1933-208
Nansemond Co (Suffolk)

Chancery Causes: The Farmers Bank of Nansemond
vs
F. H. Johnson et al
Gornto, Fentress, Everett, Jones, Beale, Milteer, Brinkley, Lawrence, Eure, Baines, Hathaway, Twin City Tobacco Co]

VIRGINIA:

IN THE CIRCUIT COURT OF NANSEMOND COUNTY

THE FARMERS BANK OF NANSEMOND .....COMPLAINANT

v.

F. H. JOHNSON, R. L. GORNTO,
JOHN FENTRESS and R. L. JOHNSON.....DEFENDANTS

TO JOHN H. POWELL, ESQ., CLERK OF SAID COURT:

Please issue summons in chancery in the above styled suit, returnable First March Rules.

G. A. Harris p.q.

VIRGINIA: IN THE CIRCUIT COURT
OF NANSEMOND COUNTY.

THE FARMERS BANK OF NANSEMOND

v.

F. H. JOHNSON ET ALS

MEMORANDUM

Filed: Feb. 4, 1933.

John A. Powell
Clerk.

KNOW ALL MEN THAT The Farmers Bank of Nansemond, plaintiff in the hereinafter styled cause, gives notice of lis pendens, by this memorandum filed in the Clerk's Office of the Circuit Court of the County of Nansemond, Virginia, on the 4th day of February, 1933, which sets forth as follows:

There is now pending in the Circuit Court of Nansemond County, Virginia, a certain cause, the title of which is The Farmers Bank of Nansemond versus F. H. Johnson, R. L. Gornto, John Fentress and R. L. Johnson; the general object thereof is to set aside as fraudulent and void a certain deed of trust made by F. H. Johnson, dated the 13th day of January, 1933, and recorded in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, on the 14th day of January, 1933, in Deed of Trust Book No. 125, at page 346, and subject the property therein mentioned to the payment of the plaintiff's claim; the amount of the claim asserted is $17,330.00; the description of the said property is as follows:

FIRST: All that certain tract of land in Holy Neck Magisterial District, Nansemond County, Virginia, known as the (Birdsong) tract of land containing two hundred (200) acres, more or less, bounded by old county road running from old Ferry on Black Water River, the Black Water River, the lane of Hugh J. Lawrence's residence, and by the lands formerly belonging to James E. Jones and others, and being the same land sold and conveyed to the said Frank H. Johnson by W. F. Beale and Gertie, his wife, by deed bearing date the 2nd day of January, 1911, and duly recorded in Nansemond County Court Clerk's Office in Deed Book 70, page 272, but the ferry house near said River and near the line of the aforesaid land is hereby reserved together with land on which the same is located with right of egress and ingress thereto and therefrom and is not embraced herein or intended to be conveyed thereby.

SECOND: That certain tract of land in Holy Neck District, Nansemond County, Virginia, containing thirty-five (35) acres, by survey, a plat of which is filed in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, in Plat Book No. 2, page 174, and being bounded and described as follows: On the North by other lands of the Jacob Milteer (homestead); on the East by the land of J. H. Howell and other lands of the said Jacob Milteer on the South by the land of the Camp Manufacturing Company, known as the J. E. Jones tract, and on the West by the land of the said Camp Manufacturing Company, known as the J. E. Jones tract; it being the same land conveyed to the said F. H. Johnson by deed duly executed by Jacob Milteer and Mary Milteer, his wife, duly recorded in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, in Deed Book 104, page 149.

THIRD: All the following personal property located and kept on the farm first above described in Nansemond County, Virginia, as follows: one dark brown mare mule; one red horse mule; one red mare mule; one dark bay mare mule, three spotted buffalo cows; one jersey buffalo cow; one black spotted holstein cow, five old hogs and twenty-five young pigs, one hundred barrels corn, five hundred bags peanuts, one hackney wagon, one double hackney, one cart and wheels, one Coach Chevrolet automobile 1929 model, and all farming utensils including plows, cultivators, harness, etc.;

and the name of the person whose estate is intended to be affected thereby is

F. H. Johnson.

Dated this 4th day of February, 1933.

THE FARMERS BANK OF NANSEMOND,

By E E Holland
President.

STATE OF VIRGINIA,
CITY OF SUFFOLK, to-wit:

I, J E Goodwin, a Notary Public in and for the City aforesaid, in the State of Virginia, do certify that E. E. Holland President of The Farmers Bank of Nansemond, whose name is signed to the writing above, bearing date the 4th day of February, 1933, has acknowledged the same before me in my City aforesaid.

My term of office expires June 4 1935
Given under my hand this 4th day of February, 1933.

J. E. Goodwin
Notary Public.

I, John H. Powell, Clerk of the Circuit Court of Nansemond County, Virginia, in which the above mentioned cause of The Farmers Bank of Nansemond vs. F. H. Johnson, R. L. Gornto, John Fentress and R. L. Johnson is pending, do hereby authenticate the above memorandum according to the provisions of Section 6469 of the Code of Virginia and declare that the facts stated in said memorandum are correct, as shown by the record in the said cause.

John H. Powell
Clerk.

INDEXED

VIRGINIA: IN THE CIRCUIT
COURT OF NANSEMOND COUNTY

THE FARMERS BANK OF NANSEMOND

v.

