

1891-10

Southampton County Chancery - Johnson, K.R. vs Wiechman, C.D. et al

restraint issued to keep creditors
from selling property

Shands, Wm. (Trustee)

Johnson 147

Stat. Rules

Hutchman &

1 apr

K. R. Johnson - Plff

against

Wm Shands, Trustee

+ C. D. Weichman } Defs

In Chancery

1890. March 21. Process up to 1st April Rules.

" 1st April Rules. Process ret? Executed. Bill filed.

Answer of C. D. Weichman filed.

Jud. Rep: decree nisi.

2

"

"

Bill taken for Confessed as to
Wm Shands, Trustee.

Cause set for hearing.

The answer of C. J. Weichmann to a bill
in chancery filed in the circuit court of
Southampton by K. R. Johnson against
him at the 1st March Rules 1890

This defendant for answer to the
said bill or as much thereof as he is
advised it is material for him answer
answering says that on the 24th of January
1883 the said K. R. Johnson gave him a
deed of Trust Mrs. Shemmas Trustee on a
tract of land lying in Southampton county
containing 84 acres to secure a bond
for \$575.00 having the same date with
the deed and payable on demand with
no stipulation or agreement as to interest
on the same in the said bond which
of course carries the usual lawful
interest of six per cent per annum
and that so far from having received
eight per cent interest a year as alleged
by K. R. Johnson he has only received one
year's interest on the same which is
indorsed on the back of the bond

This defendant says further that by
the stipulations of the said deed the
said K. R. Johnson was to pay the interest
on the said deed of Trust or bond

annually and upon the failure to pay
the interest on any one year or at the
end or five years the said Trustee was
to sell the said land on request of
this defendant and to pay him his
debt. He says that he made a demand
on the plaintiff every year for the interest
on his debt and he has for the seven
years since this bond ^{has} been due and
payable received only one years interest
leaving six years interest still due, that
by the stipulations of the said deed he
had a perfect right to demand that the
said land should be sold to pay his
debt and that at his request the Trustee
had volunteered to sell the same or
would have done so but for the
restraining order of this court. Your
respondent emphatically denies that he
has ever received any moneys on the
bond or ever charged the same, that as
late as last December 1889 R. R. Johnson
told him that six per cent was not
interest enough and he ^{and insisted on it} offered to pay
him eight per cent and he replied the
law would not permit him to receive
it and he declined the proposition.

This defendant cannot see how

he can be called a tenant and grinding
creditor whom he has permitted K. K.
Johnson to remain in quiet and
peaceable possession of this land for
some long years receiving its rents and
profits and paying him but one month
of the interest due him not only that
he owes him \$115 on another bond & he
owes him \$145 on an account opened
by Putnam & Co. for ploughing, grassing
and other things \$20 in all \$300 besides
this bond of \$750 principal and interest
in all some \$1080 and when he saw
this state of his not only unwilling
to pay him but carrying off the
timber and bricks on this farm and
so impairing his security for his
money he thought it was time for
him to order a sale and directed
the trustee to have one

This defendant emphatically denies
again that there was any money charged
in this bond of \$750 - 15 - in that this bond
was given for actual consideration
and the debt of trust was given to secure
this bond and he further denies there
was any money charged in the two
bonds of \$145 and \$110 and leaving

fully answerd his prays hence to be
disonipis with his costs &c

signed C.D. Wickman
Shenas & Son Jr. &c

Wickman

ada B

Johnson

Answer of C. D. Wickman

1890. Apr 7th filed.

B. F. M. &c.

Johnson

L. E. Bond

Weichman

1890. Mch 21. filed

B. F. M. C.

Know all men by these Presents, That we *K. R. Johnson*
and *Jno. C. Parker*

are held and firmly bound unto the Commonwealth of Virginia in the just and full sum of

one hundred

Dollars, to the payment whereof, well and truly to be

made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. And we, the obligors herein, hereby waive the benefit of our homestead exemption as to this obligation, and also waive any claim, right or privilege to discharge any liability arising under said bond in any currency, funds, counter-claims or offsets other than legal tender currency of the United States.

