

1836-004

SOUTHAMPTON COUNTY
CHANCERY PAPERS

LANKFORD ADM'R. OF ELEY

VS. ELEY et al

4/1836

other surnames: Bowden,
Johnson, Bridger,

X
Lankford

" { Papers

Eley &c

1835 Apr. 20th Inj. awarded &c

" " 27th Sp. & Sp. &c

" June Sp. & Ex. on Eley & Johnson

" July. Answer filed. Gen. Rep. &c

1836 Apr. Dismissed

Vacatur

To the Honorable Richard Baker judge of the Circuit Sup-
Court of laws and chancery for Southampton County. Humbly complain-
-ing, sheweth to your Honor your orator William Lambford
administrator of the goods and chattels, rights and credits of
Rowin Ely, decd: late of the County of Southampton.
that his intestate ~~the said~~ Rowin Ely, departed this life
about the day of Nov. or Dec. 1836; and before the
County Court of Southampton County, your orator quali-
-fied as executor of the said Ely, on the 17th day of
December 1836 which will appear by a certificate of
the Clerk of the said Court which is hereto annexed
marked A and is prayed to be taken and considered
part of this bill. that at the death of the said Rowin
Ely, one James Ely of the County of Albemarle
was indebted to his intestate in the sum of \$
or upwards and being so indebted, he the
said James Ely afterwards to wit, on the second day
of September 1836 in consideration of the debt from
him so as aforesaid due and owing to the estate
of said Rowin Ely, made his writing obligatory of
the date aforesaid, whereby he together with one Wm.
H. Ely bound themselves to pay to your orator the sum
of three hundred and twenty dollars and ninety
cents on demand, with lawful interest, which
writing obligatory, although, upon its face does
not so appear, was and is in fact due from
the said Elys to your orator in the character of
executor of the aforesaid Rowin Ely, decd: -
which obligatory is hereto annexed marked
B and is prayed to be taken and considered
part of this bill. - From time after the death of
your orator's intestate, ~~the said~~ ^{the writing obligatory was} your orator's father J. P. Lambford
- sent to your orator father J. P. Lambford
(who in such matters acted as the agent of your
complainant as he was frequently from home &
sometime out of the Commonwealth) purporting
to be the acknowledgment of a debt and promise
by the said Rowin Ely & one Wm. Johnson, to pay

on demand, to one John Bowden his heir or assigns
the sum of one hundred eighty nine dollars and 76¹/₂
Cents, and dated the tenth day of September 1832 &
attested by Elisha L Ely, (a copy of which writing
obligatory certified by the Clerk of the Circuit Superior
Court of Law & for S. D. Annapolis County in which the origi-
nal is filed, is to the Court shown and prayed to
be taken and considered part of this bill,) the said
writing obligatory on your complainant is advised that
charge was presented as afore said for payment by the
said William Johnson the identical person who is
one of the obligors - the same has not been assigned by
the obligor Johnson, and the account of the money
which he got possession, and claimed to be entitled to,
was so unsatisfactory, that payment was refused,
especially as the said Johnson purported to be one
of the obligors, and generally boomed with the said
Reubin Ely as to the debt afore said

Some time after the presentation of the said claim
by Johnson, one Reuben Ely of said in some way
unknown to your orator, acquired possession of the
said obligatory, and as there seems to be a very
strong shade of suspicion at least hanging
over the transaction, your orator refused to pay it
unless he could have some proof of the manner
in which Johnson claims to have been entitled to
and it afterwards got into the hands of Reuben Ely,
and your orator charges that while he held the
bond of the said Reuben Ely afore said, to wit on
the 10th of September 1834, a suit was instituted by
the said Reuben Ely in the name of Assignee of the
said John Bowden against him or the said bond
in the Circuit Superior Court of Law and Chancery for the County
of S. D. Annapolis - your orator was then about to set out
and actually set out for the Western Country, and was
absent from home for some considerable time, and the

fact that the suit had been instituted and would in a due
course of proceeding be tried in April the present month,
has entirely erased the memory of your orator as to
the evening of Friday the 3rd day of the term. On the next
morning being the fourth day of the term, your orator
went to Court and spoke to counsel to advise the suit
and to attempt to obtain a continuance at least until
the next term is over that the fact should be
enquired into by him and especially that the said
John Bowden and Johnson should be summoned to
give evidence in the cause. But he was told by the
said attorney that the Court had entered the office
judgment book on which was the cause entered
to and judgment granted and that as no writ-
ing had been summoned by your orator he could
not according to the rules of the Court get a
continuance and moreover that perhaps the
circumstances of the case, neither the said Bowden
or Johnson could be compelled to give evidence,
the said Johnson being a co obligor & Bowden
purported to be the obligee and assignor of the bond,
that the bond payable to your orator by the said Reuben
Ely could not in a Court of Law be offered &
allowed as a discount or set off in the said suit, &
your orator was advised by the said attorney that
it was useless to do any thing other than to attempt
to be relieved in a Court of Equity - your orator
afterwards on the same day, by other counsel, moved
a continuance of the cause but the reason appear-
ing to the Court insufficient, the motion was over-
ruled. your orator charges that at the said term of
the said Court, a judgment by default was rendered up
on the writing obligatory afore said, against your orator
as assignor of Reubin Ely in favor of the said Reuben
Ely assignor of John Bowden for the sum of \$189.76¹/₂
with legal interest thereon from the tenth day of September
1832 the said the actual interest in the declaration
mentioned and \$0.73 cost to be levied & acc which
will more fully appear at large apparently a copy of