F. H. JOHNSON

LIS PENDENS

Filed: February 4th 1932

Colon H. Powell
Clerk.
By. M. K. Faulkner D.C.

See Deed Book
No 126 Page 423

VIRGINIA:

In the Clerk's Office of the Circuit Court
of Nansemond County the 4th day of February 1932
This deed was presented, and with the certificate
annexed, admitted to record at 11:00 A.M.

Teste Colon H. Powell Clerk
By M. K. Faulkner D.C.

H. A. Harris p. q.

Copy of Costs
Taxed in the Suit of:

The Farmers Bank of Nansemond

vs.

J. H. Johnson et als

IN THE CIRCUIT COURT OF NANSEMOND COUNTY, VIRGINIA

Writ Tax	1 50
Clerk	
Sheriff	
Attorney	
Commissioner	
Printer, for Order of Publication, etc.	8 50
Deposit required	10 00

Date of Judgment or Final Decree 193

Paid Mar. 2 193 3 John W. Powell, Clerk

By Evelyn Farmer ~~Clerk~~ D.C.

MR. S. G. Harris

TO JOHN H. POWELL, CLERK CIRCUIT COURT
OF NANSEMOND COUNTY
SUFFOLK, VA.

193 3, ~~March~~ Feb. 3

TAX, $ TRANSFER, $ FEE, $

RECORDING DEED FROM

TO

Copy deed (Johnson) 1 50

Paid March 2 193 3 John H. Powell Clerk

By Evelyn Harris D. C.

MR. G. A. Harris

TO JOHN H. POWELL, CLERK CIRCUIT COURT
OF NANSEMOND COUNTY
SUFFOLK, VA.

193 3, February 3rd

TAX, $ TRANSFER, $ FEE, $

RECORDING DEED FROM

TO

Certified copy of deed of trust
F. H. Johnson to S. E. Everett, Trustee - - - - - $1.50

Paid 193 Clerk

By D. C.

VIRGINIA:

IN THE CIRCUIT COURT OF NANSEMOND COUNTY

THE FARMERS BANK OF NANSEMOND.....COMPLAINANT

v.

F. H. JOHNSON, R. L. GORNTO,
JOHN FENTRESS, R. L. JOHNSON
AND S. E. EVERETT, TRUSTEE.....DEFENDANTS

It appearing to the Court that a compromise settlement has been agreed upon by and between the complainant and defendants, on motion of the complainant, by its attorney, and with the consent of J. W. Brinkley, C. M. Lawrence, W. L. Eure, J. E. Baines and C. B. Hathaway, by their attorney, it is ordered that this cause be stricken from the docket without prejudice to the complainant to bring such proceedings as it may see fit against J. W. Brinkley, C. M. Lawrence, W. L. Eure, J. E. Baines and C. B. Hathaway on the bond executed the 22nd day of December, 1927, by and between J. W. Brinkley, C. M. Lawrence, W. L. Eure, J. E. Baines, C. B. Hathaway and F. H. Johnson and The Farmers Bank of Nansemond.

Chancery

VIRGINIA:

IN THE CIRCUIT COURT OF
NANSEMOND COUNTY.

THE FARMERS BANK OF NANSEMOND

v.

F. H. JOHNSON et als.

(case #244)

ORDER

Clerk enter
G. S. Harris atty for
Complt
Entered: Defendants
dependents

Jas. L. McGlothlin
Judge.

July 27, 1932

See Chancery Order
Book 7: Page 98

G. A. HARRIS
ATTORNEY-AT-LAW
NATIONAL BANK BLDG.
SUFFOLK, VA.

February 21,1933

Mr. John H. Powell, Clerk,
Suffolk, Virginia.

Dear Sir:

In Re: The Farmers Bank of Nansemond
v.
F. H. Johnson et als.

I am enclosing you petition and decree making S. E. Everett, Trustee, a party to the above proceedings. Will you kindly issue subpoena in chancery for S. E. Everett, Trustee, returnable First March Rules and enter the enclosed decree as of this date.

Yours very truly,

G A Harris

gah-l

Richmond Office Supply Co., Inc.
Richmond, Va. } Form No. 300-R

The Commonwealth of Virginia:

TO THE SERGEANT OF THE CITY OF SUFFOLK:- GREETINGS:-

~~To the Sheriff of the County of XXXXXXXXXXXXXXXXXXXXXX Greeting:~~

WE COMMAND YOU, *That you summon* F. H. Johnson, R. L. Gornto, John Fentress, R. L. Johnson and S. E. Everett, Trustee

to appear at the Clerk's Office of the Circuit Court of the County of Nansemond, *at rules to be held for the said Court on the* first *Monday in* March *19* 33, *to answer a bill in Chancery, exhibited against* them *in our said Court by* The Farners Bank of Nansemond

And have then there this writ. Witness John H. Powell, *Clerk of our said Court, at the courthouse, the* 23rd *day of* February *19*33, *and in the* 157th *year of the Commonwealth.*

John H. Powell *Clerk.*

By Evelyn Harris, D.C.

Service on within summon is hereby accepted this 2nd day of March, 1933.