Sealed with our seals and dated this *21* day of *March* A. D. 18 *90*

THE CONDITION of the above obligation is such that if the above bound

K. R. Johnson

who has sued out an injunction, from the Judge of the Circuit Court of Southampton County - in vacation - on the

18

- enjoining and restraining

Wm Shands & C. D. Weichman & all others.

from seeing the enforcing the deed of trust referred to in the bill & proceedings. (in the suit now pending in said Court. in which K. R. Johnson is Plaintiff and Wm Shands & C. D. Weichman are defendants) until the further order of the said Circuit Court. shall well and truly pay all costs and damages which may be awarded against him by reason of the suing out this injunction -

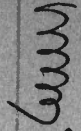
~~shall faithfully discharge the duties of~~
or else to remain in full force and virtue.

~~office or trust~~ according to law, then the above obligation to be void,

Signed, sealed and delivered }
in presence of the Court.

K. R. Johnson
J. C. Parker



Johnson
+  Corts.
Wickman

Black
Shff
Lawyer

\$9.23

1.00

16.50

\$26.73

Spa 50 - 2 Cop 50 - Reant 18 - Atty 10 - Dock 18
Rules 1.00 - Noting Return 35 - Filing brief
15 - Filing Ex 15 - Copy Ex 1.50 - Filing
Answer 25 - Replication 15 - 2 depositions & Copies
1.44 - Taking & Recording Depositions: Bond
\$1.00 - Costs 40 - Abstract of depositions 25
Dock Judgment 25 - Execution 50 - Filing
away papers 25.

Johnson } In Equity:
Weichman }

On motion of the Plaintiff in this Cause, by Counsel, & for good Cause shown, an injunction is awarded him to enjoin & restrain the defendants Wm. Shands & C.D. Weichman & all others from further proceeding to enforce the deed of trust referred to in the bill - & especially to enjoin and restrain the said Wm. Shands from making said sale as advertised to be made on the 22. of March 1890. until the further order of this Court. But this order shall not take effect until the Plaintiff shall have given bond in the penalty of ~~one~~ \$1000 - with security to be approved by the Court -

Conditioned to pay all costs and damages that may be awarded against him by reason of suing out said injunction.

Teste: B. F. McLenore C.J.

I certify that the bond required under the above order has ~~not~~ been given.

B. F. McLenore C.J.

Johnson
Weichman

Shands, Jr.

1890 / Apr 10 Rules

Cir: Ct.

Executed March

24 1890 by Clerk

- bring a copy of

this decree to the

Deputy Clerk

J. W. Williams
Clerk

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF SOUTHAMPTON COUNTY—Greeting:

WE COMMAND YOU TO SUMMON

*Wm. Shands, Trustee and
C. D. Weichman*

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 *1st* Monday in *April* next, to answer a bill in Chancery
exhibited against *them* in our said Court by

H. R. Johnson

And this *they* shall in no wise omit under penalty of law. And have then there this writ.

WITNESS, B. F. McLEMORE, Clerk of our said Court, at the Courthouse, this *21* day of
March, 1890, in the *114* year of the Commonwealth.

B. F. McLemore

C. C.

Johnson 139

or } Sec

Wichman

We consent to
the return of
of this de

J. B. Perkins
Jailor for Johnson

Shanks to Son
for Wichman

7th

May Term 1890

To be returned.

on file

Entered

Johnson }
or } decree
Wiechman }

This day this cause
came on to be heard on
the plaintiffs bill. The
answers of the defendant
C. D. Wiechman, general
application. doct. & his
its filed was argued by
counsel.

On consideration of
of. - by consent of all
parties. both plaintiff &
defendant through their
attorneys. The court doth
adjudge order & decree
that unless H. R. Johnson
shall pay or before the
24th day of December 1890.
pay to C. D. Wiechman the
sum of Six Hundred &
Ninety-nine & 9/100 dollars.
(\$697.90) which will be the
amount due on that day.
then Wm. Shands, Trustee
named in the deed shall
after having given 20 days

notice of the time & place
of sale, by public adver-
tisement at Franklin &
Barnstable & also in the
Southampton Decisorist,
shall proceed to sell on
the premises at public
auction to the highest
bidders for cash. A certain
tract of land lying in
Southampton County, con-
taining nearly four acres
bounded by the lands of
Alamanda Gordon, Timothy
Bozell, Wm. Beale, & after
paying legal costs of execu-
ting the trust, except that
the trustee shall receive one
half the legal commissions,
pay the C. D. Wickham
the sum of \$697.²¹/₁₀₀ above
stated, & the balance of the
purchase money if any
pay over to K. R. Johnson
& the court doth further
adjudge, order, & decree
that K. R. Johnson

recovers from C. D. Wilkerson
his cash about this rail
in this behalf expended.