the said judgment, which is hereto annexed marked B
and prayed to be considered part of this bill - and you pray
also that, if not already done, an execution may
be immediately issued against the estate of his late
- late and the money be made, when in truth &
justice he ought not to be made to pay the judgment
aforesaid - first, because the said James Ely is indebted
to the estate of Rowin & Ely to an amount much
exceeding the judgment aforesaid and was so
aforesaid indebted, at the time of the institution of
his suit & at the date of the judgment - secondly
because the said Johnson was at one time in
possession of the writing obligatory aforesaid long
since the death of the said Ely, he was one of the
persons bound to pay it, and there was as the com-
-plainant is advised and shewn charges, not only
on the said obligatory at that time either to
the said Rowan, Johnson or any other person;
that if the same had been paid to said Rowan,
it had been paid off or in some way discharged
in the lifetime of the said Rowin & Ely, was not
a subsisting debt at his death. Now that a charge
that in the procurement of the said obligatory
by the said James Ely, there was fraud & cheating
and that at the time Rowan assigned the same
he well knew that nothing was in justice &
equity due thereon and now complainant
charges that the said Rowan, Johnson & James
Ely combined and confederated together to
cheat and defraud the estate of the said Rowin
& Ely, and that the said writing obligatory is &
was at the institution of the said suit at law,
void and of no effect and that he ought
to be relieved against the same - that as the
said Rowan & Johnson were not bound
to give evidence, and he was taken by surprise on
the trial of the said cause or judgment as aforesaid
and for those reasons and others could not defend

himself in the Court of Law aforesaid, he is entitled
to relief in this Court of Equity, and therein alone
relieved - In answer consideration whereof
for as much as his relief is solely in a Court
of Chancery, he prays that the said James Ely,
John Rowan, the self and all other may be
enjoined and restrained from proceeding
against him on the judgment at law entered.
The case can be properly heard in a Court of
Equity - that the said James Ely, John Rowan
and William Johnson, and all proper persons
when ascertained, may be made defendants thereto
with apt and proper words to charge them,
and that upon their corporal oath, they be
compelled full, true, just and perfect answers
to make to all and singular the allegations
aforesaid as fully as if the same were being
again repeated and they should more par-
-ticularly and especially interrogated. That
the said John Rowan set forth and discover what
was the consideration for which the writing obli-
-gatory whereupon the judgment was founded
was made for a debt due and owing to him;
was it a true, just and subsisting debt at the
death of the said Rowin & Ely, and who was
the holder thereof and entitled to the same
at that time? was it then assigned to him as
the obligation of the said Rowin & Ely? and he
was put with the same to the credit of Johnson
if so on what terms? did he not direct the
said Johnson to assign the same to the said
Rowin & Ely in his lifetime? for what side he
of his it to James Ely? what was the considera-

-tion and value and amount ~~thereof~~
of the said assignment? How much did
he receive for the same from the said Ely,
and did he the said Bowden consider
and believe that the amt. of the said bond
was in justice and equity due to him by the
said Ely or his representative at the time
he assigned it to Erem Ely, and that he
made a full discovery of every thing in
his knowledge or according to the best
of his belief - and that the said Erem Ely
set forth all knowledge on his part or
belief connected with the obligation afore-
-said - How much did he pay for the
same when it was assigned to him: by whom
was it assigned and for what consideration
did he not know that the same was, not
a true, bona fide and voluntary debt when
it was transferred to him - Is it not true
or charged that at the death of John orator
in testate, the said Erem Ely was indebted
to him, and did he not execute his bond
together with the said bond of Ely to John orator
for a debt due and owing to the estate of
the said Erem Ely, and is not the same
debt as it ~~was~~ ^{not} due and unpaid at the
time he instituted the suit so as afore said
against John orator and to the effect herein
before charged?

That the said Mr. Johnson set forth and dis-
-covered all that he knows about the said obliga-
-tion purporting to have been executed by
the said Erem Ely, for what was it given,
was it for a debt from the said Ely to Bowden
or was not Johnson truly indebted for a part of the
said bond? By whom was it delivered to Bowden,
did not the said Johnson, after it was executed,
carry it to the said Bowden, and did he not
refuse to receive it, and allege that it was
not due to him, and did not the said Johnson
by one of said Bowden carry it back to
the said Erem Ely at the request of Bowden,
and the said Johnson then claim to be enti-
-tled to the said obligation? If so, how, or
what condition and consideration, &c.
whom did he part with it? How came
Erem Ely in possession of the same after what
consideration did he receive it? How the said
Johnson not reason to believe that the said
obligation was not a good and voluntary
debt to the said Bowden ^{as Erem Ely} when Erem Ely
gave it? Did not the said Johnson, since the
death of Erem Ely, declare to some person
that Bowden told him that the said obligation
when loaned, ~~for~~ was not due to him & that
he must carry it back to said Ely? that
he state fully and unvarnishedly all that he knows
or believes about the said obligation - And now
note pray, that the said Erem Ely, when Bowden
the 1st/4. and all others be restrained from pursuing
on said suit, until the matter in dispute can be

helpful hand and decided - and that you will grant
him such other and further relief as may be conve-
-nient with equity - ~~Especially~~ and as in duty bound
he will pray. - (view) William Lankford

Stammons County Tex. This day came before the undersigned a
justice for Stammons and made oath that the statement in the
 foregoing petition is true so far as the same come within his
own knowledge, & that so far as the same depend on
the knowledge of others, he believes them to be true.
Given under my hand and seal this 13th of
Apr. 1835.

~~William Lankford~~ (J.P.)

Edw R Hunter, J.P.

[Signature]

Wm Lankford
J. Brown
Wm Lankford
Wm Lankford

Injunct awarded in this case according to
the prayer of the bill, but no bond and security
is to be required as the complaint is being in
the capacity of admo. &c.

To
The clk of the
circuit sup. Ct. of Law & Eq.
for S. ampton county.

Rich. H. Baker
20. Apr. 1835.

To the Honorable Richard H. Baker Judge of
the Circuit Superior Court of Law and Chancery
for the County of Southampton.

