1886 - 24 Southampton County Chancery - Walton & Green et als Vs Westbrook, William B. et als.

Creditors suit -
to reverse Sale of
land to keep from paying bills

Walton - W. D.
Green - John W.C.
Waddenburn, A. J.

Westbrook, Wm. B. & wife
Musgrove, G. N.
Darden, J. D.
Myrick, W. A.
(Woodard, T. J. exrs for
Pope, B. E. (dec.)
Darden, J. D. Trustee
for B. E. Pope,
Westbrook, W. B. Jr.
and Westbrook, Sidney
R.

Walton & Green &c
as 3/3 Decree
Westbrook &c.

1886. Nov Term

To be entered.

Geo. Reed. S.

W. D. Watton & W. C. Green, late merchants & partners
trading under firm name of Watton & Green.
and A. J. Wedderburn, who sue for themselves
and all other creditors of Wm. B. Westbrook
who may come in and contribute to the costs
of this suit Pltffs
against
Wm. B. Westbrook, and Virginia A, his wife. G. N. Mus-
grove. J. D. Dawson. W. A. Myrick & J. J. Worsley Exrs
B. E. Pope dec'd. J. D. Dawson: Trustee for B. E.
Pope. W. B. Westbrook Jr. and Sydney R. Westbrook
Defts.

This day this cause came on to be argued
heard on the papers formerly read, and
the joint answer of W. B. Westbrook Jr. and Sidney
R. Westbrook, filed May 5. 1886. the answer of
Wm. B. Westbrook Sr. filed May 5. 1886. the answer
of J. D. Dawson Executor and Trustee of B. E. Pope
dec'd, and the general replication to said answers of the Defendants filed
and now argued by Counsel.
On Consideration whereof and on the motion
of the plaintiffs by Counsel, the Court doth
adjudge order and decree that the plaintiffs'
bill be and the same is hereby dismissed,
and that the plaintiffs pay to the defendants
their costs by them about their suit in this
behalf expended.

Walton v Gunn et als
Ex. 22 Dec.
Millbrook et als

V

To be entered
May term

Geo. V. Brown

Wallon & Green & als
vs 3 Decm
Westbrook & als

The writ of summons in this case having been duly serv on the defendant James D Darden and he still failing to appear and plead answer or demur to the said bill of the plaintiffs on the motion of the plaintiffs by counsel it is ordered that a rule be serv on the defendant James D Darden to appear at the next Term of this court and show cause if any he can why he shall not be attached for his contempt to this court in failing to answer the plaintiffs bill

Walton + Green + Co

〃

Westbrook + al

Walton & ses
vs
Westbrook &c
The defendants W. B. Westbrook Senior, W. B. Westbrook Jr. and Sidney R. Westbrook, asked by leave of the Court, files their answers in this Cause -.

Search .10
Certificate .25
Postage .04
39¢

Wallen & Green & another
v
Wm A Washburn & others
Exhibit C bill with
plaintiff's bill

J. B. PRINCE, Clerk.

# Clerk's Office of the

# Circuit and County Courts of Southampton County.

Jerusalem, Va. Dec 11 1885

I hereby certify that the judgment in favor of Walton & Green vs W. B. Westbrooks, was docketed in this Office on the 9th day of June 1885. and the judgment in favor of R. J. Weddenburn vs W. B. Westbrooks, was entered on the judgment docket of this Court, on the 6th day of Augt. 1885.

Given under my hand Dec 11" 1885.

J. B. Prince Clk.

Weddesburn
& Eschenbach
Westbrook
W.L. & D.G. Warham 1/2

IN THE Hustings Court of the City of Petersburg, July Term 18 85

A J Weddeburn Plaintiff

Against

Wm D Westbrook Defendant

Judgment rendered for the Plaintiff against the Defendant for One hundred and thirty one 07/100 Dollars

with interest on $128.85 from Nov 1 1883 till paid

and $ 7.60 costs.

Extract.

Teste: John B Hunnicutt

Walter Green
& Schuppel
Westbrook
Mesnik

IN THE Circuit Court of the City of Petersburg, May Term 1884

Walter H Green Plaintiff

Against

W B Westbrook Defendant

Judgment rendered for the Plaintiff against the Defendant for one thousand and ninety seven 69/100 dollars

with interest from November 15th 1884 till paid

and $ 8.00 costs.

Extract.