H. E. Rumble

Form 300-R

ORIGINAL

The Farmers Bank of Nansemond

vs. } SUBPOENA IN CHANCERY

F. H. Johnson et als

G.A.Harris *p. q.*

To first March *Rules*

1933

Richmond Office Supply Co., Inc.
Richmond, Va. } Form No. 300-R

The Commonwealth of Virginia:

To the Sheriff of the County of Nansemond, *Greeting:*

WE COMMAND YOU, *That you summon* F. H. Johnson, R. L. Gornto, John Fentress and R. L. Johnson

to appear at the Clerk's Office of the Circuit Court of the County of Nansemond, *at rules to be held for the said Court on the* first *Monday in* March 19 33, *to answer a bill in Chancery, exhibited against* them *in our said Court by* The Farmers Bank of Nansemond

And have then there this writ. Witness John H. Powell, *Clerk of our said Court, at the courthouse, the* 4th *day of* February 19 33, *and in the* 157th *year of the Commonwealth.*

John H. Powell *Clerk.*

By Evelyn Harris D. C.

Form 300-R

Original

vs. } SUBPOENA IN CHANCERY

.....

.....

.....*p. q.*

To.....*Rules*

Executed on the 8 day of Feb 1933, within the County of Nansemond, State of Virginia, by delivering a true copy of the within summons ~~notice~~, in writing, to J H Johnson

O B Rawles
Sheriff

By A C Rawles D Sheriff
Deputy Sheriff

Richmond Office Supply Co., Inc.
Richmond, Va. } Form No. 300-R

The Commonwealth of Virginia:

To the ~~Sheriff of the County of~~ Sergeant of the City of Norfolk, Greeting:

WE COMMAND YOU, *That you summon* F. H. Johnson, R. L. Gornto, John Fentress and R. L. Johnson

to appear at the Clerk's Office of the Circuit Court of the County of Nansemond, *at rules to be held for the said Court on the* first *Monday in* March *19* 33, *to answer a bill in Chancery, exhibited against* them *in our said Court by* The Farmers Bank of Nansemond

And have then there this writ. Witness John H. Powell, *Clerk of our said Court, at the courthouse, the* 4th *day of* February *19* 33, *and in the* 157th *year of the Commonwealth.*

John H. Powell *Clerk.*
By Evelyn Hardie D. C.

Not finding R T Gentle
nor any member of his/her family above the age of 16 years at his/her usual place of abode I executed the within process in the City of Norfolk, Va., this the 8 day of Feb 1933 by leaving a COPY hereof posted at the FRONT DOOR of his/her place of abode.

CHAS. E. FRANCIS,
Sergt. City of Norfolk, Va.
By W C Cannae Deputy.

Not finding John Fentress
at his/~~her~~ usual place of abode I executed the within in the City of Norfolk, Va., this 8 day of Feb 1933 by delivering a copy hereof to Mrs S G Fentress he being then there, a MEMBER OF HIS/~~HER~~ FAMILY and over the age of 16 years, and giving information of its purport to her/him.

CHAS. E. FRANCIS,
Sergt. City of Norfolk, Va.
By W C Cannae Deputy.

Not finding R T Johnson
nor any member of his/her family above the age of 16 years at his/her usual place of abode I executed the within process in the City of Norfolk, Va., this the 8 day of Feb 1933 by leaving a COPY hereof posted at the FRONT DOOR of his/her place of abode.

CHAS. E. FRANCIS,
Sergt. City of Norfolk, Va.
By W C Cannae Deputy.

Sgt. Fee 1.50
PAID Form 300-R

ORIGINAL

The Farmers Bank of Nansemond
vs.
F. H. Johnson et als

SUBPOENA
IN
CHANCERY

p. q.

To Rules

VIRGINIA:

IN THE CIRCUIT COURT OF NANSEMOND COUNTY.

THE FARMERS BANK OF NANSEMOND.....COMPLAINANT

v.

F. H. JOHNSON, R. L. GORNTO,
JOHN FENTRESS and R. L. JOHNSON.....DEFENDANTS

This day came The Farmers Bank of Nansemond, by G. A. Harris, its attorney, and filed its petition praying that S. E. Everett, Trustee, be made a party defendant to these proceedings.

On consideration whereof, it is adjudged, ordered and decreed that the said S. E. Everett, Trustee, be, and he is hereby, made a co-defendant of F. H. Johnson, R. L. Gornto, John Fentress and R. L. Johnson.

VIRGINIA:

IN THE CIRCUIT COURT OF NANSEMOND COUNTY

THE FARMERS BANK OF NANSEMOND

v.

F. H. JOHNSON ET ALS

D E C R E E

Entered: Febry. 21. 1933

Ja. L. McElmore
Judge.

Entered in Chancery Order Bk 7; Page 28

VIRGINIA:

IN THE CIRCUIT COURT OF NANSEMOND COUNTY.

THE FARMERS BANK OF NANSEMOND.....COMPLAINANT

v.