The separate answer of Edmund Eley to a Bill
of Injunction exhibited to your Honor by Wm.
Sankford Adm^r. of Edmund Eley ^{vs. the Respondent & others.} dec^r. This Respon-
- dent saving all benefit of Just exception to the
many errors and untruths, and to the want of
Equity on the face of the said Bill, to the ma-
- terial parts thereof, answering says, that he
admits that as assignee of John Borden he
instituted suit, and recovered Judgment on
the bond as in the Bill is stated. He admits
that he executed the bond for three hundred
and twenty dollars and $\frac{90}{100}$ with the bill exhibited
and still owes the same subject to the credit for
the judgment aforesaid. Your Respondent improperly
charges that he applied to the said Sankford
to give him him credit for the principal and
int. on the bond on which the s^d. judgment was obtained
and ~~he~~ refused to do so, unless suit was brought
and Judgment recovered, and by his positive
direction Your Respondent instituted the suit.
That on the same day on which his motion for
a continuance was denied by y^r. Honor, Your

Respondent agreed with the said Bankford not to issue execution on the judgment, and offered to take a credit on his said bond, which the said Bankford has refused & neglected to allow. That accordingly y^r. Respondent's Counsel, Joseph Prentiss esq., filed a written memorandum with the papers in suit at law, directing the Clerk not to issue Execution until further order, and reference is here made to the said memorandum now in the said papers - y^r. Respondent avers that he has never given any order or direction to have ~~any~~ writ of ~~En. issued~~ - Your Respondent is still willing to take a credit for the debt Int. & costs due him on the said judgment on his said bond, but he denies that the pl^{ff}'s bill ought to be sustained for the reasons above stated - Your Respondent was privy to the whole transaction and agreement between the said W^m. Johnson and the s^r. Edwin Ely. He wrote the deed of Trust and the bond of \$280.⁹⁰/₁₀₀ at the request of the parties - he knows that the debt due from Johnson to Borden was included in that sum, and that Edwin Ely was to give his bond to Borden in exchange of Johnson's which was to be delivered up to Johnson. He knows that the bond so to be executed was not then given by Edwin Ely, because the deed of Trust was not effectual, not recorded, & the execution of his

bond was postponed until that was done - Your Respondent states that understanding from Johnson that the plaintiff had promised to settle the said bond, he paid him a fair and valuable consideration for the said bond to be used as an offset against his bond held by the said Bankford. He believes, that the consideration is correctly stated by the said Johnson in his answer to which he refers. He admits that he paid no consideration to the said Borden for his assignment, but obtained it from him, not for the purpose of fraud, but because he was the obligee, he considered it necessary as a legal point of view to recover the amount of the said bond - he believed it to be a just, valid and subsisting debt due from the said Edwin Ely's Estate to the said W^m. Johnson - He relies on the said Johnson's answer in support of the charge he now makes, that the said Edwin Ely's estate has rec^d. the full consideration on which the said obligation was executed, and submits to your Honor whether it is consistent with justice and Equity, that its payment should be evaded on ground of defence purely technical and exclusively cognizable in a Court of Law. He denies all fraud, combination, or intention

to decree, & having answered in prayer to be
hence dismissed, & that the injunction awarded
the plaintiff may be dissolved, with costs do.

Ernest Eley

Southampton County Set:

This day Ernest Eley personally appeared before
me a justice of the peace for this County aforesaid,
and made oath to the foregoing answers in
chancery in due form of law. Given under my
hand and seal at my County aforesaid this
16th June 1835.

Just of the Peace
Ernest Eley

To the Honorable Richard H. Baker, Judge of the Circuit Superior Court of Law and Chancery for the County of Southampton sitting in Chancery:

The separate answer of William Johnson, to a Bill of Injunction exhibited to your Honor, by William Sanford adm. L. of Edwin Eley dec^d. against Edmund Eley this Respondent and John Bowden. This Respondent, saving to himself all benefit of just exception to the errors, misstatements and want of Equity on the said Bill, to so much thereof as it is material for him to answer, answering says, That before and on the 10.th day of Sept. in the year 1832, your Respondent was indebted to one John Bowden, a co. defendant in this case, as Guardian to Martha Eley orphan of Robert Eley dec^d. in a sum of money amounting with the interest to the sum of \$ 187. 76 or thereabouts, being her proportion of the purchase money of a tract or parcel of Land, descended from one Benjamin Eley dec^d. sold by order of the County Court of Isle of Wight, and purchased by your Respondent; that he was also indebted to Edwin Eley by bond, and to him as Guardian to Miller L. Eley brother of the said Edwin and Martha - that it was agreed by and between him the said W. Johnson and Edwin Eley, that the said Johnson should execute to said Edwin his bond for the aggregate amount of these three demands, and a deed of Trust on property to secure the payment thereof, and the said Edwin on his part agreed to execute his bond for the amount due to the said Bowden as

aforesaid and left the bond of the said said Johnson then held by the said Bonden. That in pursuance of the said agreement, ~~your~~ Respondent on that day executed his bond to the said Edwin, for the sum of \$280. $\frac{90}{100}$, payable on demand, and also executed a deed of Trust conveying certain property real and personal to secure the payment thereof, which deed of Trust was admitted to record by acknowledgement of the parties on the 15th day of October 1832: that the said Edwin Eley on his part no doubt acting with good faith, executed his bond payable to the said John Bonden for the said sum of \$189. $\frac{76}{100}$ dated on the day and year aforesaid, it being ~~on the same day~~ ~~as the same day~~ ~~with the bond & deed of Trust~~ ~~aforesaid~~, which your Respondent signed as security for the said Eley. This bond, the bearing date on the 10th day of September 1832, was not written or executed until your Respondent's deed of Trust was admitted to record, and made valid, tho' by consent it was made to bear the same date with the bond and deed aforesaid - Your Respondent farther states that tho' named as security, this bond was placed in his hands after its execution and the record of the deed of Trust aforesaid, to be delivered to the said Bonden in lieu of his bond, to which the said Edwin Eley was security, held by the said Bonden. That the said Edwin Eley departed this life on the second Wednesday after the first Monday in October 1832, and not in Nov. or Dec. as charged, and before your Respondent could conveniently see the