Teste : John B Hunnicutt

Hallon & Green & als
vs
Jn Chancery
Westbrook & als

answer of Jos. D. Darden
Executor & Trustee

Nov 5. 1886.
Files - D.B.P.C.C

In the circuit court of Southampton county
Va In chancery
The answer of J.D. Darden one of the Exec=
utors of B.E. Pope decd and trustee for ce
said B.E. Pope decd to a bill of complaint
filed in this court by H.D. Hallon and
J.H.C. Green late partners under the firm
and style of Hallon and Green and A.J
Hedderburn as plaintiffs against this
respondent and others as defendants

This respondent for answer to the said
bill or as much thereof as he is advised
it is material for him to answer answering
says that the said bond mentioned in the
plaintiffs bill has never been paid in
full, but that the following payments
have made by H.B. Heilbrook Jr and credited
upon the said bond
On Dec 14th 1876 he paid $250.00 on to B.E. Pope
" April 13th 1878 " " $150.00 " " " " " "
" April 12th 1879 " " $150.00 " " " " " "
" Jany 20th 1880 " " $150.00 " " " " " "
" Feby 16th 1880 " " $23.17/100 " " " " " "
" Jany 20th 1881 " " $139.74/100 " " " J D. Darden
" Jany 20th 1882 " " $150.00 " " " " " "
" March 20th 1883 " " $151.50/100 " " " " " "
And the whole amount. principal and

interest due on the said bond up to this
date amount to $3086.50/100. and having
thus fully answered he prays hence to
be dismissed with his costs by him
in this cause in this behalf expended
Nov 5th 1886 Jas D Darden Excr & Trustee

State of Va
Southampton county to wit
I H. Shands a commissioner in chancery in
the circuit court of the aforesaid county
do hereby certify that this day personally
appeared before me Jos. D. Darden whose
name is signed to the above answer re
dated Nov 5th 1886 and made oath that
the statements contained in the above
answer are to the best of his knowl-
edge and belief true. Given under
my hand this 5th day of Nov 1886
H. Shands
Com in Chancery

Walton & Green &c.

vs

J. Rule

Westbrook &c.

1886. 1st day Nov:
Term Cir: Ct

Executed by delivering
a Copy of writ to
Jno. D. Darden
Aug 28/86
J. L. Barkam

**The Commonwealth of Virginia,**

*To the Sheriff of Southampton County—Greeting:*

WE COMMAND YOU TO SUMMON J. D. Darden

to appear before the Judge of our Circuit Court of Southampton County, at the Courthouse, on the first day of November Term next, to show cause if any he can why he should not be ~~fined~~ attached for his contempt to the Court in failing to answer the bill of Wacten & Green &others vs West brook &others - in which he is a party defendant -

And have then there this writ.

WITNESS, J. B. PRINCE, Clerk of our said Court, at the Courthouse, this 10 day of Aug, 1886, in the 111 year of the Commonwealth.

Teste J. B. Prince C.C.

Walton & Green et. al:

v Sum

Westbrook, et. als:

1886. Feb: Rules

Cir: Ct.

I went to the residence of Wm B Westbrooks and his wife and they being from home, I left a copy of this summons with Mrs [redacted] Preston his daughter who who is a member of his family over 16 year of age and explained its purport and on the same day I delivered a copy of this summons to J D Darden, J. J. Woodard G R Musgrave, Wm A Myrick, S. R. Westbrook & Wm B Westbrook Jr

G. W. Vick S Sh'ff

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County—Greeting:

WE COMMAND YOU TO SUMMON Wm B. Westbrooke & Va A. his wife. G. N. Mimsgrave. J. D. Darden, W. A. Myrick & and J. J. Woodard Executors of the last Will & Testament of Wm. E. Pope dec'd. and Jas. D. Darden, Trustee for Wm. E. Pope, Wm B. Westbrooke jr and Siddey R. Westbrooke

to appear at the Clerk's Office of our Circuit Court of Southampton county, at the Rules to be holden for the said Court on the first Monday in February next, to answer a bill in Chancery exhibited against them in our said Court by W. D. Wallin & J. W. C. Green, late merchants & partners trading under the firm name & style of Wallin & Green, and A. J. Wedderburn. who sue for the benefit of themselves, and all other creditors of Wm B. Westbrooke, who will come in and contribute to the costs of this suit.

And this they shall in no wise omit; and have then there this writ.

WITNESS, J. B. PRINCE, Clerk of our said Court, this 12th day of January, 1886, in the 110th year of the Commonwealth.

Testo.

J. B. Prince C.C.

John Lyon pl.

Walton & Green dal.

vs } M. Clay.

Westbrook dal.

Joint answer of
W. B. Westbrook Jr. and
Sidney R. Westbrook.

1886. May 6
Filed in Ct.
E B P CC

In the Circuit Court of Southampton County, in Chancery

The answer of William B. Westbrook, Senior, to a bill of complaint exhibited in this Court by W. D. Walton and John W. C. Green late partners under the firm and style of Walton & Green, and A. J. Wedderburn as plaintiffs, against this respondent and others as defendants.

This respondent for answer to said bill says: That the plaintiffs obtained judgments against him as stated in this bill. But respondent has no personal knowledge about any executions issued upon said judgments, or about the returns made thereon, or about the docketing of said judgments. In respect to all such matters this respondent insists that the plaintiffs' allegations, if material, shall be lawfully proved by proper record evidence.

It is true that in December 1875, this respondent borrowed of the late Benjamin E. Pope the sum of two thousand seven hundred and fifty dollars, and secured said loan by a deed of trust on two tracts of land in Southampton County, believed to contain together fifteen hundred acres more or less, and being the same lands which in the years 1884 and 1885, & for many previous years, stood charged to this respondent on the land books of said County.