F. H. JOHNSON, R. L. GORNTO,
JOHN FENTRESS and R. L. JOHNSON.....DEFENDANTS

TO THE HONORABLE JAMES L. McLEMORE, JUDGE OF SAID COURT:

Your petitioner, The Farmers Bank of Nansemond, respectfully represents unto the Court that there is pending in the Circuit Court of Nansemond County, Virginia, a certain cause, the title of which is The Farmers Bank of Nansemond versus F. H. Johnson, R. L. Gornto, John Fentress and R. L. Johnson, and the general object of which is to set aside as fraudulent and void a certain deed of trust made by F. H. Johnson, dated the 13th day of January, 1933, and recorded in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, on the 14th day of January, 1933, in Deed of Trust Book No. 125, at page 346, and subject the property therein mentioned to the payment of the plaintiff's claim, aggregating the principal sum of $17,330.00, in which deed of trust S. E. Everett, of the City of Suffolk, Virginia, is named as Trustee.

Your petitioner further represents unto the Court that the said S. E. Everett is a necessary party and should be made a party defendant to the aforesaid proceedings, he holding the legal title to the property covered by said deed of trust, and, therefore, prays that the said S. E. Everett be convened in said proceedings and made a defendant thereto.

And your petitioner will ever pray, etc.

THE FARMERS BANK OF NANSEMOND,

By G. A. Stevens ~~President~~ Attorney

VIRGINIA: IN THE CIRCUIT COURT
OF NANSEMOND COUNTY

THE FARMERS BANK OF NANSEMOND

v.

F. H. JOHNSON et als

P E T I T I O N

Filed: Febry 21. 1933

J. L. M

Judge.

The Farmers Bank of Nansemond.....Complainant

vs. ANSWER

F. H. Johnson, R. L. Gornto,
John Fentress, R. I. Johnson,
and S. E. Everett, Trustee.....Defendants

The answer of S. E. Everett, Trustee, to a bill of complaint filed against him and others in the Circuit Court of Nansemond County, by The Farmers Bank of Nansemond, Complainant.

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

It is true that as alleged in the bill of complaint that F. H. Johnson executed a deed of trust conveying certain property to me, securing three notes, to-wit: one to R. L. Gornto for $2000.00; one to John Fentress for $700.00; and one to R. I. Johnson for $1000.00.

This deed of trust was drawn in accordance with instructions from F. H. Johnson and three creditors secured in said deed of trust.

Your respondent has no reason to doubt the genuiness of these claims, and, in fact, has no doubt about their correctness.

Your respondent, acting as counsel in the case, is fairly familiar with the facts and as far as your respondent knows said deed of trust was given to secure the holders of these notes without any purpose to hinder, delay or defraud the complainant in this case or any other creditor, and your respondent denies that there was any such intent on the part of F. H. Johnson or any of the holders of said notes secured in said deed of trust.

And now, having fully answered the complainant's bill, this respondent prays to be hence dismissed with his reasonable costs by

him in this behalf expended.

J. H. Brownell
Counsel.

J. H. Brownell, Trustee
Respondent

The Farmers Bank of Nansemond...
Complainant.

vs. ANSWER

F. H. Johnson, et als.....
Defendants.

Filed the 7 day of June, 1933.
John H. Powell Clerk

The Farmers Bank of Nansemond.....Complainants

vs. ANSWER

F. H. Johnson, R. L. Gornto,
John Fentress, R. L. Johnson,
and S. E. Everett, Trustee,.....Defendants

The answer of R. L. Gornto and the Twin City Tobacco Company, Inc., to a bill of complaint filed against R. L. Gornto and others in the Circuit Court of Nansemond County, by the Farmers Bank of Nansemond, Complainant.

These respondents reserving to themselves the benefit of all just exceptions to the said bill of complaint, for answer thereto, or to so much thereof as they are advised that it is material they should answer, answer and say:

It is true that F. H. Johnson executed a deed of trust January 13, 1933, conveying certain property named in the bill of complaint to S. E. Everett, Trustee for R. L. Gornto and others. The said deed of trust secured a certain note dated November 1st, 1932, for $2000.00 payable on demand at the Farmers Bank of Nansemond to R. L. Gornto. It was done with the understanding that it would be assigned to the Twin City Tobacco Company, Inc., and the said R. L. Gornto did assign said note to the Twin City Tobacco Company, Inc. before the institution of this suit.

Your respondents deny that this deed of trust and note was given without any consideration and that the said F. H. Johnson owed the said Twin City Tobacco Company, Inc. more than the $2000.00 at the execution of said deed of trust, to-wit: $2162.84. At the time the deed of trust was made your respondents knew that it was certainly nothing less than $2000.00 but did not know accurately on that day and at the time could not secure the information from the books, but $2162.84 was the correct amount that the said F. H. Johnson owed the Twin City Tobacco Company, Inc. at the date of the execution of the

said deed of trust.

Your respondents made the demand on F. H. Johnson to secure the same and succeeded in getting him to secure it, and your respondents deny that it was without consideration and that it was done to hinder, delay or defraud any creditors.

And now, having fully answered the complainant's bill, these respondents pray to be hence dismissed with their reasonable costs by them in this behalf expended.

F. H. Johnson
Counsel.

R. L. Gornto
Twin City Tobacco Co.
by J. F. Eppes att'y
Respondents
R. Lynch
Twin City Tobacco Co.
R. L. Gornto Pres.

The Farmers Bank of Nansemond..
Complainant

vs. ANSWER

F. H. Johnson et als.....
Defendants

Filed the 7th day of June, 1933.

