

1912 - 001 Chancery Causes: E. H. Williams George F. Whitley James U. Burges, Trustees for Folder 1
vs W. E. Johnson & H. Johnson 44
Id. of Wight County

Other SURNAMES: [American Linseed Company]
[J. W. Gwaltney & Company], [Frank T. Clark
Company, Limited], [T. J. Cox & Son], Cox
Clark, [Atlantic Paint Works], Quarles, Roberts
[Giles M. Quarles Company], [Balknap Hardware
& Manufacturing Company], [Republic Metalware
Company], Chalmers [Home Telephone Company]

Other SURNAMES: [Johnson &
Seward], Seward, [G. H. Johnson
& Company], Sims, Hunter
[Hunter & Sims], [National
Basket Company], Warren, White
[White Hardware Company], [Claremont
Herald], [O. G. Williams Manufacturing
Company], Marbury, Pegram, Guy
[Marbury, Pegram, Company, Inc]
[Barrett Manufacturing Company]
[Clauss Shear Company], Clauss
[Virginia-Carolina Hardware Company]
[C. A. Woolsey Paint & Color Company]
[Stoakley-Gibraltar Paint & Roofing
Company], Jordan, Stoakley, Davis
Woolsey, [H. B. Davis Company]
[Simmons Hardware Corporation]
[Red "C" Oil Manufacturing Company]
Simmons, Joyner, Jung, Gibraltar
[George H. Jung Company], [Cream
City Sash & Door Company], Gwaltney

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

E. H. Williams, George F. Whitley and
James U. Burges, trustees for the creditors
of G. H. Johnson, trading as G. H. Johnson
& Company.....Complainants.
versus

W. E. Johnson and G. H. Johnson.....Defendants.

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT OF ISLE OF WIGHT
COUNTY, VIRGINIA:

Your complainants, E. H. Williams, George F. Whitley and James U. Burges, trustees as hereinafter set forth, respectfully represent that on the 20th day of February, 1908, G. H. Johnson, of Smithfield, Virginia, being financially embarrassed and unable to carry out his obligations and pay his creditors in full, conveyed to your complainants, as trustees, for the benefit of all of his creditors, share and share alike, all his property, real, personal and mixed, of every kind and description, the same being enumerated and described in a schedule annexed to said deed marked "schedule A", a certified copy of which deed with said schedule is hereto annexed marked exhibit "1" and made a part of this bill.

Your complainants immediately took possession of said property and found that the said G. H. Johnson in addition to the personal property and equity in the real estate mentioned in said schedule was the sole owner of a stock of hardware, which was kept for sale by him in the town of Smithfield, Virginia, and was also the owner of an undertaking establishment under the firm and style of Johnson & Seward.

The said Seward having invested no money in said business makes no claim thereto, but, being liable for the debts of the said firm, requires that the assets of the said establishment be first applied to the payment of its debts. The undertaking establishment at the time it was conveyed would have sold for enough to pay the debts of the firm. The liabilities of the said G. H. Johnson amount to about eight thousand dollars and his assets over and above his interest in the undertaking establishment will not sell for more than three thousand dollars.

Your complainants state that their duties as such trustees are not entirely clear to them for the reason that the said G. H. Johnson just prior to the making of said deed of assignment, to-wit: on the 1st day of February, 1908, conveyed to his father, W. E. Johnson, all his right, title and interest in and to said undertaking business hereinabove described as is shown by a deed or bill of sale duly recorded in the Clerk's Office of Isle of Wight County, a certified copy of which is hereto attached marked exhibit "2" and made a part of this bill; and also conveyed to his brother, J. B. Johnson, certain articles of personal property specifically named in a deed of bill of sale, a certified copy of which is hereto attached marked exhibit "3" and made a part of this bill.

Your complainants state that being advised that said bills of sale were made without the knowledge of the grantees therein mentioned; that no part of the consideration therein named had been paid or acknowledged; that said bills of sale had been recorded by the grantor, they demanded

possession of said property conveyed in said deeds as they were required to do by the deed of assignment to them as trustees.

Your complainants further state that when demand was made upon J. B. Johnson, the brother of said G. H. Johnson, he immediately delivered the possession of said property to them and relinquished all claim thereto, but the said W. E. Johnson declined either to pay the purchase price named in the bill of sale to him, or to surrender his claim to said undertaking business, claiming that said G. H. Johnson was indebted to him in the sum of five hundred dollars and that he was also liable as an endorser upon his notes for the amount of one thousand dollars. Your complainants, as they were required to do, took possession of the undertaking establishment and placed the said G. H. Johnson in charge thereof with instructions to operate the same for the trustees. Your complainants state that the said G. H. Johnson has been operating the business since that time but now declines to turn over the proceeds from said business claiming that he is acting as an agent for his father, the said W. E. Johnson. Your complainants have offered to deliver to the said W. E. Johnson the undertaking establishment conveyed to him by said bill of sale upon the payment by him of the sum of fifteen hundred dollars, which said offer the said W. E. Johnson has declined.