According to a Statement rendered respondent by the Executors of said Pope, on the 20th day of January 1886, there was then due on account of said loan the sum of $3043 79/100; of which amount $2535 16/100 was principal, and $570 63/100 was interest. Since that time, on or about the first day of March 1886, the said Executors have been paid fifty dollars.

It is true that this respondent in the month of May 1885, sold to his two sons William B. Westbrook Jr. and Sidney R. Westbrook the two tracts of land aforesaid and the personal property on the same, for the sum of Seven thousand five hundred dollars, to be paid in five Equal annual instalments, bearing interest from the day of sale. It was believed that the money due Pope's Estate would not be called for for many years, so long as the interest was paid, and it was expressly agreed by and between this respondent and his said sons, that this respondent would provide for the payment of said debt whenever required by the Executors, and thus relieve said lands of the lien therefor, and that they, the purchasers, should not be required to pay the whole of their bonds until said lien was discharged; in other words that the purchasers might hold on to enough of the purchase money to indemnify themselves against the lien of the Pope debt; so that the property sold should not cost them more than $7500.

On the 15th day of May 1885, this respondent wrote the deed a copy of which is exhibited with the bill, and in said deed he qualified his covenant of general warranty by reference to the deed of trust aforesaid. And on the same day this respondents sons, William B. Westbrook Jr. and Sidney R. Westbrook, executed and delivered to this respondent their five joint bonds for fifteen hundred dollars each, bearing interest from date, and payable, one, two, three, four and five years after date respectively. Said bonds were witnessed by John I. Turner Esq. a justice of the peace living in the neighborhood who had been sent for to meet another justice, to take and certify respondents wife's acknowledgment of said deed. But that other justice failed to come, and therefore on the next day, May 16th 1885, this respondent and his wife went together to Southampton Court House and acknowledged said deed before a Commissioner in Chancery, and delivered it to the clerk to be recorded. On the day of the sale, in a settlement of some small accounts standing between them, and by the use of a small amount of currency, the grantee made to respondent a payment of two hundred and fifty dollars, which was endorsed as a credit on the back of the first bond. Respondent does not remember that any

person was called upon to witness this settlement; indeed there was no occasion for doing so.

This respondent was glad when his sons offered to buy said property for obvious reasons. Respondent thought that the property was fairly worth $7500. He had never offered to sell it for less. He knew that his sons were free from debt, and had a little money, and were young men of good habits. And respondent believed that by diligence and economy and the aid of such credit as the ownership of said property would give them, they would be able to meet their obligations, pay the whole of the purchase money within the five years, and become prosperous men, ambitious in business, and respected in the community. The grantees immediately took possession of their property, and have cultivated it industriously and successfully.

This respondent further answering denies that the sale and the deed aforesaid were made by this respondent with intent to hinder, delay or defraud the plaintiffs or any other creditor or creditors; he denies that said deed is fraudulent per se; he denies that it is fraudulent on its face; he denies that it is fraudulent in law; he denies that it is fraudulent in fact; he denies that it is null and void as to the plaintiffs or as to any other person or persons; and he denies that the lands conveyed by said

deed to his sons are subject to the lien of the plaintiffs' judgments against this respondent; and he denies that the personal property thereby conveyed is subject to the lien of their executions.

This respondent denies every allegation in the bill that imputes to this respondent any fraudulent, or other unlawful intent or motive whatsoever, and he prays that the plaintiffs shall be required by lawful and conclusive evidence to prove their offensive charges and imputations in this behalf.

And having answered this respondent prays to be hence dismissed with his costs by him about his defence in this behalf expended.

May 5. 1886.

Jas B Hestbrook

Wm Lyon Solicitor

In the Circuit Court of the County of Southampton, in Chancery.

The joint answer of William B. Westbrook Junior, and Sidney R. Westbrook, to a bill of Complaint filed in this court by W. D. Walton and J. W. C. Green late partners under the firm and style of Walton & Green, and A. J. Widderburn as plaintiffs, against these respondents and others as defendants.

These respondents for answer to said bill say: That William B. Westbrook Jr. was born on the 11th day of October A.D. 1862, and Sidney R. Westbrook was born on the 3rd day of April A.D. 1864, and they are the sons of their co-defendant William B. Westbrook, the elder.

In the Month of April 1885, when said Sidney became of age, respondents agreed to devote their lives to the business of agriculture, and they offered to buy from their said father his two plantations in Southampton County with all the personal property and crops thereon. After some negotiation, these respondents and their father contracted and agreed as follows: That he would sell to them, and they would buy from him the said plantations and personal property for the sum of seven thousand five hundred dollars, to be paid in five equal annual instalments, with interest from the day of sale.

On the 15th day of May 1885, these respondents

executed and delivered to their said father their joint bonds, five in number, for fifteen hundred dollars each, bearing interest from date, and payable in one, two, three, four and five years, respectively. Said bonds were witnessed by John I. Turner Esq: On the same day the grantor prepared the deed of bargain and sale of that date, of which a copy is exhibited with the bill. And on the next day, the 16th May 1885, the grantor and his wife went together to the Court House of Southampton County, and acknowledged said deed before a Commissioner in Chancery, and delivered the same for these respondents to the Clerk to be recorded.