Received Jan'y 22. 1891. of
Amshands Trustee for K. R. Johnson
\$390.⁵⁰ net proceeds of sale
of Johnson's land which
amount is to be credited
on a bond which I hold
against him and secured
by deed of Trust on said
land

R. R. Edwards
for C. D. Wickman

Received Feby 1891 of William Shands
Trustee five dollars as payment in
full of ~~crier's~~ fee for seeing on Jan'y
22. 1891 K. R. Johnson's land
Jas T Putton

Crier

Please sign & return

Franklin, Va., 189

Mr. Wm Shands Carter for
K. R. Johnson

To SOUTHAMPTON:-DEMOCRAT, Dr.,

W. H. Stroud, Publisher.

Mar 20 ⁹⁰	20 4 lines to ad			
	2 ad of land 1 t	40		
Jan 1 ⁹¹	20 2 in ad for do 4t	450		
Dec 31 ⁹⁰	15 1/8 bills for do	5490		
		125		
		615		

Paid
W. H. Stroud
Per. Ricks.

Johnson

vs 3 Deere

Wickham et al

To be entered
July 20th 1891

C.H.H.

Johnson
vs } Deere
Wichman et al

This day this
cause came on to be heard on
the papers formerly read and
upon the report of Whitham
Trustee of sale of Johnson's land
made in pursuance of a decree
entered in this cause at the May
Term 1890. disbursements of proceeds
supported by proper vouchers to
which report no exceptions have
been filed and was argued by
counsel. on consideration whereof
the court doth adjudge, order
and decree that the said report
be and is hereby confirmed and
it appearing unto the court that
there is nothing further to be done
in this cause it is hereby ordered
that the same be removed from
the docket.

To the Hon C. H. Hill Judge of the Circuit
Court for Southampton County Va

your undersigned trustee reports that
in pursuance of a decree entered in
the chancery cause of Johnson vs
Heichman et al at the May Term
1890 of this court after having given
the required notice of place time
and terms of sale he proceeded on
Jan 22nd 1891 to sell at public auction on the
premises to the highest bidder the
real estate mentioned in the said
decree. That C. D. Heichman being
the highest bidder became the
purchaser of the same for the
sum of \$625.⁰⁰/₁₀₀. paid the same
and had a deed for the same
made to a Gardner to whom he then
and there sold the land. That the said trustee
paid the following cost. To retained
to pay for writing deed \$10.⁰⁰ To
retained to pay Commissioners of
accounts &c \$2.⁶⁰/₁₀₀. To one half
Commissions on \$625.⁰⁰ = \$10.²⁵/₁₀₀. To
paid auctioneer \$5.⁰⁰/₁₀₀. To paid for
advertisements \$6.¹⁵/₁₀₀. To paid
balance of \$590.⁵⁰/₁₀₀. To C. D. Heichman
as part payment of the amount

to be paid him according to the
aforesaid decree. receipts for
which payments are herewith filed
That there are no funds in the hands
of said trustee and nothing further
to be done by him in the matter, all
of which is respectfully submitted
by

Wm. Shanks Trustee

July 2nd 1891

Johnson Report of
vs. Wm. Shanks Trustee
Wm. Shanks vs.

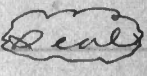
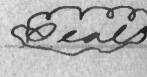
Johnson
p. 3 S. 4
Kichman

Acory

See 75. ch. 16. 2

This deed of trust, made this 24th day of January 1883, between Kenneth R Johnson and Jennie Johnson his wife grantors of the first part and William Shands trustee of the other: Witnesseth that for and in consideration of the sum of one dollar to the said Johnson wife in hand paid by the said William Shands, the receipt whereof is hereby acknowledged the said Kenneth R Johnson and Jennie Johnson his wife doth grant unto the said William Shands with general warranty a certain tract of land lying in Southampton County, containing 94 acres bounded North by the lands of Alameda Gardner and Timothy Boyet; South by the lands of John Ellis; and West by the lands of Wm Beale. In Trust to secure a bond due C D Hieshman of five hundred and seventy five dollars and fifteen cents, bearing date the same day with this deed, and it is hereby expressly stipulated and agreed that the said Kenneth R Johnson is to remain in quiet and peaceable possession of the said tract of land on the following terms to wit: That the said K. R. Johnson is to have five years to pay the above said bond on the further condition that he pays interest annually to the said C. D. Hieshman, but on the failure of the

of the said K. R. Johnson to pay the interest on any one of the five years as it may fall due, or at the end of ^{five} years from this day. Then upon the request of the said E. D. Wichman or his assigns the said William Shands trustee, as aforesaid after having given at least twenty days notice of time and place of sale by advertisement at Jerusalem and Franklin, proceed to sell on the premises at public auction to the highest bidder for cash, the the aforesaid tract of land, and after paying the costs of this trust pay to the said E D Wichman the said bond of \$575.13^{cts} and such interest as may be due thereon and the balance if any, pay over to K R Johnson, As witness the following signatures and seals.