said Bonden for the purpose aforesaid. That when he did present the said bond to the said Bonden, he declined making the exchange, because Edwin Eley was then dead, and he might be put to some trouble about it, and he already had the bond of the said Johnson with Edwin Eley as security - In support of these various allegations he herewith submits as parts of this Bill, the original bond of \$280. $\frac{90}{100}$ which the said Mr. Bankford as adm. of Edwin Eley paid to Mills & Eley, late ward of the said Edwin, and which your Respondent has fully paid off & discharged, an attested copy of the said deed of Trust, and a copy of the order for sale of the said land and Commissioners Report showing that your Respondent was the purchaser & the share of each of these entitled - marked A. B. C. - Your Respondent finding that this arrangement made between them could not be carried into effect as intended, presented the said bond, of \$189. $\frac{76}{100}$ on which the judgment injoined was obtained, to the plaintiff as adm. of Edwin Eley dec'd., who promised to pay the same at some future day, not then very distant - That your Respondent, being thus subjected to the payment of his bond to Bonden, and of his bond to the said Edwin, including the amount due to Bonden, considered the said bond of Edwin Eley with your Respondent as surety, a valid and subsisting debt - Your Respondent avers that he has since the death of the said Edwin Eley, fully discharged his bond to the said Bonden, by which the said

Eduin was surety, and which ^{was} to have been lifted by that now
injoined. His bond of \$280. 90 being transferred to Mills
d. Eley, your Respond^t, being disappointed in receiving pay-
ment of the said Lankford, was informed by his Co. defen-
dant Ennem Eley, that he was indebted to the said
Lankford as adm^t. of Eduin Eley, ^{& the same is? he a good offset for him,} and thereupon your
Respondent ^{sold} transferred the said bond to the said Ennem
Eley, receiving from him ^{& my note for a small sum,} in money, ~~the full amount of~~
his note for a small sum which he paid to Mills Eley as cash
in part of the bond marked A, deducting a discount of a
few dollars, the precise amount not recollected, but your
Respondent does not believe that it exceeded ten dollars,
which he willingly deducted to procure the means of
paying off the debt aforesaid - Your Respondent denies
all fraud and combination, he avers that the bond on which
the judgment was obtained, was given for the consid-
eration aforesaid & for no other, that he has paid off
his bond given to Eduin Eley including the debt to
Bonden, & has discharged his bond to Bonden, which was
to have been taken in by the bond transferred to Ennem
Eley, That Eduin Eley's Estate has received the full am^t.
of the said bond of \$189.76¹/₂ and he is advised that
whatever difficulty might have existed as to the delivery of
said bond, in a court of law, no objection can be set up in Equity
to the recovery of the same from the said Eduin Eley's
Estate - & having answered he prays to be hence
dismissed &c. &c.

William X Johnson

Southampton County Set.

This day Wm. Johnson personally appeared Mark
before me a Justice of the peace for the County aforesaid & made
oath to the foregoing answer in Chancery in due form of law
Given under my hand and seal at the County aforesaid the 16th June 1835. John C. C. J. P.

Lankford Nov. 18

" } Anns of Dfto

Ealey 18

1835 June 17th

Exhibit. Co. not filed.

To the Honorable Richard H. Barker Judge of the
Circuit Superior Court of ^{and} Chancery for the County of
Southampton:

The separate answer of John Borden
to a bill of disjunction exhibited to this Court by
Mr. Sanford Adm. of Edwin Eley dec^d. against Emma
Eley, Wm. Johnson and your Respondent.

This Respondent saving & for answer to the material
parts of this said Bill says, that One John H. Chap-
man acted as Guardian to Martha Eley orphan of
Robert Eley dec^d. ~~before~~ he was about to remove, &
Respondent became her Guardian, and received
from the said Chapman a bond given by the said
Wm. Johnson with Wm. Eley and John W. Babb as sure-
ties for the said Martha's proportion of some land
sold under an order of Isle of Wight County Court.
That the said sureties becoming dissatisfied, the
said Johnson recited ^{to him} a new bond with Edwin
Eley ^{as surety}, the precise amount he does not recollect but
he believes amounted to about the sum stated by
the said Johnson in his answer in this cause. He
states that at that time he understood from the said
Johnson & Edwin Eley, that the said Johnson was
to execute a deed of Trust on his land & twenty
barrells of corn to secure him as surety. He
believes that this ~~deed~~ ^{bond} was given in July 1832.
And a deed was then written by Wm. Eley, but not
being considered correct, was destroyed and ~~lost~~.

Enam Eley was spoken to by Edwin Eley to omit another
as the Respondent's presence in coming from Isle of Wight
Court in August or Sept. ^{of that year.} - He was not present and
knew nothing of the circumstances under which the bond
now in suit was given - He admits that after he
heard of Edwin Eley's death, W. Johnson ~~promised~~
to deliver the bond now in suit, in exchange for that
previously executed by the same parties, as before stated
and your Respondent declined because the said Edwin
was then dead & had never asked of Respondent to
assent to this arrangement. He states that, at the re-
quest of his Co-Defendant Enam Eley, he assigned
the said bond to him without recourse, from a be-
- lief that the money was justly due, & that his assign-
ment was necessary to its collection from Edwin Eley's Estate.
He states that the said W. Johnson has since the
death of Edwin Eley, discharged the above named
bond executed to your Respondent by the W. Johnson
and Eley, by executing another bond with other
good security - He believes that the bond so dischar-
- ged was destroyed - That he received no valuable
consideration from the said Enam Eley for the said
assignment but believed it necessary for the purposes of
Justice - That he did not believe the bond due from Edwin
Eley's Estate ~~at the time~~ - but he did believe it justly due
to W. Johnson, and to his transferee - He denies
all fraud & combination, he prays to be hence
dismissed &c. John Bowden

Southampton County Set.

This day John Bowden personally appeared before
me a Justice of the peace for the County aforesaid
and made oath to the foregoing answer in ~~Plenary~~
in due form of law. Given under my hand and
seal at the County aforesaid this 16.th day of June
1835.

Seal of J. P.