Respondents knew that the estate of Benj. E. Pope deceased had a lien upon said lands by deed of trust to secure a loan of money, of which there remained due about three thousand dollars, and that the general warranty in the deed to these respondents would be qualified by reference to said lien. But it was distinctly contracted and agreed by and between these respondents and their said father, that he would pay and satisfy said debt and relieve the property from said lien; and that the grantees would not be required to pay the whole of their bonds aforesaid, even after maturity, until it became necessary to provide for payment of the debt to Pope's estate, which

was not likely to be demanded for many years, so long as interest was promptly paid thereon.

On the day of sale a payment of two hundred and fifty dollars on account of the first bond, was made by the adjustment and settlement of some small accounts before that time standing between the parties, and by the use of a small amount of current money; and said payment of $250 was credited on the back of said bond. No person was called upon specially to witness said settlement, because all the parties concerned were of full age and had entire confidence in each other, and there was nothing in the transaction to suggest the possibility of suspicion, or the need for extraordinary care. Respondent William B. Wellbrook Jr. had been engaged in business in Petersburg and had saved a little money. Respondent Sidney before he was of age had been employed as overseer with a salary, and had traded profitably in stock, and had been the legatee of the estate of Ambrose Matthews deceased: So that the brothers after making the payment of $250 aforesaid, had still some money left for current uses in carrying on their farms.

These respondents immediately took possession of the property they bought, and they have worked with it and upon it, industriously and successfully. During the year, and before the maturity of their

first bond, which was held by Mrs. Sarah W. Talley as assignee, they have been able to pay it off, and take it in. They expect to meet every one of their obligations as it falls due, and they intend to continue payment of their bonds, until there shall be left in their hands of the purchase money, only enough to protect them and their lands against the lien of the Pope debt aforesaid.

These respondents distinctly and emphatically deny each and every allegation in the bill, which charges that the deed to these respondents was made by the grantor with intent to hinder, delay, and defraud the plaintiffs or any other creditor or creditors. There is no distinct allegation in the bill that these respondents or either of them, had any notice whatever of any such fraudulent intent even if it had existed on the part of the grantor. But these respondents take occasion to deny and they do deny that they had any notice or suspicion of any fraudulent intent or motive on the part of their father and grantor. These respondents had no knowledge whatever of any indebtedness on the part of the grantor to the plaintiffs Walton & Green, except a judgment for $97. or thereabouts which had been obtained in a suit in which they claimed a much larger amount; and said judgment has since been satisfied by these respondents, it being a lien upon their land.

These respondents had no knowledge whatever of the debt due the plaintiff Wedderburn. Even if they had known of said debts, such knowledge would not have affected their transaction. They knew that their father was the owner of other valuable property in Prince George County, and in the city of Petersburg, and other places. And they would have known in any event, that the sale of the Southampton property for a full and fair price, on reasonable terms, to two industrious young men, of good habits, who were free from debt and had some money, and who are yet perfectly solvent and able to meet all their obligations, would be the best way to enable the grantor to pay his debts to creditors who were disposed to push him.

Respondents further answering again deny, that the aforesaid deed to them is fraudulent per se, [whatever that may mean]; they deny that it is fraudulent on its face; they deny that it is fraudulent in law; they deny that it is fraudulent in fact; and they deny that it is null and void as to creditors, or as to the plaintiffs, or as to any other person or persons.

And proceeding to answer particularly the three special "allegations of fraud, shown" in the bill as badges of fraud, these respondents say:

First, that no list or inventory of the personal

property, was made, because the same lay there within the boundaries of the lands sold, in sight of the parties, and both the grantor and the grantee knew every item and article thereof:

Secondly, it is not true that respondent Sidney was under age; it is not true that respondents had never been engaged in any business or employment; it is not pretended that these respondents either had, or paid $7500 in money; but it is not true that they were unable to buy $7500 worth of valuable and productive property; it is not true that these respondents were insolvent; in fact they were free from debt and had some money; and they were able to take care of themselves:

Thirdly, it is true that these respondents bought the property aforesaid for more than it was assessed for, and possibly for more than some people would have been willing to pay for it; but respondents insist that a full and fair price is not a badge of fraud in a sale. Respondents are satisfied with their bargain, and they intend to pay the price, and keep the property.

Respondents finally deny that their lands aforesaid are subject to the lien of the plaintiffs' judgments, and that their personal property aforesaid is subject to the lien of any executions issued upon said judgments, either heretofore, or

hereafter, if any such there be, or have been, or may be.

Repelling with indignation the imputations of fraud, flippantly and recklessly made in the bill against these respondents and their father, and humbly praying that the plaintiffs may be held to strict, legal, full and conclusive proof of their offensive charges in this behalf, these respondents having answered fully, pray that they be hence dismissed with their costs by them about their defence in this behalf expended.