Your complainants are advised that said W. E. Johnson acquired no interest in said property mentioned and described in said bill of sale for the following reasons: 1st. That the property conveyed belonging to the partnership of Johnson & Seward was liable first for the debts of said

partnership and could not be conveyed by the said G. H. Johnson. 2nd. Because the consideration named in the bill of sale has never been paid by the said W. E. Johnson. 3rd. Because the deed was fraudulent and void as to the creditors of said G. H. Johnson, the same being made upon a consideration not deemed valuable in law and executed and recorded without the knowledge and consent of the said W. E. Johnson for the purpose of hindering, delaying and defrauding the creditors of said G. H. Johnson.

Your complainants further allege that notwithstanding the fact that ^{claimsto have} W. E. Johnson/~~now~~ ~~has~~ possession of the said undertaking establishment he has presented to your complainants a bill for five hundred dollars announcing his intention of instituting suit if the same be not paid.

In tender consideration whereof, and forasmuch as your complainants are remediless in the premises, save in a Court of equity, they pray that said W. E. Johnson and G. H. Johnson made be made parties defendant to this bill, and required to answer the same, though ~~answer~~ under oath is hereby expressly waived as provided by statute; that ~~and~~ an order may be entered directing them as trustees ~~to~~ to take charge of the assets of said firm of Johnson & Seward and dispose of the same in the best manner possible, pay first all the bills of the said partnership and ~~disburse~~ distributes the balance among all the creditors of the said G. H. Johnson in accordance with the terms of said deed of assignment. Second that said G. H. Johnson be required to render an account before one of the Commissioners of this Court of his transactions as manager of said undertaking business since the same was conveyed to your complainants

as trustees as well as an account of all debts collected by him since the date of said deed of assignment which were due either to said G. H. Johnson & Company or the firm of Johnson & Seward.

And your complainants will ever pray, etc.

E. N. Williams

Frank J. Deeley

Richard A. Deery

trustees for creditors of
G. H. Johnson & Company,
complainants.

A. H. Johnson & Co. New York

2nd June rules 1908
Process returned executed
Bill filed - De Noes

1st July rules 1908
Answer of defend-
ants filed - Doc. set
down for hearing

JAMES U. BURGESS,
ATTORNEY AT LAW,
POST OFFICE BUILDING,
SUFFOLK, VA.

The Commonwealth of Virginia,

To the Sheriff of the County of Isle of Wight, Greeting:

WE COMMAND YOU that you summon

W. Ephson and G. H. Johnson

to appear at the Clerk's office of the *Lexis* Court of the *County* of *Isle of Wight*
at the rules to be held for the said Court, on the *3* Monday in *June* 1908,
to answer a bill in chancery, exhibited against *them* in our said court for
by *E. N. Williams, George F. Whitley and J. M. Burger,*
trustees for the creditors of G. H. Johnson, trading
as G. H. Johnson Company

And have then there this writ. Witness *NATHANIEL F. YORNG*, Clerk of our said court, at
the court-house, the *3rd* day of *June* 1908, and in the *32nd*
year of the Commonwealth.

Dist. Johnson

Due and legal notice of the writ of
Inveas is accepted and acknowledged.

W. E. Johnson

G. H. Johnson

By J. J. Johnson, their counsel

Williams, et al. Trustees

vs.

SUBPOENA
IN
CHANCERY.

W. E. Johnson et al.

Williams, Whitley & Burge p. q.

To 2nd June Rules,
Circuit Court.
1908

B 33119

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

E. H. WILLIAMS, GEORGE F. WHITLEY and

J. U. BURGESS, trustees for the creditors
of G. H. Johnson, trading as G. H.
Johnson and Company,

vs.

W. E. JOHNSON and G. H. JOHNSON.

To the Honorable B. D. White, Judge of the said Court:

The joint and several answers of W. E. Johnson and G. H. Johnson to a bill in equity filed against them in the Circuit Court of Isle of Wight County, Virginia, by E. H. Williams, George F. Whitley and James U. Burgess, trustees for the creditors of G. H. Johnson, trading as G. H. Johnson and Company.

These respondents saving and reserving to themselves the benefit of all just exceptions which may be had to the many errors, uncertainties and insufficiencies in the said bill contained, for answer thereto or to so much thereof as they are advised it is material they should answer, answer and say:

That the making and execution by G. H. Johnson of the writings filed with the complainants bill as exhibits- one and two, is admitted, all other allegations in the said bill, except as herein particularly answered, not affecting the interest of these respondents, are neither denied nor affirmed and so far as they are material strict proof of the same is hereby called for.

