elam, agents, being the sum of fourteen hundred ($1,400.00) dollars less the premiums paid by them out of it, on the two bonds assigned to them by P. H. Lee, and which constituted the first two liens on the property, made by Elihu Joyner as aforesaid, or enough of it to satisfy said two bonds; that the said S. E. Everett, Trustee, may be required to pay over to your oratrix enough of the sixteen hundred ($1,600.00) dollars now in his hands, being the proceeds of the sale, of the vacant lot, after the desctruction of the buildings to be applied to the payment of the bond held by your oratrix, and the remainder thereof, in his hands, of any, then pay over to the said Bain & Company, to be credited on their last lien on said property, being the bond of twenty-five hundred ($2,500.00) dollars, and for all such other, further and general relief as this case may require, or which to equity may seem meet, and she will ever pray, etc.

Notice is hereby given that the court will be asked to allow a proper counsel fee to R. H. Rawles, counsel, for the plaintiff, in thiscase, as this is a suit brought in order to determine the proper application to be made of the various funds mentioned in this bill.

S. P. Waff by Counsel

VIRGINIA, NANSEMOND COUNTY, to-wit:

I, R. H. Rawles, a Notary Public, for the county aforesaid, in the State of Virginia, docertify that Sallie P. Waff, whose name is signed to the foregoing bill, has this day personally appeared before me, in my county aforesaid, and after being duly sworn, made oath that all the statements contained in this said bill as coming of her own knowledge are true, and that all other statements therein contained as coming of knowledge or information derived from others she believes to be true.

My term of office expires on the 30th day of January, 1911.

Given under my hand this 30th day of November, 1910.

R. H. Rawles N.P.

Bill.

S. P. Wolff
vs
Bain Motor Vehicles.

1911 Feb 4. Filed
M. M. Watkins D.C.

S. P. Haff

v.

Bain & Co. et als

Bill

R. H. Rawls,
ATTORNEY AND COUNSELLOR AT LAW
SUFFOLK, VIRGINIA

S. P. Wapp
vs.
Bain & Co & others.

1911 - Feb 4 - By consent of all parties cause placed on docket in open Court.
Bill filed -

Notes

L. P. Hraff

vs

Baird Co. et al.

in Eq.

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