May 5th 1886

Wm B. Westbrook Jr.
Sidney R. Westbrook

Wm Lyon, Solicitor.

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Waltm & Green Jc.

01 Z Stat: Rules

~~Westbrook Jct.~~

In Southampton Circuit Court.

W. D. Walton & J. W. Green, late merchants late merchants
partners trading under firm name of Walton & Green
and A. J. Wedderburn, who sue for themselves and all
creditors of Wm. B. West-brook, who will come in and contribute
to the costs of this suit suit } Plffs
against } In Chancery.
Wm. B. Westbrook and Va. A. his wife. G. N. Musgrave. J. D. Pasteur
W. A. Myrick & J. J. Woodard Exors B. E. Pope dcsd. J. D. Pasteur
Trustee for B. E. Pope. W. B. Westbrook Jr. and Sidney R.
West-brook. Defts

1886.

Jany 12 Summons to Feby Rules.

Feby Rules. Summons rets'd Defts. Bill & Exhibits filed. and
Decree nisi vs Defts.

Mch " Bill taken for confessed and cause set
for hearing.

Certificate from

J.B. Prince & Co.

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For

W.L. & Thos. G. Watkins

Fee 25 ¢

In the clerk's office of Southampton County
Nov 20th 1885

I, J.B. Prince, Clerk of the County Court of Southampton County - do hereby certify that in the year 1884 - Wm B. Westbrook was charged on the land book of this County with 1303 acres of land, valued at $4344.50 and that on the land books for 1885 he is charged with 1302 acres of land, valued at $4344.50 and personal property valued at $415.00 - that Wm B. Westbrook Jr and S.R. Westbrook are not charged with any property, real or personal for either of said years.

Test

J.B. Prince C.C.
By M. Lowry D.C.

This Deed made this 10th day of May 1880 between Wm B. Westbrook and wife Virginia A. Westbrook of the first part and Wm B. Westbrook Junr & Sidney R. Westbrook of the other part Witnesseth: That for and in consideration of the sum of seven Thousand five hundred Dollars paid & secured to be paid the said Westbrook and wife have this day granted bargained and sold and by these presents doth covenant & convey unto the said Wm B. Westbrook Jr. Sidney R. Westbrook (Brothers) Two certain Tracts of land with all the Teams implements fixtures, Stock both of cattle & hogs with all the growing crops thereon planted on said, subject to a Deed of Trust executed to James D Dardan Trustee for B. E. Pope for a note therein secured for the sum of twenty five Hundred Dollars and all accruing interest, which said deed will be found recorded in the Courts office of Southampton County in Book page, in which said this property is discribed and more fully discribed to wit: Beulls Island

containing one thousand acres be
the same more or less & lying immedi-
ately on Nottoway River & bounded
East by the same and lying on the
Three Creeks and bounded South by
the same, and lying on the roseon
Swamp and bounded North by the same
adjoining the lands of Waverly
Barham and others, and bounded
West by the Saml. Barham Tract
now owned by Waverly Barham, 2nd
Barham Wrenn Tract containing
(000) five hundred acres be the same
more or less adjoining the lands of
Waverly Barham Benja. Everett
Ben Carter Everett, and lying
broadside on the road leading across
Blows Mill Swamp to Coopers
Store, this being on the West on the
North, lies on Blows Mill Swamp to
till it intersects with the line of the
S. H. Barham Tract at a large Cypress
on the run of the swamp, is bounded
East by said Farm, Now Waverly
Barhams, To Have and to hold subject
as aforesaid, the said property herein
conveyed free from the Claim of him
the said Westbrook Wrenn and all and

every person or persons with general warranty

Witness the following Signatures and Seals,

Wm B. Westbrook (seal)

Virginia A. Westbrook (seal)

Virginia

Southampton County To wit:

I B. H. Sexton a Commissioner in Chancery for the County & Circuit Courts for the County aforesaid in the State of Virginia do certify that Wm B. Westbrook whose name is signed to the writing above bearing date the 10th day of May 1886 has this day acknowledged the same before me in my County aforesaid And I further certify that Virginia A. Westbrook the wife of Wm B. Westbrook whose name is also signed to said writing bearing date as aforesaid personally appeared before me and on being examined by me privily and apart from her husband and having the said writing aforesaid fully explained to her she the said Virginia A Westbrook acknowledged the same to be her act & deed, declared that she had willingly executed the

sank and did not wish to retract it.
Given under my hand May 16th 1880.
R. F. McLemore
Comm'r in Ch'y.

Southampton County Circuit Court Clerk's Office,
March 16th 1880
The foregoing Deed of Bargain and
Sale was this day presented in said
Office and with the Certificate
annexed admitted to record
Test J. B. Prince D.C.
A Copy
Test Jas L. McLemore D.C.