These respondents answering particularly the allegations of complainants bill with reference to the writing filed as exhibit two therewith, the effect thereof; and the rights of W. E. Johnson thereunder, would respectfully say that at the time of the execution of the said writing and for some time before, the said G. H. Johnson was indebted to said W. E. Johnson in the sum of Five Hundred Dollars, evidenced by a negotiable note for that amount, dated on the 1st day of July 1907, and the said W. E. Johnson was indorser on certain notes of the said G. H. Johnson aggregating the sum of twelve hundred and fifty dollars, with interest. That being so indebted, the said G. H. Johnson, on the 1st day of February 1908, with the purpose and intention of securing the payment of the said note of \$500.00 due and owing to the said W. E. Johnson, and of saving said W. E. Johnson harmless in his obligations as indorser as aforesaid, executed the writing filed with complainants' bill as exhibit Number two, conveying the property described therein and being that owned by said G. H. Johnson in connection with his undertaking business and which shall hereafter be referred to herein as the undertaking stock. These respondents were not informed as to legal forms, and they are now advised that the said writing is, in form, a bill of sale, and purports to be an actual sale of the property therein described, but they say that, in fact, no sale was contemplated or intended thereby, the said G. H. Johnson not having sold, and not intending to sell, and said W. E. Johnson not having agreed to buy, the said property. In fact the said W. E. Johnson was ignorant of the form of the instrument till the same had been put upon the record. The said writing was intended solely as a security for the debts aforesaid, and was made with the purpose and intention of carrying out an understanding between the parties. Your respondents are advised that in view of these circumstances and the purposes of the said writing, that, notwithstanding the form of the writing, the intention of the parties and the substance of the contract will be given effect and that the said writing is a mortgage, and

that the said W. E. Johnson has a lien upon the property therein specified which is prior to any right, title or interest of complainants, or any one else.

Your respondents say that the said note for five hundred dollars is still due and owing to the said W. E. Johnson, and that no part thereof has been paid, and that the indebtedness for which said W. E. Johnson is liable as aforesaid is also still due, owing and unpaid.

With reference to the allegation in complainants' bill that W. E. Johnson acquired no interest in property described in Exhibit Two, because "1st. That the property conveyed belonging to the partnership of Johnson and Seward was liable first for the debts of said partnership and could not be conveyed by the said G. H. Johnson": If this be true respondents are indeed at a loss to understand how G. H. Johnson could convey any interest in said property to complainants. If G. H. Johnson could not secure any right or interest to his creditor, W. E. Johnson, by his conveyance of Feb. 1, 1908, what right do complainants get from the very same grantor in the conveyance of February 20, 1908? How then does it lie in their mouths to complain? If this be true what right had they to demand that the proceeds of the undertaking business be turned over to them?

But your respondents say there was no partnership between Johnson and Seward, and no liability upon Seward, but that the entire undertaking stock was the sole property of said G. H. Johnson, and that he had the full, complete and perfect right to convey the same for the purpose of securing the said W. E. Johnson.

Your respondents emphatically and most positively deny that the said writing was made with any intent to hinder, delay or defraud the creditors of said G. H. Johnson, but say that the same is and was intended to be, a security for the honest obligation of said G. H. Johnson to said W. E. Johnson, and was honest, fair and open, and that the same is valid- and that till the debts due said W. E. Johnson, and those for which he is liable as aforesaid are paid

in full, complainants have no interest, right nor title to the property therein conveyed, and no right to have or receive any proceeds arising therefrom.

In conclusion your respondents say that they are advised that W. E. Johnson has a prior lien upon the undertaking stock and that it must first be applied to the payment of said lien, and if insufficient to satisfy same, that said debt due W. E. Johnson or such part as shall not be satisfied by said lien shall be paid ratably with the creditors under the terms of the deed of assignment to complainants as trustees.

These respondents therefore pray that the court will enforce the lien of the mortgage executed on Feb. 1, 1908, and filed as Exhibit two with complainants' bill; that a special commissioner be appointed to sell the property; that same may be accordingly sold and the proceeds applied towards the payment of the indebtedness due W. E. Johnson as aforesaid, and that the said indebtedness be otherwise provided for under the said deed of assignment.

And now having answered the complainants' bill they pray to be hence dismissed, etc.

James H. Johnson
p. d.

G. H. Johnson
W. E. Johnson
By James H. Johnson, atty-

3
IN THE CIRCUIT COURT OF ISLE
OF WIGHT COUNTY, VIRGINIA.

JOHNSON'S TRUSTEES

vs.