John A. Powell-Clerk

The Farmers Bank of Nansemond.....Complainant

vs ANSWER

F. H. Johnson, R. L. Gornto,
John Fentress, R. L. Johnson,
and S. E. Everett, Trustee.....Defendants

The answer of John Fentress to a bill of complaint filed against him and others in the Circuit Court of Nansemond County, by The Farmers Bank of Nansemond, Complainant.

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

Your respondent says that it is true that F. H. Johnson executed a deed of trust the 13th day of January, 1933, conveying certain property as mentioned in the bill of complaint to S. E. Everett, Trustee, to secure a certain note dated November 1st, 1932, payable on demand at the Farmers Bank of Nansemond to John Fentress, your respondent. When the note was given your respondent thought that $700.00 would cover the amount due your respondent but the correct amount due your respondent is $762.20 and F. H. Johnson, in addition to the $700.00 note mentioned, owes your respondent $62.20.

Your respondent denies that this security was given to your respondent to hinder, delay or defraud any creditors.

And now, having fully answered the complainant's bill, this respondent prays to be hence dismissed with his reasonable costs by him in this behalf expended.

John Fentress
Respondent

H. Bowers
Counsel

The Farmers Bank of Nansemond..
Complainant

vs. ANSWER

F. H. Johnson et als.....
Defendants

Filed the 7th day of June, 1933
John A. Powell Clerk

The Farmers Bank of Nansemond.....Complainant

vs. ANSWER

F. H. Johnson, R. L. Gornto,
John Fentress, R. L. Johnson,
and S. E. Everett, Trustee.....Defendants

The answer of F. H. Johnson to a bill of complaint filed against him and others in the Circuit Court of Nansemond County, by The Farmers Bank of Nansemond, Complainant.

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

It is true that your respondent executed a deed of trust on the 13th day of January, 1933, as referred to in the bill of complaint, but your respondent denies that said consideration and notes named in said deed of trust were without consideration of any kind. Your respondent owed each one of the parties secured in said deed of trust some more than the amount secured in said deed of trust.

Your respondent denies that it was executed with the intent to hinder, delay or defraud his creditors.

And now, having fully answered the complainant's bill, this respondent prays to be hence dismissed with his reasonable costs by him in this behalf expended.

F. H. Johnson
Respondent

Counsel

STATE OF VIRGINIA

City of Suffolk, to-wit:

F. H. Johnson, the respondent named in the foregoing answer being duly sworn, says that the facts and allegations therein contained are true.

F. H. Johnson

Respondent

Taken, sworn to and subscribed before me, J. E. Everett a Notary Public of and for the City and State aforesaid, in my City aforesaid this 7th day of June, 1933.

J. E. Everett

Notary Public

My Commission
Expires July 24, 1933.

The Farmers Bank of Nansemond
Complainant

v. Answer

F. H. Johnson et als.....
Defendants

Filed the 7 day of June, 1933
John H. Powell - Clerk

The Farmers Bank of Nansemond.....Complainant

vs. ANSWER

F. H. Johnson, R. L. Gornto,
John Fentress, R. L. Johnson,
and S. E. Everett, Trustee.....Defendants

The answer of R. L. Johnson to a bill of complaint filed against him and others in the Circuit Court of Nansemond County, by The Farmers Bank of Nansemond, Complainant.

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

It is true that F. H. Johnson executed a deed of trust dated the 13th day of January, 1933, conveying certain property to S. E. Everett, Trustee, to secure your respondent a note of $1000.00 and your respondent now says that said amount was due your respondent at the time that the said deed of trust was executed and F. H. Johnson is still indebted to your respondent, R. L. Johnson, the sum of said note of $1000.00.

Your respondent denies that said deed of trust was made to hinder, delay and defraud the complainant in this case or any other creditor.

And now, having fully answered the complainant's bill, this respondent prays to be hence dismissed with his reasonable costs by him in this behalf expended.

R. L. Johnson
Respondent

H. H. Bowden
Counsel

The Farmers Bank of Nansemond..
Complainant

vs. ANSWER

F. H. Johnson et als.....
Defendants

Filed the 7 day of June, 1933.
John H. Powell-clerk

VIRGINIA:

IN THE CIRCUIT COURT OF NANSEMOND COUNTY

THE FARMERS BANK OF NANSEMOND.....COMPLAINANT

v.

F. H. JOHNSON, R. L. GORNTO,
JOHN FENTRESS, R. L. JOHNSON
AND S. E. EVERETT, TRUSTEE.....DEFENDANTS

TO THE HONORABLE JAMES L. McLEMORE, JUDGE OF SAID COURT:

Your complainant complains and says that, on the 22nd day of December, 1927, F. H. Johnson, one of the defendants, was the owner in fee of the following real estate situated in Holy Neck Magisterial District, Nansemond County, Virginia, and being generally described as follows:

1st. All that certain tract of land in Holy Neck Magisterial District, Nansemond County, Virginia, known as the (Birdsong) tract of land containing two hundred (200) acres, more or less, bounded by old county road running from old Ferry on Black Water River, the Black Water River, the lane of Hugh J. Lawrence's residence, and by the lands formerly belonging to James E.Jones and others, and being the same land sold and conveyed to the said Frank H. Johnson by W. F. Beale and Gertie, his wife, by deed bearing date the 2nd day of January, 1911, and duly recorded in Nansemond County Court Clerk's Office in Deed Book 70, page 272, but the ferry house near said River and near the line of the aforesaid land is hereby reserved together with land on which the same is located with right of egress and ingress thereto and therefrom and is not embraced herein or intended to be conveyed thereby.