To enjoin the defendants Exam Eley, John Bowden their agents, attorneys and all others
concerned from further proceedings upon a judgment obtained in the Circuit Superior
Court of Law and Chancery for the County of Southampton at the April Term 1835, in favor
of Exam Eley assignee of John Bowden against William Sankford and of Edwin
Eley and until the further order of the Court.

Teste James Richelle Ck

Came to hand may 28th 1835-

Elyah Lawrence

Sankford and

Exa Eley

Eley &c

1835 James Richelle

Enclosed by Outwaring a true copy
of the to Exam Eley & William Sankford
and Exam Eley & c not successful
in their demand
Elyah Lawrence
for the William Sankford

The Commonwealth of Virginia:

To the SHERIFF of *Southampton* -

County.—GREETING:

You are hereby commanded to summon *Exum Eley, John Bowden and William Johnson*—

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the County of Southampton, on the first Monday of *June* next, that being rule day, to answer a

Bill exhibited against *them*—
in the said Court by *William Sanford administrator of*
Edwin Eley dec'd

And unless the said defendants shall answer the said bill, within four months thereafter, the Court will take the same for confessed, and decree the matter thereof accordingly.

And this *they* shall in no wise omit, under the penalty of 100%. And have then there this writ.

Witness—JAMES ROCHELLE, Clerk of our said Court at the Court House, the *27th* day of *April* 183*5*, and in the *59th* year of the Commonwealth.

James Rochelle Clk

[One copy to be delivered to each defendant.]

I acknowledge the Services of the within
October 5. 1835

Wm. Lamberton

Mr William Lankford Adm^r of Edwin Ely Deed

You will please take notice that on Tuesday the 20th day of this Present Month at Thomas Marshall Tavern in the County of Shesapeake between the Hours of Ten O'clock in the Morning & Sun Set of the same day I shall proceed to take the Depositions of Mills L Ely William H Ely and James Bridger Let to be read in evidence in a Suit now depending in the Superior Court of Law & Chancery for the County of Southampton in which you are Plaintiff and I am Defendant I am &c

October the 2nd 1835

Edwin Ely assignee of
John Bowden

October the 20th 1835 the within Deposition of Mills & Eley was taken before me at Thomas Marshall Tavern in the County of Glesfright this day between the Hours of Ten O'clock and Sun Set of the same day agreeable to Notice herein enclosed to be read as evidence in a Suit in the Circuit Superior Court of Law & Chancery for the County of Southampton in which William Lankford Admr. of Edwin Eley Deed is Plaintiff and Ann Eley assignee of John Bowden is defendant

David Robert J. P.

Lankford Admr

" 3 Dep.

Eley &c

Came to hand sealed October

24th 1835 L R Edwards &c

The Deposition of Mills L Eley of the County of Isle of
Wight and State of Virginia taken before me to be read as evidence
in a Suit depending in the Circuit Superior Court of Law and
Chancery for the County of Southampton taken agreeable
to Notice at Thomas Marshall Tavern on the 20th day of
October 1835 Between the Hours of Ten O'clock in the forenoon
and Sun Set of the same Day which is to be read as evi-
dence in a Suit now depending in the said Court in which
William Sanford Admr. of Edwin Eley decd is plaintiff
and said Edwin Eley assignee of John Bowden is defendt.
This deponent after being sworn on the Holy Evangelist
of Almighty God deposed and said, That a very short
time before the death of Edwin Eley decd. he heard said Edwin
Eley say that he had taken a Deed of Trust on William
Johnsons Land and twenty Barrels of Corn in which Deed
of Trust he had included all the money due him and
this deponent and Martha Eley for the Sale of a Tract
of Land which Benjamin Eley died possessed which said
Tract of Land was sold under a Decree of the County
Court of Isle of Wight and the said Johnson became the
Purchaser and after the money became due the said
Johnsons Securities become dissatisfied and wished said
Johnson to Connote them and the said Edwin Eley said
that the reason why he took said Deed of Trust was
to Connote said Securities and said Edwin Eley said he
was to pay all the money the said Johnson owed to John
Bowden as Guardian for Martha Eley orphan of Robert
Eley decd and to me who was then the Ward of said Edwin
and also all the money that was due said Edwin out of
the Sale of said Tract of Land was included in the amt of
said Deed of Trust, and this deponent further saith that
said Edwin Eley said that in consideration of said Deed of Trust
he gave a Note to said William Johnson made payable
to said John Bowden and requested said Johnson to
carry said Note to said Bowden to take in another Note
which said Bowden held against said Johnson which
Note was for the Sum of about one Hundred & eighty nine
Dollars and further this Deponent saith Note given
under my hand and Seal this 20th day of October 1835

Mills L Eley Seal

Lankford and

or 3 days

Ealey &

Came to hand under Seal

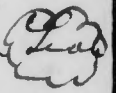
Oct 29' 1835

L.R. Edwards & Co

The deposition of James Bridges of the County of
Isle of Wight, taken before me to be read as
evidence in a suit depending in the Circuit
Superior Court of Law & Chancery, in the County
Court of Southampton of which Wm Lankford
Admr. of Edwin Ely dec^d is plff, and Eum Ely, As^t
of John Bowden is def^t - which & deposition is taken
agreeable to a notice at the tavern of Thomas Mai-
- shall ^{in ss. County of Hampshire} between the hours of ten O'clock & Lun-
- tea on the same day, to wit, Oct 20th 1835 -

This deponent after being sworn ~~on~~ ^{by} the holy evangelist
of Almightie God deposed & said - I - - -
that he was in company with the s^d Edwin Ely
a little time before his death & he asked the s^d
Ely, how he & Wm Johnson had fix^d about the s^d
Johnsons land, & the s^d Ely told him that he had
taken a deed of trust on s^d Johnsons land & twenty
Barrels corn and the s^d Edwin Ely further said that
he was to pay ~~to~~ ^{to} Mills & Ely & to John Bowden
Gdn^r to Martha Ely both Orphans of Robert Ely
dec^d all the money they were entitled to for the sale
of a tract of land which s^d Johnson purchased which
was sold by a decree of the County Court of Isle of Wight
which tract of land formerly belonged to Benj^d Ely dec^d
which s^d money was to be paid under the condition
of s^d dec^d of ~~of~~ ^{of} trust, and this deponent further said
that the reason why he ask^d the s^d Edwin Ely how
he & Johnson had fix^d about the s^d land that he
the s^d deponent wish^d to purchase the s^d land him-
self, and this deponent thought that he the s^d John-
Johnson, would have to tell the s^d land before

he could make payment - - - - -
and further this deponent saith not - - - - -

James Bridger 

Schoof Wright County, Oct. the 20th 1835, this
day James Bridger made oath before me,
to the above deposition - - - - -
Jordan Tan, J.P.