JOHNSON.

ANSWER.

*Filed 1st July rule 1908
Dist. Robinson
Co*

JOHN N. SEBRELL, JR.
Attorney and Counsellor at Law
NORFOLK, VIRGINIA

GEORGE F. WHITLEY
ATTORNEY AT LAW,
SMITHFIELD, VA.

April 7, 1908.

Mr. John N. Sebrell, JR.,
Norfolk, Va.,

Dear Sir:-

I have yours of April 4th, relative to the
W. E. Johnson bill of sale, & etc. The property mentioned
in the bill of sale has not been sold and cannot be sold
by the trustees as they have no right to it. The informa-
tion which you have in regard to the bill of sale which
is in your possession is correct, & except as to my draw-
ing it.

Let us know what your contentions are.

Yours very truly,

*Account Aunt Sarah of Wright Co.
Exhibit No 5 with Deposition
of G. F. Whitley in suit of
E. Williams & et al
Johnson et al
L. F. Williams. NP*

Geo. F. Whitley

Exhibit No. 1-

with testimony
of H. Whitney

AS H. Whitney

April 4, 1908.

Mr. Geo. F. Whittier,
Smithfield, Va.

Dear Sir:

I have received a letter from Mr. W. B. Johnson, of Ivins
Virginia, in which he says that a paper (which I now have in my
possession) purporting to be a re-conveyance of the property in the
Bill of Sale from G. B. Johnson to him was presented to him with
a request that he sign same and that he was informed that you drew
the paper and directed that he be requested to sign same. He writes
me further that you called him up away the 'phone later and asked
him if he was going to sign the paper, and that he referred you to
me. I have been further advised that it was the purpose and in-
tention of the trustees to hold the goods mentioned in the Bill of
Sale. Please advise me whether this has been done or when the
same will be sold. I am trying to get in possession of the facts
in this case and as soon as I am sufficiently acquainted with them,
I shall be pleased to write you just as requested.

Yours very truly,

7111-12111 Circuit Court of Va. at Smithfield
Exhibit No 4 with deposition of
G. F. Whittier in suit of
E. H. Williams & et al
Johnson et al
J. F. Whittier Jr

Exhibit No. 4
with testimony of
M. J. Whittey
App. No. 11.

GEORGE F. WHITLEY
ATTORNEY AT LAW,
SMITHFIELD, VA.

April 1, 1908.

Mr. John Sebrell, Jr.,
Norfolk Va.,

Dear Sir:-

Yours of the 30th, inst, received. I note that you state the indebtedness of G. H. Johnson & Co. to W. E. Johnson, to be \$500, my understanding is that the bill of sale given to W. E. Johnson, before the deed of assignment was made was given in satisfaction of the above mentioned \$500, claim, also in satisfaction of a \$1000, claim for which W. E. Johnson, was responsible as endorser. The above being true we do not see that we owe your client any thing.

Your client is mistaken as to our wanting him to sign a paper.

I would like to have a letter from you, at your earliest convenience, in regard to the above mentioned situation.

Yours very truly,

Geo. F. Whitley.

*Account Book of Geo. F. Whitley to be
Exhibit No 3 with deposition
of G. F. Whitley in suit of
E. Williams & et al.*

Johnson et al.

*A. J. H. H. H. H.
UP*

Exhibit No 8

July 20, 1887.

Mr. Geo. F. Whitley,
Attorney at Law,
Charlottesville, Va.

My Dear Sir:

I have your kind favor of the 5th, and in reply to inform you that the depositions of C. B. Johnson & company as to the amount of evidence of a navigable water dated July 1, 1887, for 1886 are on file on the first day of December, 1887, and in answer to your letter of the 10th of December, 1887, and in answer to your letter of the 10th of December, 1887. I will have you to kindly advise me of the result of your efforts to have the same filed in the morning.

Yours very truly,

J. H. H.

Circuit Court of Isle of Wight Co
Exhibit No 2 with deposition
of C. B. Whitley in suit of
Est Williams & et als

Johnson et als.

W. H. H.
JP

Exhibit No 2 ✓

GEORGE F. WHITLEY
ATTORNEY AT LAW,
SMITHFIELD, VA.

March 26, 1908.

Mr. John N. Sebrell/

Norfolk Va.,

Dear Sir:-

Yours of the 21st inst received and contents noted.
In regard to the bill of sale from G. H. Johnson to W. E.
Johnson, I do not know what the intention of the parties
were, but as I understood it at the time it was an actual
transfer of the title to the property.

I can not speak definitely about the assets or
liabilities of G. H. Johnson, as we have not been able
to get them all together. We think his assets will amount
to \$3500.00, his liabilities between eight and nine thous-
and.