2nd. That certain tract of land in Holy Neck District, Nansemond County, Virginia, containing thirty-five (35) acres, by survey, a plat of which is filed in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, in Plat Book No. 2, page 174, and being bounded and described as follows: On the North by other lands of the Jacob Milteer (homestead); on the East by the land of J. H. Howell and other lands of the said Jacob Milteer, on the South by the land of the Camp Manufacturing Company, known as the J. E. Jones tract, and on the West by the land of the said Camp Manufacturing Company, known as the J. E. Jones tract; it being the same land conveyed to the said F. H. Johnson by deed duly executed by Jacob Milteer and Mary Milteer, his wife, duly recorded in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, in Deed Book 104, page 149.

That on the 13th day of January, 1933, the said F. H. Johnson owned and possessed the following personal property:

One dark brown mare mule; one red horse mule; one red mare mule; one dark bay mare mule, three spotted buffalo cows; one jersey buffalo cow; one black spotted holstein cow, five old hogs and twenty-five young pigs, one hundred barrels corn, five hundred bgas peanuts, one hackney wagon, one double hackney, one cart and wheels, one Coach Chevrolet automobile 1929 model, and all farming utensils including plows, cultivators, harness,etc.

That on the 22nd day of December, 1927, the said F. H. Johnson, singularly and severally with J. W. Brinkley, C. M. Lawrence, W. L. Eure, J. E. Baines and C. B. Hathaway, entered into the following agreement:

WHEREAS, W. R. Milteer Company, Incorporated of Suffolk, Virginia, desires The Farmers Bank of Nansemond in Suffolk, Virginia, to use or discount, from time to time, for its accommodation and credit, such checks, drafts, notes and acceptances as it may offer to said bank for discount; and whereas, the persons hereinafter named have requested said bank to use, or discount such items as above mentioned, and have offered, in consideration thereof, to endorse or guarantee all such items, and become jointly and severally liable for the payment thereof; and whereas, it is frequently inconvenient to secure said endorsement, and the said persons hereinafter named have requested said bank to accept this contract of guaranty in lieu thereof.

NOW, THEREFORE, THIS CONTRACT OF GUARANTY, Made this 22nd day of December, 1927, by and between J. W. Brinkley, C. M. Lawrence, W. L. Eure, F. H. Johnson, J. E. Baines and C. B. Hathaway, parties of the first part, and The Farmers Bank of Nansemond in Suffolk, Virginia, party of the second part, WITNESSETH:

That for, and in consideration of the premises, the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt of which are hereby acknowledged, the said parties of the first part hereby, jointly and severally, guarantee to the said Bank, its successors, endorsees, and assigns, the punctual payment at maturity of any and all notes, acceptances, drafts, checks or other evidences of debt made or endorsed by the said W. R. Milteer Company, Incorporated, or for which the Company may be liable to the said bank, and which may have been discounted for said W. R. Milteer Company, Incorporated, by the said Bank, or for which the said W. R. Milteer Company, Incorporated, may have received credit from said bank, it being the intention of this contract to cover all liability of every kind or character of said W. R. Milteer Company, Incorporated, to said bank, growing out of the discounting or using of notes, acceptances, drafts, checks or other evidences of debt made or endorsed by said W. R. Milteer Company, Incorporated.

And in the event of the non-payment of said notes, acceptances, drafts, checks, or either or any of them, punctually at maturity, the said parties of the first part agree to pay the same at once, upon demand made upon them therefor, together with all the costs and charges of collection, and agree, that if not so paid, said bank may at once institute suit against them and the said W. R. Milteer Company, Incorporated, or either of them and said W. R. Milteer Company, Incorporated, or against either or all of them for the collection thereof, and in the event of suit, to pay all costs and attorneys fees which the said bank may be required to pay.

It is further understood and agreed that this contract is to be unlimited as to time, but limited to Twenty Thousand Dollars ($20,000.00) as to amount, shall become effective from date hereof, and shall cover all liabilities of every kind and character of said W. R. Milteer Company, Incorporated, to said bank by virtue hereof, and shall continue in force and effect until all of such liabilities of said W. R. Milteer Company, Incorporated, to said bank shall have been fully paid and satisfied, and, further, until said parties of the first part shall have given to said bank written notice that they will no longer be liable hereunder.

It is further understood and agreed that the said bank shall have the right to extend the time of payment of any of the said notes or other obligations or evidences of debt, to accept renewals therefor or curtails thereon, without notice or assent of the said parties of the first part and without affecting their liability hereunder, and that said parties of the first part shall be bound hereunder, for the full payment of all notes, acceptances, drafts, checks or other evidences of debt used by the said bank for the said W. R. Milteer Company, Incorporated, as aforesaid, notwithstanding the failure of the said bank to give to said parties of the first part, or either of them, notice of protest or non-payment of either or any item so used for the credit of the said W. R. Milteer Company, Incorporated, or otherwise to comply with any of the usual requirements considered essential or necessary in order to hold said parties liable as guarantors-full liability for the payment thereof being absolutely fixed by the execution of this contract.