Walker Sherrod
vs
Wm B Rountree &c
Deed Exhibit
Filed Sept 1880

Abstract

Fee $1.00
Postage 10¢

This Deed made the 10th. day of December, one thousand, eight hundred and seventy five, between Wm. B. Westbrook and Virginia A. Westbrook. his wife. of the first part, and James D. Darden trustee for Benjamin E. Pope, of the second part. Witnesseth: That for and in consideration of a loan made by the said Benj: E. Pope, to the said Wm. B. Westbrook, in the sum of Seventy seven hundred and fifty dollars. payable twelve months after date. by note Executed to the said Benj: E. Pope. being of like date with this deed and for value received, for which consideration duly and fully performed. the said Wm. B. Westbrook, have, this day, in order to secure payment of said note. well and truly to be made to the said Benj: E. Pope, his heirs and assigns. conveyed in trust, the following real Estate. lying in the County of Southampton and in the State of Virginia: First, one tract or parcel of land, known as my River farm. and called Butts Island. containing by estimation about one thousand acres, excluding a piece of land, lot of the Est: of Gen. D. Cary dec'd. of about one hundred and seven acres. and also another piece bought of Sand: A. Barham, containing about forty acres. This farm lies immediately on the

Nottoway River - and Three Creeks and adjoining the lands of the Estate of Richard Blow. Est: Dr Richd. Epps and Saml. A. Basham. Second: My farm known as the Basham Wrenn place, containing by estimation about four hundred acres, and adjoining the lands of the said Wm. B. Weathers, Saml. A. Basham, Est: of Ann Jelks and others. making in aggregate conveyed and intended to be conveyed, Fifteen hundred acres (be it more or less). To him the said James D. Darden, trustee for Benj: E. Pope. and to secure to the said Pope, the above sd loan, of twenty seven hundred and fifty dollars, and such interest and costs as may accrue from said transaction, till paid.

Now, if the aforesaid note shall remain unpaid unto the said Benj: E. Pope, a longer time than two years. or if the interest on said note shall not be paid punctually - then the said trustee, after due notification by the said B. E. Pope, shall give a notice of not less than thirty days, at several public places in said County. by written or printed posters, and expose said property to public sale, on such time as may be agreed upon by said

Benj. E. Pope and Wm B. Westbrook. or their duly authorized representatives - and in event of such sale, the said trustee shall receive for his services, five per cent. on the gross sales of said property. first pay to the said Pope, his heirs or assigns, the principal and interest of said note. and all cost and commissions. and the balance, if any, to the said Wm B. Westbrook, his heirs or assigns, but in no event shall a sale be made unless the parties interested are duly notified. and the property property advertised.
Witness our hands and seals this day and date above written.

Wm B. Westbrook (Seal)

V. A. Westbrook (Seal)

Virginia.
Southampton County. to wit:
I Jas. R. Tyler. a commissioner in Chancery for the County Court Southampton, in the State of Virginia. do certify that Virginia A. Westbrook the wife of Wm B. Westbrook. whose names are signed to the writing above, bearing date on the 10th day of December 1875, personally appeared before me in my County and State aforesaid, and being examined by me privily and apart from her said husband, and having the writing aforesaid fully explained to her, she,

the said Virginia A. Westbrook, acknowledged the said writing to be her act and deed, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 10th day of December 1875.

James R. Tyler
Commissioner in Chancery

Southampton County: In the Clerk's Office, December 10th 1875.

This deed of trust from Wm D. Westbrook & wife to James D. Darden trustee, for the benefit of Benj: E. Pope was this day received, and acknowledged by said Westbrook to be his act and deed and with the certificate of acknowledgment of the wife thereto annexed. admitted to record.

Test. L. R. Edwards C.C.

A Copy.

Test: J. D. Pruden C.C.

Matthew Ellis sworn saith
&
says he was present when
Edwards & Ellis made
this mark

To the Honorable George Blow Judge of the
Circuit Court of the County of Southampton in Chancery sitting.
Humbly complaining shew unto your Honor your Orators
W D Wallin and J W C Green late Merchants and partners
trading under the firm name and style of Wallin & Green
and A J Wedderburn, who sue for the benefit of themselves
and all other Creditors of Wm B Westbrook who will come
in and contribute to the costs of this suit, the following facts,
Namely
That at the May term 1885 (which commenced on 30th May
1885) your Orators Wallin & Green obtained a judgment
in the Circuit Court of the City of Petersburg against the
said Wm B Westbrook for the sum of $1097.69 with interest
thereon from the 15th day of Nov 1884 till paid and
$8.45 Costs of said, and at the July term 1885 (which
commenced on 16 July 1885) of the Hustings Court of said
City, your Orator A J Wedderburn obtained a judgment
against the said Wm B Westbrook for the sum of $131.07
with interest on $128.85 a part thereof from Nov 1st
1883 till paid and $ [illegible] Costs of said - a true copy
of both said judgments marked A and B respectively
are herewith filed as a part of this bill - Process or
summons in said suit of your Orators Wallin & Green
was issued on 23d day of April 1885 and returnable
to May Rules 1885 of said Circuit Court and was
served on said Wm B Westbrook on the 23d day of April
1885, and process or summons in said suit of your
Orator A J Wedderburn was issued on 19th day of May
1885 and returnable to June Rules 1885 of said Hustings
Court and served on said Wm B Westbrook on 19th day of
May 1885 - That executions were duly & properly