We would like for you to send us a certified
statement of the amount due your client by G. H. Johnson,
we are endeavoring to settle the matter up as soon as pos-
sible and would thank you ^{to} forward this statement at your
very earliest convenience.

Yours very truly,

Geo F. Whitley.

Circuit Court of App of West G. Va.

*Exhibit No 1
with deposition
of G. F. Whitley
in suit of
Est Williams et al
Johnson et al
G. F. Whitley*

Exhibit No. 1
with deposition of
G. J. Whitley.
H. J. Allen. Jr

E. H. WILLIAMS ET. ALS., TRUSTEES

VS.

JOHNSON ET AL.

Depositions of G. H. JOHNSON ET ALS. taken on behalf of Plaintiffs at the Office of E. H. WILLIAMS, SMITHFIELD, VIRGINIA, SEPTEMBER 18TH, & 19TH, 1908, by consent of parties to be read in evidence in the Chancery Suit E. H. WILLIAMS ET ALS., TRUSTEES, VS JOHNSON ET AL, pending in the CIRCUIT COURT OF ISLE OF WIGHT COUNTY, VIRGINIA.

PRESENT: E. H. WILLIAMS, GEO. F. WHITLEY AND J. U. BURGESS,

Counsel for the plaintiffs,

JNO. N. SEBRELL,

Counsel for the defendants.

---oo0oo---

G. H. JOHNSON,

a witness on behalf of the plaintiffs, being first duly sworn, deposes and saith as follows on DIRECT EXAMINATION.

(BY MR. BURGESS):

1 Q. Mr. Johnson, are you the G. H. Johnson who made a deed of assignment to E. H. Williams, Geo. F. Whitley and J. U. Burges, Trustees, which was dated February 20th, 1908?

A. Yes, sir.

2 Q. That assignment was made, I presume, because you were financially embarrassed, were you not?

A. Yes, sir.

3 Q. What property did you convey by that deed?

MR. SEBRELL: Question objected to on the grounds that the deed itself is the best evidence.

A. Well, let me see; the store,--the Hardware store-- the stock, I mean the books the accounts and things, and I don't remember anything else.

4 Q. Did you not convey some chattel property, and if so state what it was.

(Same objection)

A. I don't remember about that.

5 Q (BY MR WHITLEY.) Don't you remember the articles advertised and sold?

A Yes, sir, but I don't know whether that we conveyed them or not.

6 Q (MR. BURGESS) Did you not convey your interest in the Undertaking business?

(Same objection)

A No, sir.

7 Q Did not you and Mr. Jesse Minton take an inventory of the Undertaking Stock, so that it could be made a part of the deed of assignment?

A Well, we took that inventory mainly before anything was disturbed.

8 Q For what purpose did you take this inventory?

A Because if it did come into the hands of the Trustees, that they would know what was there.

9 Q Did you not after that time, render statements of the accounts to the Trustees?

A Yes, sir.

10 Q Did you not after a while, convey a part of the Undertaking business to the Trustees?

A No, sir.

11 Q If you had not conveyed a part of the Undertaking establishment to the Trustees, why did you turn over to them the statements of the accounts?

A There was other securities made that were released, and a memo. of the whole Undertaking establishment and accounts was turned over to them, so that they might have a memo. in case the business was turned over to them.

12 Q What do you mean by saying that "there were other securities made"?

A Well, the Bank was secured for some papers discounted there; and my brother was secured for some money borrowed from him, which was released and turned over to the trustees.

13 Q When was the partnership of Johnson & Seward formed?

A No partnership was ever formed.

14 Q Did you not order goods in the name of Johnson & Seward?

A Sometimes,- not always.

15 Q Did you not have bill heads with the name of both Johnson & Seward on them?

A I did.

16 Q Did you not sign notes with the name of Johnson & Seward?

A Sometimes.

17 Q What Seward was this?

A W. T. Seward.

18 Q Did you not represent to the Creditors by signing the name of Johnson & Seward, that he was a member of the firm, and was liable for the debts of the firm?

MR SEBRELL: Question objected to on the grounds that it calls for an opinion from this witness as to what conclusions were arrived at by his creditors, from the mere fact of his signing his firm name, Johnson & Seward.

Question withdrawn.

18 Q Did you not report to your creditors and to the Commercial Agencies that you and Seward were partners?

A I did not. It was generally understood by travelling men, people around town and in the Country, that Mr. W. T. Seward had no part in the Undertaking business in management or benefits, except to receive pay for a day, if he did any work for the business.

19 Q How do you know that this was generally understood?

A It was the talk of most everybody, and it was known from the beginning that he had nothing invested.

20 Q What was the sign over or in front of your door?

A There was no sign for over a year, but there was a sign of Johnson & Seward.

