

1872-042 SOUTHAMPTON COUNTY
CHANCERY PAPERS

HARRIS VS. DUCK

9/1872

other surnames: Harvell

Harris
to } Stat. Rules
Duck

In Southampton County Court.

Orrin Harris

Plff

Irving W Duck
^{against}

Def

1872 Feb'y 20th Sum. found

" March Rules Sum. ~~dict~~ Executed Bill filed - D nisi to Deft.

April " Bill taken for Confessed & cause set for hearing. 4th

" Sep 6th Sum. found

Harris
as $\frac{3}{3}$ Bill
Duck

1872 March Rules

1872 March Rules

To the Honorable Joseph W. Ingraham judge of
the county court of Southampton in chancery sitting

Humbly complaining your orator Orrin Harris
sheweth unto your Honor that sometime in November
1868 Irving W. Duck sold to your orator a tract
of land lying in Southampton County and estimated
to contain three hundred and twenty acres for the
sum of one thousand dollars and in December
1868 (the same year) placed your orator in
possession of the said tract of land in which he
has remained ever since. Your Orator states further
that by the terms of the sale Irving W. Duck
placed him in possession that he was to pay
the said sum of \$1000 in four annual installments
of \$250 each and in the event he fails to
pay any of the annual installments as they
fell due then that installment was to carry
interest. Your Orator states that he has not
paid any of the principal of the sum due
but has paid interest up to this time and that
by the terms of the contract one of the said
installments is not yet due not becoming
so before next fall or winter. And although
he has not paid all the said installments
as they fell due yet anxious to pay the
same and secure a deed on the 15th of February
1872 your Orator tendered to the said

Irving W Duck the said sum of \$1000 and
all the interest then due in full payment
for the said tract of land and demanded
a deed for the same which the said Duck
refused to make. Your Orator is advised and
charges that when a vendor has been placed
in possession of a tract of land under a
contract of sale and has paid a portion of the
purchase money and when the time for
complying with the contract has not elapsed
and finds that a court of equity will
compel the vendor to make to the vendee
a deed for the same upon the payment
of the purchase money, and therefore your
Orator invokes the aid of a court of equity.
In such consideration whereof and
inasmuch as your Orator is without relief
except in a court of equity He therefore
prays that Irving W Duck may be made
a party defendant to this bill and that the
court would compel him as free and
perfect answer make to the allegations herein
contained as if he had been personally
fully and especially interrogated. And that
upon your orators paying to the said ^{Irving W Duck} the
said sum of \$1000 with all the interest
then owing or tendering the same
that the court would direct the said

Irving W Duck to execute to him a deed
for the said 320 acres of land and that
the court would grant such other and
general relief the premises considered as
equity may dictate and the nature of
this case may require and as in duty
bound your orator will ever pray in
Shames

Harris

m

Duck.

Answer

file this

1872 July 23

The answer of Irvin W. Duck to a Bill in chancery filed in the County Court of Southampton County, Virginia by Orrin Harris -

This defendant, says, That the statement of the facts relative to the sale of a tract of land by this defendant to said Harris, are so inaccurately stated, that he is compelled to say that as stated in said Bill, they are not true -

This defendant denies, that the said Harris has any just cause of complaint against him, & denies that the said Orrin Harris is entitled to the Land referred to, or to its possession, or to have the contract referred to, or any other contract relative thereto executed -

This respondent denies ever having sold the Land to said Orrin Harris, or that he ever paid one dollar towards his purchase. The facts, are these

This defendant in the latter part of the year 1868, bargained verbally with said Orrin Harris & his son James Harris to sell to them jointly the tract of Land referred to for \$1000, - to be paid for in four payments of \$250 each - the

first payment to be made on the 1st day
of January 1869, & annually thereafter,
with Interest - That at the end of the
year 1869, James Harris paid \$25. on
the Interest due, nothing more having
been paid by said Orrin Harris & James
Harris - That in the month of March
1870, James Harris determined not to
execute the contract so notified this
Defendant & finding that the said
Orrin Harris & James Harris could not
comply with the contract thus made,
this Defendant agreed with said James
Harris to cancel the agreement. & ~~refused~~
~~said James Harris the \$25. he had paid.~~

That this Defendant finding that the
said Orrin & Jas Harris could not stand
not complied with the contract, & the
said Jas. Harris, abandoning the contract
on his part, this Respondent no longer
considered the contract thus broken and
abandoned, as binding on him, & sold
the said Land to R. B. Hancee ^{for \$500} who paid
\$400 in cash & secured the remainder of the purchase money
for the same & whom a deed has been
made through, who is now the owner
of said Land. - That after this sale
to Hancee, ^{to wit about 20 July 1872} the said Orrin Harris, came
to this Respondent with one R. H. Putnam

and Putton took a bundle of money out
said, or Orrin Harris said, that he came
to pay for said land - how much money
he has this respondent does not know.
nor is it material to know - This
Respondent told said Orrin Harris that
he should not receive any money for
the said land as he ^(Harris) had long since
failed to comply with his contract &
had forfeited the same, that he (this
Defendant) had sold the said land
to R. G. Harvee, which sale the said
Harris knew of, before any attempt
to pay for it by the aid of said Putton
or otherwise -

~~That said land is now pending in the
possession of said land, by said Harvee
& this Respondent is seeing said Harris
for rent -~~

This Defendant is advised &
therefore says, That the Contract as
stated in said Complainant's Bill
(if true) does not entitle him a
specific execution of said Contract.