ispired on to the said judgments and directed
to and went into the hands of J A Johnston Deputy
of the City of Petersburg
& by him returned no effects found to satisfy the
same or any part thereof. Certified copies of said executions
as required or shall become necessary will be filed with this bill
That said judgment of your orators Walton & Green was docketed
on 9th June 1885 and said judgment of your orator A J Vandenbrook
was docketed on 6th August 1885 on the judgment docket of Southampton City
as will appear by papers marked [redacted] 6 hereunto filed as a part of this bill.
The said Wm B Northrop is now and was at the times
when to the said judgments were obtained and executions
issued as aforesaid and possessed of valuable
real and personal estate in the County of Southampton
but of the exact nature and value of said personal
property your Orators have no information
That by deed dated 10th Dec 1875 (a certified copy of
which marked B is hereunto filed as a part of this bill)
the said Wm B Northrop and Va A Northrop his wife
conveyed to James D Darden trustee for Benjamin E Pope
to secure a note of $2750 bearing even date therewith
to said Pope and payable twelve Months after its date
and interest" and costs as may accrue from said
transaction till paid" certain real estate lying in
said County, 1st a tract of land known as My River
farm and called Butts Island containing by esti-
mation about One hundred acres including a piece
of land lot of the Est of Geo R Carey dec of about One
hundred and seven acres - and also another piece
bought of Saml H Barham containing about forty acres"
as said deed more fully describes; 2d his farm known
as the Barham Mason place containing by estimation

about 500 acres and in said deed more fully described "Nothing in the aggregate conveyed and intended to be conveyed Fifteen hundred acres (be it more or less)"; and in said deed it was provided that should said note remain unpaid to said Pope a longer time than two years, or if the interest on said note should not be paid punctually, then the Trustee after notification by Pope should sell at public auction &c. Your Orators are informed and charge that the greater part if not the whole amount of principal and interest of said note to said Pope has been fully paid off and discharged - that said Benjamin E Pope has died and that Geo Musgrove, J D Darden, W A Maynard & J J Woodard are the Legally appointed Executors of his last will & testament that as will appears by a certified copy thereof marked "E" hereunto filed as a part of this bill, by deed dated 15 May 1885 and recorded 16 May 1885 (just 23 days ~~before~~ after proof in said suit by your Orators Dalton & Green was opened and 23rd days after the same was served on said Westbrook and 14 days before the said judgment was obtained) the said Wm B Westbrook and Via A Westbrook his wife for the expressed consideration therein of $7500 paid or secured to be paid said "Westbrook and wife", conveyed to their sons Wm B Westbrook jr and Sidney R Westbrook two tracts of land (but in what county not stated but presumed by your Orators to be in Southampton County) "with all the teams, implements, fixtures, stock both of cattle & hogs with all the growing crops thereon planted or seeded" subject to the deed of trust aforesaid to James D Darden Trustee for B E Pope, to wit, Bush Island containing 100 acres more or less and more fully described therein and 2nd Bush Swamp tract containing 500 acres more or less and

more fully described therein

That as will appear by papers Marked H hereunto filed as a part of this bill, the said Wm B Westbrook in the Spring of 1885 and before the execution of the deed aforesaid to his said two sons, listed for taxation in Southampton County and of same under oath as provided by law personal property valued at $415 and charged on the land books of said County with 1302 acres of land valued at $4344.50, but neither of his said two sons in that year (1885) or 1884 have in or are chargeable on the personal property or land books of said County with any land, personal property, Capital, debts, bonds or choses in action of any nature kind or value whatever.

That in the deed to his said two sons no schedule or list of said Wm B Westbrooks personal property conveyed thereby is given, but the same is conveyed only in general terms

That when said deed to said Wm B Westbrook jr and Sidney R Westbrook was made your Orators are informed that the former was only about 22 Years old and the latter NOT 21 Years old, and neither of them was engaged in any business or employment from which they, or either of them could have made or obtained Money, or the Means to purchase and pay for the property conveyed to them by said deed, and neither of them had the Money, Means or property to purchase or pay for the same

Your Orators aver and charge that the said deed from Wm B Westbrook wife to said Wm B Westbrook jr

and Sidney R Northcott was made by said Wm B Northcott with the intent to hinder, delay and defraud his creditors and especially your Orators, that said deed is fraudulent per se on its face, and is fraudulent in fact & is absolutely null and void as to his creditors and especially as to your Orators; and your Orators charge and aver that besides other reasons and particulars appearing on the face of said deed and in facts existing and which if necessary will be proved in the prosecution of this suit, the said allegations of fraud are shown as follows, 1st Because no list or schedule of personal property is given in said deed pretended to be conveyed thereby, 2d Because the said Wm B Northcott for some at that time only about 22 years of age and the said Sidney R Northcott ~~only~~ not 24 years of age and they nor either of them had any property or estate or means of any kind as shown by the said paper Marked H filed as a part of this bill, that neither of them was then or had ever been engaged in any business or employment from which they could have made or accumulated the money, means or property to buy or pay said $750 or any part thereof for the real and personal estate conveyed to them by said deed, and in fact that they were wholly insolvent, had no visible estate of any kind known to your Orators and were almost if not entirely dependent on them father the said Wm B Northcott for their support and maintenance, and that in fact they never paid said $750 or any part thereof to their said father, 3d Because the