21 Q What was the sign, if any, over your door the day of your assignment?

A Not any.

22 Q How long had this sign been removed?

A Over a year,- I don't know, it might have been two (2) years. It has been sometime.

23 Q Why was it removed?

A I don't know. No special reason.

24 Q Then, is I understand you the removal of the sign was not intended in any way to affect your relationship with Mr. Seward?

A No, sir.

25 Q Did the sign fall down, or come down, or was it simply taken down?

A It was taken down.

26 Q Who took it down?

A It was taken down by my instructions.

27 Q Why did you give these instructions?

A To remove obstructions from the front of store.

28 Q Is it not a fact that all of the orders for goods for the Undertaking establishment were signed ~~##~~ Johnson & Seward?

A I think not, but am not sure.

29 Q Do you remember how orders for goods from the National Casket Co. of Baltimore, Md. were signed?

A Not always, but sometimes Johnson & Seward.

30 Q Are you prepared to say that you ever ordered any goods from them, that you did not sign the order, Johnson & Seward?

A I am not.

31 Q I now hand you a letter dated January 25th, addressed to the National Casket Co.(which is herewith filed marked "Exhibit #1") signed Johnson & Seward, per G. H. Johnson. Will you please tell me if that order is in your own handwriting?

A It is.

32 Q I now hand you a letter addressed to Hunter & Sims, Richmond, Va., dated Nov. 6th, 1906, signed Johnson & Seward, per G. H. Johnson, (which is herewith filed marked "Exhibit 2"). Will you please tell me if that is your writing?

A I think so,- wouldn't swear, but it looks like it to me.

33 Q I hand you two (2) other letters addressed to the same people one dated Sept. 13th, 1906 and the other dated Nov. 28th, 1906, both signed Johnson & Seward, per G. H. Johnson, (which are herewith filed marked "Exhibits 3 and 4.") Will you please tell me if either of these are in your handwriting?

A I think so.

34 Q I hand you a statement of account of the debt due Hunter & Sims by Johnson & Seward. Will you please advise me if you ever received similar accounts?

A I have. Most of the accounts were made out to Johnson & Seward.

35 Q Have you ever addressed a letter to any of your creditors, or otherwise notified them, that while you signed Johnson & Seward to the orders, that Seward was not a member of the partnership?

A I don't remember.

36 Q I now hand you two (2) notes both dated Jan. 23d, 1907, ^{one for \$100.00 and the other \$105.98} made payable to Hunter & Sims, signed Johnson & Seward. Will you please tell me for what these notes were given, and who signed them? (The said notes being herewith filed, marked Exhibits 6 & 7).

A They were signed by myself, and were for goods bought for the Undertaking business.

37 Q I now hand you an account against the estate of Dan'l Tynes, (which is herewith filed marked exhibit 8). Will you please tell me if that is in your hand writing?

A I think so.

38 Q It is your desire, is it not, that your father should be paid from the assets of the Undertaking establishment, prior to any other creditor?

A Yes, sir.

39 Q Mr. Johnson, at the time you made this assignment, is it not a fact that Mr. E. H. Williams held several claims against you, and demanded that you ~~assign~~ turn over all your property for the benefit of your creditors, and threatened to institute bankruptcy proceedings if you failed to do so.

A What assignment?

40 Q The deed of assignment to Trustees.

A He did.

41 Q Then if I understand you, you preferred to comply with his demands, rather than have your business and property thrown into the Bankruptcy Courts?

A Yes, sir, I preferred that.

42 Q Did not Mr. Williams demand at that time that the Undertaking business be included in the property turned over to the Trustees for the benefit of these creditors?

A I don't remember.

43 Q Did you not at that time tell him that your father did not know about the bill-of-sale that you had made conveying the Undertaking establishment to him?

A I don't think I did.

44 Q Mr. Johnson, I put you on your guard as I expect to contradict you. I now repeat the question, and ask if you did not at the time that the deed of assignment was prepared, say to Mr. Williams that you had made a bill of sale to your father, but that he (your father) knew nothing about it.

MR SEBRELL: Question objected to by counsel for defendants, because it indicates an intention on the part of Counsel for plaintiffs to contradict his own witness.

MR. BURGESS: Counsel for plaintiffs replies that the witness has stated that his interest is adverse, and that he is therefore an adverse witness, and can be questioned as such.

MR. SEBRELL: Counsel for defendants says that Counsel for plaintiffs is in error in saying that witness has stated that he has an adverse interest, and calls attention to the fact, that no adverse interest has been shown in the testimony.

A My father did know that I had made a bill-of-sale before the assignment was made, and I see no reason why I should tell Mr. Williams, that he did not. I am quite sure I did not tell him so.