That if this Defendant had broken
his Contract, & no other damage had
accrued to said Orrin Harris than the
deprivation of possession of said land,
that this Court cannot decree specific

execution, but unless learn the said Min
Harris to his remedy, it saw for damages

His defendant denies that there
is any reason for such specific execution
of said Contract whatever, and that
the plaintiffs' Bill should be
dismissed

signed . J. M. D. M. C.

Sworn to before me this 17th day of July
1872.

John R. Kilby
A. P.

3600
as 3 Dec
Duck

For the interest
J. W. Wright

Harris

23 Decem
Duck

By consent of parties this
day this cause came on to be
heard on the plaintiffs bill and
answers of defendants and was argued
by counsel On consideration
whereof and by consent of parties
the court doth adjudge, order,
and decree that the plaintiffs
bill be dismissed each party
paying his own costs.

Harris

v { Sum^d

Duck

1872 March Rules

Executed Febr

29/7²

Harriet D S

J. W.

The Commonwealth of Virginia

To the Sheriff of Southampton County, Greeting:

WE COMMAND YOU to summon

Irvin W Duck

if *he* be found within your bailiwick, to appear at the Clerk's Office of our *County*
Court of Southampton County, at the Rules to be holden for the said Court, on the first Monday in
March next to answer a bill in Chancery exhibited against him in our said
Court by Orrin Harris

And have then there this writ. Witness, OSWIN WHITE, Clerk of our said Court, at the Court-
house, this *20* day of *February* A., D., 1872, in the *96* year of
the Commonwealth.

O. White Clk

To *Orrin Harris*

Take notice that I shall on the *17th* day of *July*, 18*92*, next, at
Zuni, in the County of De of Migh Va

_____ between the hours of 8 a. m. and 6 p. m. of that day, proceed
to take the Depositions of *J. W. Duck*

_____ and others, to be read as evidence in *my* behalf, in a certain *suit*
in chancery, depending in the *County* Court of *Southampton*
County, wherein *Ben*

_____ are plaintiffs, and *I am*

_____ are defendants; and if from any cause the taking of the said
Depositions be not commenced on that day, or if commenced be not concluded on that day, the
taking of the same will be adjourned and continued from day to day or from time to time, at the
same place and between the same hours, until the same shall be completed.

Respectfully,

To the Sheriff of *Southampton* }
County to execute.

Irvin W. Duck
for atty.

Enclosed by delivering to
Orren Harris is a copy of the
notice on the 1st day of July 1872
A. G. Cook - by for
W. W. Harris 544

Duck
at
Harris

notice to take
Dep. on 17 July
1872
at Juni

Excuse this &
enclose to me
by mail
J. R. L.

Duck
Harris

The depositions of Miss W. Duck and John Harris, taken on the 17th day of July 1872 at Juncos, in the County of Lee of Virginia, between the hours of 8 a. m. and 6 p. m. of that day, to be read as evidence in behalf of J. W. Duck, in a suit in chancery pending in the County Court of Southampton County, Va. wherein Orrin Harris is plaintiff and said Duck defendant, taken pursuant to the annexed notice.

The said Miss W. Duck, being duly sworn, says as is set forth below.

1st Question by John R. Kilby, atty. for J. W. Duck.
How old are you and where do you reside, and are you a party to this suit?

Ans. I was fifty eight years old, reside in the County of Lee of Virginia and am a party to this suit.

2^d Question by same

State all you may know of the sale of the track of land in controversy by you to the said Orrin Harris and all other facts connected therewith.

Answer. In the fall of the year 1868 about the month of November or December I sold Mr. Orrin Harris and James Harris his son a track of land known as the Germano Daily Track (shaded)

in the County of Southampton for the
sum of one thousand three hundred
in four equal instalments of two
hundred and fifty each, the
first payment to be made on the 1st
day of January 1869, and annually
there after, with interest. Mr
Harris then asked me if he could not
pay the payments in full, when
he came so, I told him that he
must pay the interest at least,
under this agreement I declined the
promise, to Mr Crisp Harris & James
Harris, on the first of January 1869
who moved in on the premises,
in the month of March 1869 I purchased
a horse of Mr James Harris for seventy
five & pence, which I expect to be
applied to the purchase of the land
but at the end of the year 1869 Mr
James Harris moved from the premises
and went to live with Mr Henry Pretton
then Master, Storr during the year 1870
and in the Spring of 1871 (the said James Harris
then living with Mr H. Pretton) came
to me and wished to give up his right
to the said Bailly land, when he directed
me to apply the seventy five & pence to pay