K. R. Johnson 
Jennie Johnson 

State of Virginia, Southampton County
to wit.

I Luther R Edwards a Notary Public in and for said County and State do hereby certify that Kenneth R Johnson and Jennie Johnson his wife whose names are signed to the writing above swearing

date the 24th day of January 1883, have personally acknowledged the same before me in said County as their act and deed, and I further certify that the said Fannie Johnson on being examined privately and apart from her husband the said Kenneth R. Johnson, and having said writing fully explained to her she the said Fannie Johnson declared that she had willingly executed said deed and that she does not wish to retract it.

Given under my hands this 26th day of January 1883,

Luther B. Edwards N.P.

In Southampton County Court Clerk's Office May 21st 1883, This Deed of Trust from H. R. Johnson wife to William Shands Trustee for the benefit of C. D. Hickman was this day received and together with the certificate thereto annexed admitted to record.

Teste James R. Tyler C. C.
A copy Teste B. P. W. Lemere C. C.

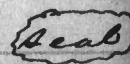
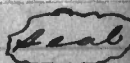
Johnson
to } D of Trust-

Wichman's Trust

Exhibit-
"A"

This deed of trust, made this 24th day of January 1883, between Kenneth R. Johnson and Jonnie Johnson, his wife, grantors of the first-part and William Shands trustee of the other. Witnesseth, that for and in Consideration of the sum of one dollar to the said Johnson and wife in hand paid by the said William Shands, the receipt-whereof is hereby acknowledged, the said Kenneth R. Johnson and Jonnie Johnson, his wife, doth grant unto the said William Shands with General warranty a certain tract of land lying in Southampton County, containing 94 acres bounded north by the lands of Alonander Gardner and Timothy Boyet; South by the lands of John Ellis; and West by the lands of Wm. Beale. In Trust to secure a bond due C. D. Wickman of five hundred and seventy five dollars and fifteen cents bearing date the same day with this deed, and it is hereby expressly stipulated and agreed that the said Kenneth R. Johnson is to remain in quiet and peaceable possession of the said tract of land on the following terms to wit: That the said K. R. Johnson is to have five years to pay the above said bond on the further condition that he pays interest annually to the said C. D. Wickman, but on the failure of the said K. R. Johnson to pay the interest on any

one of the five years as it may fall due, or at the end of five years from this day, then upon the request of the said C. D. Wiechman or his assigns the said William Shands, trustee, as aforesaid after having given at least twenty days notice of the time and place of sale by advertisement at Jerusalem and Franklin, proceed to sell on the premises at public auction, to the highest bidder, for cash, the aforesaid tract of land, and after paying the costs of this trust pay to the said C. D. Wiechman the said bonds of \$575.15 cts. and such interest as may be due thereon and the balance, if any, pay over to K. R. Johnson. As witness the following signatures and seals.

K. R. Johnson 
Jonnie Johnson 

State of Virginia, Southampton County to wit:
I, Luther R. Edwards a notary Public in and for said County and State, do hereby certify that Kenneth R. Johnson and Jonnie Johnson his wife whose names are signed to the writing above bearing date the 24th day of January 1883, have personally acknowledged the same before me in said County as their act and deeds, and I further certify that the said Jonnie Johnson on being examined privily and apart

from her husband, the said Kenneth R. Johnson, and having said writing fully explained to her, she, the said Jennie Johnson declared that she had willingly executed said deed and that she does not wish to retract it. Given under my hand this 25th day of January 1883.
Luther R. Edwards N.P.

In Southampton County Court Clerk's Office May 21st, 1883. This Deed of Trust from K. R. Johnson & wife to William Shands, Trustee, for the benefit of C. D. Wiechman, was this day received and together with the Certificate thereto annexed admitted to record.