45 Q Did you not mark accounts "satisfied" or "paid" on your books and afterwards turn them over to the Trustees when a search warrant was gotten out?

MR. SEBRELL: Counsel for defendants insists that before this question should be permitted to be answered, that the witness should be directed to certain accounts or to facts which would show a materiality for the question.

MR BURGESS: Counsel for plaintiffs replies that the witness understood the question, and is waiting to form proper answer.

MR. SEBRELL: Counsel for defendants says that he is unable to see any materiality at this time, and refrains from objection, simply because the question has a tendency to incriminate this witness, and he does not desire to prevent the witness from making answer, But he does not wish that this record should be embarrassed with matters extraneous to the issues involved.

A Let me see. Before the assignment was made, i. e.. about the time the bill-of-sale was made, Mr. G. F. Whitley as my attorney told me that I could transfer some notes and accounts to him to be collected by him, to be used to pay certain obligations. These I held until after the assignment to the Trustees, when they told me that I had no right to hold same. The next morning I turned over the notes to them, and told them that I would get up the accounts, and these were the accounts.

46 Q Did I understand you to say that all the accounts which you held back had been turned over to Mr. Whitley?

A So far as I knew.

47 Q Is it not a fact that some of the accounts on your books which were marked paid, had not been turned over to Mr. Whitley?

A I do not mean to say that any of the notes or accounts were turned over to Mr. Whitley until after the assignment.

48 Q Have you any objection to Mr. Whitley explaining or testifying to any transactions which took place between you and him?

A Certainly not?

49 Wasn't a Search Warrant served on you?

A Yes. The notes were turned over before, and the accounts afterwards. There were two notes which were in the Bank that I did not have, and which I had told them before was there, that they were looking for, and which they found at the bank.

MR. SEBRELL: Question and answer objected to on the grounds that the search warrant and the return thereon are the best evidence. And the production of same is cold fallen.

50 Q Is it not a fact that there were accounts on your books marked paid when you turned over your books to the Trustees, that had not been paid?

A These were the accouhts.

51 Q BY MR WILLIAMS: As a matter of fact these accounts were not turned over to Mr. Whitley?

A No, sir, I never turned over any to him that I remember of.

52 Q You did not turn over any of the notes to Mr. Whitley before the deed of assignment?

A I did not. But he knew of some that I had.

53 Q Is it not a fact that you carried some of these notes out and hid them on the farm?

A Well, I think I told Mr. Williams so, but they were in my room.

54 Q Did not Mr. Whitley on several occasions urge you to turn over to the Trustees these accounts or notes that you had in your possession, after the deed of assignment had been made, and was not in the presence of myself?

A Only in the presence of Mr. Williams.

55 Q Did Mr. Whitley out of my presence at any time advise you not to turn them over after the deed of assignment?

A He did not advise me not to turn them over.

56 Q Is it not a fact that you did not turn them over until evidence had been secured that they were in your possession, and you were threatened with prosecution?

A I did not turn them over until after I had taken them to Mr. Barrett at the bank, and asked him to take care of them for me. I did not care to leave them at home when I was out, and so I took them to Mr. Barrett, and he said (that was one evening), I don't know just what he said, but he did not seem to want to take them and I kept them. And that night Messrs. Whitley and Williams told me that I had no right to keepmthem, that they should be turned over to them. They did say that I could be prosecuted for keeping them. After Mr. Williams left, I went back to Mr. Whitley, and asked him if what they said was facts, or were they just trying to make me give up the notes.

And he said "they were facts", and he advised me to give them up, which I did.

57 Q Mr. Johnson, did you give them all up at that time, or did you turn over to the Trustees a part of the notes, and accounts and checks which you received, and still withheld some?

A It was my intention to give them all up.

58 Q As a matter of fact you did not give them all up at that time, but some checks, notes and accounts were found in your possession when the search warrant was executed at a later date. Is that true or not?

A Let me see now. When they came to me together I did not know whether they were bluffing or not. I had a talk with Mr. Whitley afterwards, and he advised me to give them up, and he told me that I had no right to transfer them to him, and that he could not take them. I told him that night that I would give them up, and what I had together I gave up the next morning. I told them that I would get the balance as near as I could and turn them over; that probably I would have to go over my books, as some of the accounts I had, had gotten mixed with some old statements. I am not positive that he has all yet. I won't be until I have gone over the books.

59 Q BY MR. BURGESS: These accounts as I understand you, were both Undertaking and Hardware accounts, were they not?

A They demanded all accounts, and all books, and said they had a right to demand same.

60 Q BY MR. WILLIAMS: Is it not a fact that when this search warrant was served that there was also found in your possession some checks in payment of the accounts on your books, which you had received since the date of the deed of assignment?