said land as hereinbefore shown was valued at only
$4344.50 and Wm B Westbrooks personal property
at only $415 , in all $4759.50, Less by $2740.50
than said $7500 , and if said note to B E Pope of
$2750 (even excluding interest) had not been paid
off then adding said $2750 to said $7500 in all
$10,250 and deducting therefrom said $4759.50 and
it would appear that the said Wm B Westbrook jr
and Sidney R Westbrook would be guilty of the
unprecedented folly of paying $10,250 for property
which was valued at $4759.50 or $5490.50
more than its value - They of course knew of the
debt to Pope as the very deed to them refers to
that debt and the deed to James D Darden Trustee to
secure it.

Your Orators charge that the said deed to said
Wm B Westbrook jr and Sidney R Westbrook is for
the reasons stated and others that will appear in
the progress of this suit, fraudulent, null and void
and that the land and personal property intended
to be conveyed thereby is subject to the lien and
satisfaction of the judgments and executions of
Your Orators hereinbefore stated and also by
virtue of the statute Law of this state as expounded
and decided in the case of Wallace v Trenkle
27 Grattan 479 & other similar decisions -

In tender consideration of all which & forasmuch
as Your Orators are without remedy save in a
Court of Equity where & To the end therefore that
justice may be done they pray that the said
Wm B Westbrook and Virginia A Westbrook his wife
and the said G M Musgrove, J D Darden, W A Reynolds and J J Woodard
Executors of the last will and testament of Benjamin E Pope deceased

and the said
Benjamin E Pope, James D Darden Trustee for Benjamin E Pope
Wm B Westbrook jr and Sidney R Westbrook may be made
defendants to this bill and answer the same fully & unreservedly
but not under oath, your Orators hereby expressly waiving
answers under oath from said defendants and each of them
except said Benjamin E Pope who are required to answer the
same upon oath — that the said Benjamin E Pope in their
answers say unreservedly and truly whether the whole of the
debt or Note claimed to be paid by said deed to James D
Darden trustee as aforesaid has not been fully paid off
and discharged and if yea when and by whom, and
if the whole has not been paid off & discharged then
how much of the same still remains due & unpaid
and with interest from what time; that the said
Wm B Westbrook, Wm B Westbrook jr and Sidney R
Westbrook in their answers but not under oath, your
Orators hereby expressly waiving answers
upon oath from them and each of them, state specifically
unreservedly and truly whether the said Wm B Westbrook jr
and Sidney R Westbrook or either of them and if so which
of them paid the said sum of $7500 or any part thereof
and if only a part how much to the said Wm B Westbrook,
and of yea how much thereof and when, where and in
what presence the same was so paid and whether paid
in Currency or gold or silver Money, securities, bonds,
notes or otherwise and the exact nature of such securities
bonds, notes &c and by whom such securities, bonds, notes &c
were made and the dates and amounts respectively of each of
them and when due and to whom due and payable, and from
whom, when, where and in what presence they obtained the said
securities, bonds, notes &c, Currency or gold or silver Money,

and that your Honor will make a decree and declare the aforesaid deed from said Wm B Westbrook and Va A Westbrook his wife to the said Wm B Westbrook jr and Sidney R Westbrook fraudulent and void and void and of no effect as to the Creditors of said Wm B Westbrook and especially your Orators and their judgments, executions and debts aforesaid, that your Honor will decree to your Orators first liens upon the property conveyed by said deed in accordance with the Law in such cases, That your Honor will direct the taking of all necessary and proper accounts to ascertain the real and personal property of the said Wm B Westbrook and the lien debts binding the same with their priorities, and that your Honor will direct and decree the said real & personal property to be sold to satisfy the said lien debts in the order of their priorities, and out of the proceeds of sale pay to your Orators Counsel Messrs W L & Thos G Watkins and R T Wilson alias as Law such reasonable and proper fee for their professional services in this suit as may be right, your Orators here now alleging that your Honor will be and is here remarked to allow such fee, That your Honor will appoint a receiver to take charge of the real and personal estate conveyed by said deed from said Wm B Westbrook and Va A Westbrook his wife to said Wm B Westbrook jr and Sidney R Westbrook until the sale thereof can be had or until the further order of the Court, and grant unto your Orators such other and general and further relief as in Equity and the nature of the case may require. And your Orators as in duty bound will ever pray &c Many it please your Honor to grant the

W L & Thos G Watkins } fcy
R T Wilson

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Wallace & Ewen etal
vs
Wm B Rice & others
Westbrook et al

Circuit Court of Chatham Co
Ga