The said parties of the first part hereby severally waive the benefit of their homestead exemptions as to this contract and as to any liability hereunder.

Witness the following signatures and seals this date above written.

J. W. Brinkley (Seal)
C. M. Lawrence (Seal)
W. L. Eure (Seal)
F. H. Johnson (Seal)
J. E. Baines (Seal)
C. B. Hathaway (Seal)

That in pursuance of the aforesaid agreement, your complainant, The Farmers Bank of Nansemond, extended to W. R. Milteer Company, Incorporated, certain credits from time to time, aggregating the sum of $20,000.00, as contemplated by said agreement.

That, to-wit: on the 13th day of January, 1933, the said W. R. Milteer Company, Incorporated, was indebted to your complainant in the sum of $17,330.00, evidenced by four promissory negotiable notes described as follows:

> One note for the sum of $16,750.00, executed by W. R. Milteer Company, Inc., by P. G. Everett, Secretary & Treasurer, and payable to The Farmers Bank of Nansemond, Suffolk, Va., and payable on the 1st day of February, 1933.
>
> One note for the sum of $290.00, executed by O. L. Baker and by W. R. Milteer Company, Inc., endorsed, dated December 10, 1932, and payable to W. R. Milteer Company ninety days after date.
>
> One note for the sum of $190.00, executed by O. L. Baker and by W. R. Milteer Company, Inc., endorsed, dated December 14, 1932, and payable to W. R. Milteer Company ninety days after date.
>
> One note for the sum of $100.00, executed by Archie Taylor, by Marie Taylor and by W. R. Milteer Company, Inc., endorsed, dated December 14, 1932, and payable to W. R. Milteer Company, Inc., ninety days after date.

That your complainant for the past two years made repeated demands on the said W. R. Milteer Company, Incorporated, to pay its entire indebtedness, or at least make liberal curtails thereon, and as a result thereof the said W. R. Milteer Company, Incorporated, reduced its obligations to your complainants from $20,000.00 to $17,330.00, as hereinabove set forth.

That your complainant, being unable to get further curtails and being advised that the said W. R. Milteer Company, Incorporated, was insolvent and unable to meet its obligations, made demand for payment of the indebtedness aforesaid on the said F. H. Johnson in person by Col. E. E. Holland, President, and H. M. Holland, Secretary, of The Farmers Bank of Nansemond, on or about the 10th day of January, 1933; that further demand for payment of the indebtedness aforesaid was made by your complainant by letters to J. W. Brinkley, C. M. Lawrence, W. L. Eure, F. H. Johnson, J. E. Baines and C. B. Hathaway; a copy of the letter addressed to F. H. Johnson being as follows:

Jan. 13, 1933.

"Mr. F. H. Johnson,
Franklin, Virginia.

Dear Sir:

You will recall that we hold an indemnifying bond signed by you and others, guaranteeing the payment of obligations of the W. R. Milteer Company, Incorporated, which at this time amounts to $16,750.00. In addition to this amount, the company is endorser on their customers' paper, amounting to $480.00 which is also covered under the guarantee.

The Milteer note for $16,750.00 has been carried by us for a number of years and we are now demanding payment of same at its next maturity which will be February 1st.

Unless some provision is made to take care of this note by maturity, it will be necessary for us to take legal steps and get judgment against you and the other guarantors.

Trusting that you will give the matter your serious consideration and avoid our having to take any drastic action against you, we are

Yours very truly,
H. M. Holland, Cashier"

HMH-G

That although demand for payment was made as aforesaid, the said F. H. Johnson totally ignored said demand and proceeded at once to execute a blanket deed of trust on all his real estate of which he was seised and possessed, and a large part, if not all, of his personal property as is shown by deed of trust made the 13th day of January, 1933, by F. H. Johnson to S. E. Everett, Trustee, and recorded on the 14th day of January, 1933, in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, in Deed Book 125, page 346, which deed of trust reads as follows:

> "THIS DEED, Made this 13th day of January in the year one thousand nine hundred and thirty-three (1933) between F. H. Johnson of Nansemond County, Virginia, party of the first part, and S. E. Everett, Trustee, of Suffolk, Virginia, party of the second part,
>
> WITNESSETH: That the said party of the first part doth grant unto the said party of the second part, with general warranty, the following property, to-wit:
>
> FIRST: All that certain tract of land in Holy Neck Magisterial District, Nansemond County, Virginia, known as the (Birdsong) tract of land containing two hundred (200) acres, more or less, bounded by old county road running from old Ferry on Black Water River, the Black Water River, the lane of Hugh J. Lawrence's residence, and by the lands formerly belonging to James E. Jones and others, and being the same land sold and conveyed to the said Frank H. Johnson by W. F. Beale and Gertie, his wife, by deed bearing date the 2nd day of January, 1911, and duly recorded in Nansemond County Court Clerk's Office in Deed Book 70, page 272, but the ferry house near said River and near the line of

the aforesaid land is hereby reserved together with land on which the same is located with right of egress and ingress thereto and therefrom and is not embraced herein or intended to be conveyed thereby.