Larkford and

or 3 days

Eley R

Came to hand under Seal

Oct 29' 1835

J.R. Edwards Cts

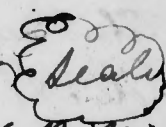
The Deposition of William H Ely of Lawful age of the County of Schofwright taken before me to be read as evidence in a Suit depending in the circuit Superior Court of Law and Chancery for the County of Southampton agreeable to Notice between William Sanford Administrator of Edwin Ely died Plaintiff & Emma Ely assignee of John Bowden Deft which deposition is taken agreeable to said Notice at Thomas Marshall's Tavern in the said County of Schofwright Between the Hours of Ten O'clock and Ten & 1/2 on the 20th day of October 1835

This deponent after being sworn on the holy Evangelists of Almighty God deposed and said that he was one of the subscribing Witnesses to a Deed of Trust which William Johnson of the County of Schofwright gave to said Edwin Ely on a Tract of Land which William Johnson purchased which was sold under a Decree of the County Court of Schofwright, ^{which formerly belonged to Benjamin Ely, decd} and Twenty Barrels of Corn the Deed in Trust was taken for the sum of two Hundred and eighty Dollars as well as this deponent recollects and the said Edwin Ely agreed at that time with said Johnson that he the said Edwin Ely would give his own Note to John Bowden ^{who was guardian for Martha Ely} for one Hundred and eighty Nine Dollars and some cents which was the amount of the said Johnson said he owed to said Bowden and the said Ely said that the amount of said Bowden's debt against Johnson was included in that Deed of Trust and that he said Ely would take it from said Bowden the Note said Bowden held against said Johnson and deliver it to said Johnson in consideration of said Deed of Trust and further this deponent saith that said Edwin Ely said in consideration of said Deed Trust that he would pay to Mills & Ely who was then the Ward of said Edwin what Money was due him said Mills & Ely by said Johnson for his said Mills & Ely's part of the Sale of said Tract of Land which said Johnson purchased as aforesaid and that the said Johnson in consideration of said Deed of Trust had fully paid him ^{said Edwin Ely} his proportion of the Sale of said Tract of Land sold under a Decree as aforesaid, Question by Emma Ely assignee of John Bowden Defendant was not said Edwin Ely and Mills & Ely own

Brother to Benjamin Ely deed and was not Martha
Ely own Sister to them all and was not Benjamin
Ely deed Land sold under a Decree of the County Court
of Isle of Wight for a Division amongst said Edwin, M.
L. and Martha Ely and did not William Johnson
Purchase the Land when sold under that Decree

Answer Yes

and further this deponent saith not given under
my hand and seal this 20th day of October 1835

William H. Ely 

October the 20th 1835 the foregoing deposition of William
H. Ely was taken before me at Thomas Marshall's
Tavern ^{in the County of Isle of Wight} this day between the Hours of Ten O'clock and
Sun Set of the same ^{day} agreeable to Notice herein encl-
sed to be read as evidence in a Suit in the Circuit
Superior Court of Law & Chancery for the County of
Southampton in which ~~Benjamin Johnson~~ ^{Benjamin Johnson} of Edwin
Ely ^{deed} Plaintiff & Edwin Ely assignee of John Bowd
is Defendant

Lankford atty &

n. J. Dep.

Ely &

Came to hand under Seal Oct

29th 1835

L.R. Edwards

James Robert

Certificate of
admⁿ. —

exhibit. A.

Rel^y admⁿ.

Rel^y d^y 3

Southampton County Court December 17th 1832.

On the motion of William Sankford who made oath and together with Carr Bowers and Jesse Sankford his securities entered into and acknowledged a bond in the penalty of ten thousand dollars conditioned as the law directs certificate is granted him for obtaining letters of administration on the estate of Edwin Eley dec^d in due form.

Teste J. R. Edwards Clk

Eley asu.

or Eley Judge?

Eley's answer

Rankine

Rly.

Exhibit B.

On demand I bind myself my heirs &c to pay unto John Borden his heirs
or assigns of the just and full sum of One hundred eighty nine dollars and seventy
six cents & a half. current money of Virginia for value of him recd. as witness
my hand and seal this 10th day of September 1832.

Edwin Eley (Seal)

William ^{his} Johnson (Seal)
mark

Witness
Elisha S Eley

Endorsement. " January the 22^d 1834 I assign the within note to Exam. Eley
without recourse to me. John Borden "

Southampton Vicar Superior Court April Term 1835.

Exam Eley assignee of John Borden

Plff: ⁱⁿ In Debt.

against
William Somkeford admor of Edwin Eley dec^d who was co obligor with
William Johnson }
Deft.

The defendant still failing to appear on the motion of the plaintiff it is
considered by the court that the plaintiff recover against the Defendant the sum
of One hundred and eighty nine dollars seventy six cents and a half with legal
interest thereon from the 10th day of September 1832 till paid the debt and interest
in the declaration mentioned and his costs by him in this behalf expended
To be levied of the goods and chattels of the decedent in the hands of the defend-
ant to be administered. And the said Defendant in Moneys &c.

Plffs costs \$6.73.

Copied Teste L.R. Edwards D.C

The writ issued September 16th 1834 -

Cum Clay

Note

\$ 320.90.