Teste: James R. Tyler C. C.

Also by: Teste: D. F. McLennan C. C.

Johnson
or { Sugimura
Wickman

1890 March 21.

Entered
Page 379.

Johnson }
vs } In equity,
Wichman }

On motion of the plaintiff in
this cause, by counsel, & for
good cause shown, an injunction
is awarded him to enjoin & re-
strain the defendants Wm Shands
& C. D. Wichman & all others,
from further proceeding to in-
force the deed of trust referred
to in the bill, & especially to
enjoin & restrain the said
Wm Shands from making said
sale as advertised to be made
on the 22nd of March, 1890,
until the further order
of this court. But this order
shall not take effect until the
plaintiff shall have given
bond in the sum of
\$100,000, with surety deemed suf-
ficient by the clerk, conditioned
to pay all costs & damages that
may be awarded against him
by reason of giving out said
injunction.

C. W. Hoge
To the clerk of his court Southampton

Johnson

or } Bill.

Wichman

To the Hon C. W. Hill, Judge
of the Circuit Court of the
County of Southampton. On
In vacation

Yours complainant, N. R. Johnson,
complainings, sheweth unto the
court that on the day of
1888, he gave a deed
of Trust on his farm in
said county, near Franklin
Pa, & on which he lately resided,
to Wm Shands, Trustee, to receive
the payment of a certain
bond, for the sum of \$675.⁰⁰
due to C. D. Wickham, bearing
date even with said deed, payable
years after date, That the
said Trustee, on the 27th day
of Feby 1890 & since, has adver-
tised to sell said land, in order
to satisfy said trust, and
Saturday the 22nd day of
March 1890, Your orator further
sheweth unto the court, that
to sell said land at this
time, will be to utterly sacrifice
the same, That all farmers
who have not farms & houses of
their own, have before this

time made all their arrangements for this year, & will need all the money they can get hold of to run them through the year: that thus this class of bidders would be entirely debored from bidding at this season of the year, & the only bidders would be men who wanted to speculate only: that the almost total failure of crops in this section for two years forth, has caused farming lands to greatly depreciate for the time being, & for this reason even speculators will not at this time pay a fair value for land: that for the above reasons, neither speculators nor farmers needing a home, would bid on said land & thus it would be sacrificed.

Your complainant further sheweth unto the court that the debt incurred by the said deed of trust is numerous, that the considerations received by your complainant for the land incurred by said deed, was fully

cash forthly two old bonds, which
your complainant had. Prior to
that time, given said C. S. Wiech-
man, & which were returned at
the time of giving the ~~old~~ new
bond, with the security deeds;
that the two old bonds, bore
interest at the rate of 10% per
annum, a part of which at
said rate the said complainant
paid the said Wiechman in
cash, & a part was calculated in
bringing the amount due up
to the figures of the new bond.
That the rate of interest charged
& agreed upon for the new bond
was 8%, at which rate your
complainant has forthly paid
the interest thereon.

Your complainant further avers
that the said Wiechman will ^{not}
be prejudiced in any way by
a suspension of said rate
until the said bond shall
become more collectible, or
until the question of usury
shall be settled, as the said
bond is fully sufficient to

say said debt;

In under consideration whereof
& your complainant being some-
times case in a court of
equity, he prays that the said
Wm Shands & C.D. Wiechman
may be made parties defendant
to this bill & required to answer
the same. To your complain-
ant answers are answers under
oath; that they & all others be
injoined & restrained from in-
flicting the said deed of Trust.
That especially, the said Wm
Shands Trustee, be enjoined & restra-
ined from selling said land in
the 22nd of March as advertised.
That proper inquiry may be
made as to the whereabouts
of the said band, & your com-
plainant relieved from the
payment of all interest thereon.
That proper process issue & all
proper orders be made,
and all such other further & general
relief may be afforded your
complainant as in the
premises may be just & right-
and your complainant will ever pray. &c.

H. B. Johnson

Virginia. Southampton Co. Townsh.

Virginia. Southampton Co. Townsh.
J. L. R. Edwards, a justice of the
peace in & for the county aforesaid.
hereby certify that
N. R. Johnson personally appear-
ed before me in my county
aforesaid, & made oath that
the allegations contained in the
foregoing bill, which he swears
of his own knowledge, particularly
those concerning usury, are true.
and all other matters therein stated
he believe to be true.

Given under my hand this
19th day of March 1890.

L. R. Edwards J P