SECOND: That certain tract of land in Holy Neck District, Nansemond County, Virginia, containing thirty-five (35) acres, by survey, a plat of which is filed in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, in Plat Book No. 2, page 174, and being bounded and described as follows: on the North by other lands of the Jacob Milteer (homestead); on the East by the land of J. H. Howell and other lands of the said Jacob Milteer, on the South by the land of the Camp Manufacturing Company, known as the J. E. Jones tract, and on the West by the land of the said Camp Manufacturing Company, known as the J. E. Jones tract; it being the same land conveyed to the said F. H. Johnson by deed duly executed by Jacob Milteer and Mary Milteer, his wife, duly recorded in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, in Deed Book 104, page 149.

THIRD: All the following personal property located and kept on the farm first above described in Nansemond County, Virginia, as follows: one dark brown mare mule; one red horse mule; one red mare mule; one dark bay mare mule, three spotted buffalo cows; one jersey buffalo cow; one black spotted holstein cow, five old hogs and twenty-five young pigs, one hundred barrels corn, five hundred bags peanuts, one hackney wagon, one double hackney, one cart and wheels, one Coach Chevrolet automobile 1919 model, and all farming utensils including plows, cultivators, harness, etc.

IN TRUST, to secure the following notes without priority the payment of the sum of

One note dated November 1st, 1932, for Two Thousand ($2000.00) Dollars payable on demand at the Farmers Bank of Nansemond, to R. L. Gornto, with interest from date.

One note dated November 1st, 1932, for Seven Hundred ($700.00) Dollars, payable on demand at the Farmers Bank of Nansemond, to John Fentress, with interest from date.

One note dated November 1st, 1932, for One Thousand ($1000.00) Dollars, payable on demand at the Farmers Bank of Nansemond, to R. L. Johnson, with interest from date.

All notes waiving the homestead exemption.

In the event that default shall be made in the payment of the aforesaid debt, or any instalment of the principal or interest thereof, then the Trustee, on being required to do so by the legal holder of the said notes, shall sell the property hereby conveyed. And it is covenanted that in case of sale the same shall be made after first advertising the time, terms and place thereof for fifteen days, upon the following terms, to-wit: in five or more conspicious places in Nansemond County, Virginia, for cash; and out of the proceeds of sale pay first the cost of sale, including a commission of five per centum of gross amount to the trustee, and pay the fees for drawing and recording this deed, if then unpaid, and pay the balance, if any, as the law directs.

It is also covenanted that this deed of trust shall secure any note or notes, or bond or bonds, given in renewal or extension, or curtail of the aforesaid debt.

The said party of the first part, covenants to pay all taxes, assessments, dues and charges upon the said property hereby conveyed so long as he or his 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 $2500.00 for the further protection of the legal holder of the

said beneficiaries, 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 said debt 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 him at his own proper cost and charges.

Witness the following signature and seal:

F. H. Johnson (SEAL)

State of Virginia,
City of Suffolk, to-wit:
I, Raye V. Knight a Notary Public in and for the City aforesaid, in the State of Virginia, do hereby certify that F. H. Johnson whose name is signed to the writing hereto annexed, bearing date the 13th day of January, 1933, has acknowledged the same before me in my City aforesaid.
Given under my hand this 13th day of January, 1933.

Raye V. Knight, Notary Public.

My term of office expires 21st day of April, 1934.

Virginia: In the Clerk's Office of the Circuit Court of Nansemond County the 14th day of January, 1933.
This deed was presented, and, with the certificate annexed, admitted to record at 11:30 A. M.

Teste: John H. Powell, Clerk,
By M. K. Gardner, D. C."

Your complainant further complains and says that the said deed of conveyance is voluntary and without consideration of any kind; that R. L. Johnson, mentioned in the aforesaid deed of trust, is a brother F. H. Johnson, one of the defendants; that the said deed of trust was made by the said F. H. Johnson with intent to hinder, delay and defraud his creditors, and especially your complainant; and that when the said deed was executed the said F. H. Johnson was and now is insolvent.

Your complainant therefore prays that the said deed of the 13th day of January, 1933, as hereinabove set out, be set aside and declared void and fraudulent so far as your complainant's rights and interest are concerned; that a judgment be entered against the said F. H. Johnson for the sum of $17,330.00 with interest on $16,750.00 from February 1, 1933, until paid, interest on $290.00 from March 10, 1933, until paid, and interest on $290.00 from March 14,

1933, until paid; that all of the real and personal property described in the aforesaid deed of trust be sold to satisfy the said judgment and the costs of this suit, including a reasonable fee for the complainant's attorney for conducting this suit; that F. H. Johnson, R. L. Gornto, John Fentress, R. L. Johnson and S. E. Everett, Trustee, be required to answer this bill, but not under oath, answer under oath being expressly waived; and grant to your complainant such general relief as the nature of its case may require or to equity may seem meet.

And your complainants will ever pray, etc.

THE FARMERS BANK OF NANSEMOND,

By G. A. Harris
Its Attorney.

G. A. Harris p.q.

VIRGINIA:

IN THE CIRCUIT COURT OF NANSEMOND COUNTY

THE FARMERS BANK OF NANSEMOND

V.

F. H. JOHNSON et als.

BILL OF COMPLAINT

Filed this the 8th day of March, 1933
John N. Powell, Clerk
By Evelyn Harris, D. C.

G. A. HARRIS
ATTORNEY AND COUNSELLOR AT LAW
SUFFOLK, VIRGINIA