Clay adv.

Clay do.

exhibit

B.

For demand with lawful Interest We the subscribers and
each of us do promise and oblige ourselves our Joint and several
heirs Executors Administrators &c. to pay or cause to be paid unto William
Lambford his heirs or assigns the just and full sum of three
hundred & twenty dollars & ninety cents good and lawful money of Virg.
for value received witness our hands and seals this second day
of September 1833

Witness
of

— subscribed & Delivered

Carver Eley Secy

William H. Eley Secy

Jan^y the 8th 1834 recd of Wm
Johnson the Sum of two hundred
and one Dollars in part of the
within

Mills L Eley

February the 9th 1835 Recd
Forty Five Dollars in part
of this note Mills L Eley

William Johnson

to M^{rs} Aole

Edwin Eley

\$280.90

A

Bankers
to E. H. Smith and
Johnson
Eley &

On Demand I bind myself my heirs &c to pay in
to Edwin Eley his heirs or assigns the Sum of Two
Hundred & eighty Dollars and twenty Cents Current
Money of Virginia for Value rec^d as Witness my
hand & seal this 10th day of September 1832

Witness
Augustus Braccard
Jacob H. Duck

his
William X Johnson Seal
mark

William H. Eley

Johnson & wife
to 3 Dec of trust
Eley for Eley

B.
Lambford
" 3 Eley with answer of
Eley & Johnson

This Indenture made and entered into this 10th day of September 1832. Between William Johnson of Matthew and Elizabeth his wife of the county of Isabella and State of Virginia of the one part and Edwin Eley of the county of Southampton and State aforesaid of the Second part and Eum Eley Senr. of the state aforesaid and county of Isabella of the third part. Witnesseth that whereas the said William Johnson is indebted to the said Edwin Eley in the sum of two hundred and eighty dollars & ninety cents by note bearing date the above date with lawful interest from the date of these presents and said sum the said William Johnson is desirous effectually to secure to the said Edwin Eley. This indenture therefore witnesseth that for and in consideration of the premises as also for one dollar by the said Edwin Eley and Eum Eley in hand paid to the said William Johnson the receipts whereof is hereby acknowledged have granted bargained and sold and by these presents doth grant bargain and sell unto the said Edwin Eley and Eum Eley their heirs and assigns forever one certain tract or parcel of land lying & being in the county of Isabella aforesaid, containing by estimation one hundred and thirty five acres be the same more or less, and bounded by the lands of Gilbert Eley's heirs Samuel Eley Wm. H. Eley, Jno. W. Ball, Rhoads Bay, and Mills L. Eley's mill pond it being the tract of land where Benjamin Eley did possess; also twenty barrels of good sound merchantable corn to have and to hold the said tract or parcel of land together with all and singular its appurtenances and the said twenty barrels of corn unto the said Edwin Eley and Eum Eley their heirs and assigns forever. But upon this special trust and condition that the said Eum Eley his heirs & admors. &c. shall when required by the said Edwin Eley his heirs & admors. &c. proceed to sell the aforesaid tract of land and the said twenty barrels of corn to the highest bidder for ready money, but of such sale ten days previous notice shall be given by an advertisement thereof in writing at the court house door of said county and at some other public place in the said county and with the proceeds first pay the cost attending this indenture, then pay the said Edwin Eley the said sum of two hundred and eighty dollars and ninety cents with such interest as may be due thereon and afterwards pay the balance if any to the said William Johnson his heirs &c. the right and title to said tract of land with its appurtenances and the said twenty barrels of corn unto the said Edwin Eley and Eum Eley their heirs forever for the purposes before mentioned. The said Wm. Johnson and Elizabeth his wife doth for themselves and their heirs forever warrant and defend. In Evidence whereof the parties to these presents have hereunto set their hands and seals the day and year first herein written.

Jacob H. Duch
Augustus Ballant
Wm. H. Eley

William H. Johnson
Elizabeth H. Johnson
Edwin Eley
Eum Eley

Schofield County (to wit)

We Augustus Ballard and Jacob H. Duck justices of the peace in the county aforesaid in the state of Virginia do hereby certify that Elizabeth Johnson the wife of Wm. Johnson of Matthew parvus to the within deed bearing date the 10th day of September 1832. personally appeared before us in our county aforesaid and being examined by us privily and apart from her husband & having the within deed fully explained to her she the said Elizabeth Johnson acknowledged the same to be her act & deed and declared that she had willingly signed sealed and delivered the same and that she wished not to retract it.

Augustus Ballard (Seal)

Jacob H. Duck (Seal)

Schofield County October 1st 1832. The foregoing deed was acknowledged in the clerk's office by the said Wm. Johnson, Edwin Eley and Eum Eley, and together with a certificate thereon endorsed of the acknowledgment and privy examination of the said Elizabeth Johnson and admitted to record.

Teste Nathl. Young Clerk
A copy Teste Nathl. Young Clerk

Elly & Co
as 2 Dec 1830
Elly 3

Lankford as
~ 3
Elly &

Filed by J. P. at 29. 1830

In Island of Night County Court January Term 1831
 Edwin Eley and Mills L. Eley an infant suing
 by the said Edwin Eley his brother and next friend³ complainants
 against
 Martha Eley an infant by Edmund Eley her next
 friend
 Defendant

This cause came on this day to be heard by consent of parties, on the bill and answer, and was argued by counsel; and consideration whereof the court doth adjudge, order and decree that John A. Chapman after advertising the time and place of sale at least twenty days, sell at public auction in such parcels as to him may seem right the several tracts of land in the bill mentioned, two of them being the lands to which Martha Eley & Peggy her sister derived title under the will of Benjamin Eley, and the other being the land to which the said Peggy derived title from Lawrence Eley, and out of the proceeds of the sale pay the costs of this suit, and the expenses of the said sale. That the said commissioner divide the net proceeds of sale, so as to give to the defendant Martha Eley one moiety of the net proceeds of the two first above named tracts, and one third part of the balance including the net proceeds of the tract derived from Lawrence Eley, and take one or more bonds for the same from the purchaser or purchasers payable to the Guardian of the said Martha Eley nine months after date, and the said commissioner is directed to divide the whole balance of the said net proceeds of sale so as to give to each of the complainants, one half thereof, and take one or more bonds from the purchaser or purchasers for one of the said halves payable to the complainant Edwin Eley nine months after date, and one or more bonds from the purchaser or purchasers for the other half payable to the Guardian of the complainant Mills L. Eley nine months after date & make report to.