certain debt which he owes, which
I did, leaving about twenty five dollars,
in hand which he directed to be applied
to payment on the land. Saying that
that sum was all that he expected
to pay there for, and wishing me to ex-
onerate him from his contract about
the land, which I did, thereupon I
considered the contract made between
myself and the said Orrin & James Harris
ended. Knowing that Mr Orrin Harris
was old, infirm and without means,
was unable to do anything, just having
paid a dollar on this contract
at which time there were two hundred
dollars due. After that period I spoke
to Mr Orrin Harris upon the subject
who gave me no satisfaction, as to
his ability to comply with the contract
which he had already forfeited. I then
offered Mr. Isaac Wright C. H. to sell the
said land to Mr. H. & Henry Pettow for one
thousand dollars, which they decided to
give, I then offered and sold the said
land to Mr. Ransom G. Harvee for
Eight Hundred dollars, and made him
a deed there for. In February 1872
Mr Orrin Harris with Mr. Henry Pettow

Came to see me and met me at my place
at the Court, when Mr. John Harris
said that he had come to lay me for
that land, and took from his pocket
a Ball of Notes, how much I know
not, where upon I told him, I had no
such land, having sold it, a fact which
he well knew, where upon they left
and soon after this suit was brought
the track of land referred to contains
320 acres more or less.

And further this defendant saith not

J. M. Duck

James Harris being duly sworn says as
is set forth below.

1st Testimony by John R. Killy, atty for Mr. Duck
How old are you and where do you
reside

Ans. About Thirty years, at and live
in the County of Allegheny

2nd Testimony by same

From State all you know of the sale of the
land above referred to by Mr. Duck
to your father (James Harris) and yourself
Answer. I was ^{not} present but nearby when my
father and Mr. Duck made a bargain

for the said land which was to be done immediately thereafter, by Consent of Mr. Duck and my father I agreed to join with my father in the purchase, and each one then and there agreed to pay one hundred and twenty-five dollars, each annually, with their understanding my father and myself moved on the premises at the ~~first~~ of the year 1867 and went to work on the same, I remained on the premises only the year 1867 and made a crop with my father, at the end of the year I moved off the premises and went to live with Henry Patton with whom I lived the year 1870. In the month of March 1867 I sold to Mr. J. M. Duck a horse for twenty-five dollars, this matter stood till the following year when the twenty-five dollars was applied to the payment of some debt so that I owed leaving about twenty-five dollars to be paid to the payment for the land. I then told Mr. Duck that I could pay 100 more and that unless my father could make a payment in the fall that I would be out of the contract. I then went to my father ^{and told him} the conversation that had taken place between Mr. Duck & myself and asked him (father) if he intended to make any other arrangements with Mr. Duck.

when he told me that he should make
no other arrangements, that he expected to
pay Mr Duck what he had promised
before the time expired.
And further the deponent saith that,

James Hunt

Ransom G. Harrell being sworn, says
as is set forth below.

1st Question by J. R. Kilby atty for A. W. Duck
How old are you, and where do you
reside—

Answer. I am fifty nine years old and reside
in the County of Southampton

2nd Question, State all that you may know
of the Sale of the Parley land by deed
to Orin and Jane Harris, and of the same
to yourself

Answer. I know nothing of the original Sale of the said
land by Mr Duck to Messrs Orin & Jane Harris
by in May 1871 I formed the idea of buying the said
land and went to Mr Harris and had a
conversation with him about the said land
He said to me that if some persons in the neigh-
borhood were to buy the land, he should make
no objection, but if some others were to
buy it he should object, I did not know

that occasion, were Mr. Hain, the fact
that I intended buying the land, a few days
after this I saw Mr. Deak and bought
the land of him for Eight Hundred dollars,
in three or four days after I purchased
the land I saw Mr. Hain, and told
him that I had purchased the land, to
which he raised no sort of objection
at which time I carried a note from Mr. Deak
to Mr. Hain, requesting Mr. Hain to allow
me possession sufficient to put up
fences, make meadow &c. so as not
to interfere with his possession during
that year (1871). After reading the note
which he said, "Certainly Mr. Deak the
place belongs to you, and you can do
what ever you see fit."

Previous to this last conversation had
had a conversation with Mr. Hain
after I had made up my mind to purchase
the land, and I asked him if he would make
any difference if I were to purchase the
said Georgia Daily Place to which
he raised no objection and seemed perfectly
willing for me to buy it. Mr. Deak in
his letter to Mr. Hain, above referred to,
of which I saw the paper said that he
had a place that he would like to buy.

Having been, that he might be put
to the sort of inconvenience
At the first of the year 1872 I demand
possession of the said Brin-Hair,
of the premises aforesaid, which he
refused to surrender, and since
have possession of the same
And further this aforesaid said seat

D. R. G. L. L. L.

Virginia

Sec of High County St. int.

I, Charles B. Crumpler, a justice
of the peace in and for said County, do certify
that the foregoing Report was taken
at the place, on the day, and between the hours
named in & according to the command in law

Given under my hand 17 July 1872

Chas. B. Crumpler J. P.

See 150

Came to hand Sealed July

18. 1872.