Attest Teste

Clerks fee \$4.59
 atty " 10.00
 \$14.59

Nath^l. Young clk.

In pursuance of the annexed decree of the county of Island of Night bearing date January Court 1831 authorizing me as Commissioner after advertising as directed by said decree to make sale of two tracts of land which Benjamin Eley did seize and possess, and one tract which Peggy Eley

formerly and lately Peggy Browne died seized and possessed, I have therefore on this 23th day of January 1831 made sale at public auction on a credit of nine months except the costs & expenses of said decree which was for cash the said three tracts of land and Thaddeus Powell has become the purchaser of one of said tracts called the red house or mill plantation where Benjamin Ely died containing one hundred and thirty five acres more or less for the sum of three hundred & eighty dollars and bounded by the lands of Gilbert Ely heirs, Samuel W. Ely, John B. Ely dec'd. heirs, John W. Babb & and William B. Ely became the purchaser of another tract of land which Benjamin Ely died possessed of adjoining Hartwell F. Powell, Samuel W. Ely &c containing by estimation thirty five acres more or less for the sum of twenty dollars on a credit as aforesaid after deducting expenses and Edwin Ely has become the purchaser of the other tract of land mentioned in said decree which Peggy Browne died died entitled to formerly Peggy Ely containing by estimation forty five acres more or less and bounded by the lands of Gilbert Ely's heirs, Edwin Ely &c for the sum of twenty dollars on a credit as aforesaid after deducting expenses of said decree &c and I have taken bonds with good security from each of said purchasers made payable to Edwin, Mills and Martha Ely for the sums they were severally entitled to agreeable to said decree. Given under my hand this 25th day of January 1831.

J. H. Chapman

Attest

Nathl Young clk.

In Islip & Night County Court September Term 1831

Edwin Ely and Mills B. Ely an infant suing by
the said Edwin Ely his brother and next friend ² complainants
against ²

Martha Ely an infant by Edwin Ely her next friend Defendant

In Chancery

On motion of the complainants by their counsel, and for reasons shown to the court doth adjudge and order that so much of the report made in this cause and returned to March Court last, as relates to the purchase of a tract of land by Thaddeus Powell, be and the same is hereby set aside, and it is further ordered that John H. Chapman the commissioner proceed again to sell the said tract of land and make division of the proceeds thereof agreeable to the original decree in this cause, and make report thereof.

Attest

Nathl Young D.

In obedience to the annual decree of the county court of Islip & Night bearing date September Court 1831 I have pursuant thereto after having advertised as directed in said decree have made sale of at public auction the tract of land formerly belonging to Benjamin Ely dec'd on a credit of nine months and William Schurz of Matthew became the purchaser at three hundred dollars and forty cents and after deducting twenty nine dollars & two cents for the costs of the decree & commission which I received in cash I have taken bonds with good security from said William Schurz, William H. Ely & John W. Babb one bond in favour of Martha Ely for one hundred & eighty dollars & twenty two cents and two other bonds made payable to Edwin & Mills B. Ely for the sums of forty five dollars & twenty three cents each & I have paid over to Edwin Ely the bond made payable to him in his own right, & the bond made payable to Mills B. Ely as Guardian to said Mills B. Ely, and the bond made payable to Martha Ely. I have received as her Guardian, the above is respectfully submitted to the Court. Given under my hand this 24th day of October 1831.

John H. Chapman

Attest

Nathl Young clk.

Sanford

Wm. Ely

Wm. Ely

Deposition of
Sanford
Chas. W.
Ref. in 4th of 12
m. 1857-58
2. Rec 250-402
1 Aug 50.
no. 6 of 1858
no. 6 of 1858

The answers ^{proofs} and exhibits clearly show that the judgt. at law is a
valid and subsisting debt due from Edwin Ely's Estate to Susan Ely.
The error, if any, is a legal, and cured by release of error at law -
The Defat in the Disjunction has prevailed and is willing to acknowledge
satisfaction of the Judgment at law, and of the costs of this suit, if
credited on his obligation held by the plaintiff.

It is submitted that as to the ^{balance} ~~remainder~~ of the Bond due to Sanford
he must pursue his legal remedy - The Bill is not filed to recover
the money due thereon, as Equity has no such jurisdiction - As to the
objects of the Bill, the Defat must succeed, unless his grounds are
mistaken, & this success carries the costs - We are willing that a
decree may be entered, requiring Sanford to give the credit, & the Defat
I acknowledge satisfaction & -
Prentiss & Mason for Defat

A bond dated 10 Sept. 1832 by Rowin Ely & Wm
Pollock, or payables to John Rowan for the sum of \$189.70
- of? Jan. 22. 1834 to Rowin Ely by Rowan

J. Thurston and just. at Law find the error: at
Sept. term 1835.

Wiggin, and a bond due by Rowin Ely. The
plff. in the suit at law, to Lawford & rep. of
Rowin Ely officers or agents &c.

Should the Court be of opinion from the papers
in this cause that the supposed writing oblige-
-ment from Rowin Ely is a good & valid obli-
-gation to Rowin Ely, then the just. at law, should
go as a credit to Rowin Ely, bond to
Lawford, and a decree should be
rendered that Rowin Ely pay the balance
to the plff. in injunction - and costs
are asked for, for the plff. in injunction.

A. Atkinson atty
for plff.

For Mr.
Lankford
Nov.

when did John or present the Bond?
when did Elly first say he had it?