A I don't remember about that. I did receive checks which I turned over to Mr. Williams.

61 Q Mr. Johnson, why were you afraid to leave your notes and accounts at your home when you were away?

A I make it a rule to leave nothing very valuable in the house, as it is rarely ever locked in the day time.

62 Q Mr. Johnson, at the date of the deed of assignment, did you not

understand that you were conveying to the Trustees the Undertaking establishment?

A If I had any interest.

63 Q Did you not with Mr. Jesse Minton take an inventory of the Undertaking establishment with the understanding that it was to be made a part of the deed of assignment?

MR: SEBRELL: Counsel for defendants objects to this question, because the same question has been asked and fully explained before.

A The Trustees wanted an inventory of the Undertaking stock and equipment, so in case afterwards that they would know the value, in case they needed to know. This is what it was for.

64 Q Mr. Johnson, did you not with your brother, Mr. J. B. Johnson endeavor to buy this Undertaking establishment from the Trustees within a few days after the deed of assignment had been made?

A The Trustees claimed that they had a right to control or sell the Undertaking business. My brother tried to buy from them if they had a right to sell. A price was made, but he did not buy.

65 Q BY MR. BURGESS: Mr. Johnson, did you not a few days ago in the office of Mr. Williams, say to Mr. Williams in the presence of Mr. Whitley, that the property in the bill-of-sale to your father, was not conveyed to him, but simply to keep it under your control so that your creditors could not bother it, and to save the business from your creditors?

A I think not. I am not positive. I don't remember but one thing positively that I did say.

66 Q What was that?

A Mr. Williams asked me if I intended to secure my father for FIVE HUNDRED DOLLARS (\$500.00) only, and I told him not FIVE HUNDRED but for FIFTEEN HUNDRED DOLLARS (\$1500.00).

67 Q And that is the only statement made by you that you now remember?

A Yes, sir. We talked of other things, but,--

68 Q Did you not say that you did not intend this for a security at all?

A I don't remember what I told him. I did not tell him I did not intend

it as a security.

69 Q BY MR. WHITLEY: Didn't you state in the presence of Mr. Williams and myself, that you intended to transfer the title to the Undertaking business to your father, Mr. W. E. Johnson, and that you intended this transfer in satisfaction of the FIVE HUNDRED DOLLARS (\$500.00)?

A I did not.

70 Q BY MR. BURGESS: What was your intention when you made the bill-of-sale to your father?

A I had papers drawn up to secure some creditors before the assignment by Mr. Whitley. And to secure my father for the sum of FIFTEEN HUNDRED DOLLARS (\$1500.00) I asked Mr. Whitley the best thing to do, and he suggested a bill-of-sale. I told him to do it the best way he knew, so it was made in the form of a bill-of-sale of the whole Undertaking business. My intentions were to include everything pertaining to the Undertaking business to secure my father for FIFTEEN HUNDRED DOLLARS.

71 Q BY MR. WHITLEY: Did you not state in the presence of Mr. Williams any myself that Mr. Sebrell had requested you to appear at his office, and at that request you appeared, and that he asked you whether or not this bill-of-sale to your father was not as a security for the debt, and that you informed him it was as a security.

A I did not. I told Messrs. Whitley & Williams that in order that Mr. Sebrell should understand the case, I went to his office and stated it just as it was; that there was something said in the answer to the suit about FIVE HUNDRED DOLLARS (\$500.00), that I did not just understand what that meant, so I wrote Mr. Sebrell again stating the case. This is what I stated to you all.

72 Q BY MR. BURGESS: Is it not a fact that after this bill-of-sale had been made, that Mr. Williams threatened to bring bankruptcy proceedings against you, and in order to prevent being thrown into the bankruptcy Court you made a deed of assignment conveying the undertaking establishment, and at the same time or soon afterwards had a paper prepared for your father to sign, reconveying the property to the Trustees, so that your entire assets could be administered by them?

A About 15 or 20 days after the bill-of-sale, Mr. Williams did threaten to institute bankruptcy, and I said to keep the matter out of court, I would be willing, if then others were willing to have a deed reconveying the property to them. And another little consideration was that they should have their fees.

73 Q Did you not at the same time turn over the Undertaking establishment to Mr. Williams, and deliver to him the key?

A Yes, I did.

74 Q If this deed or bill-of-sale was a mortgage you still had possession did you not, and continued to sell?

A I think so. I would have sold, and think I did.

75 Q Is it not a fact that you are still in possession of the Undertaking business?

A No, sir.

76 Q Who is?

A My brother, Mr. J. B. Johnson.

77, Q Who is he operating it for?

A For himself.

78 Q Who did he buy it from?

A No one, by permission of Mr. Whitley or Mr. Williams or both. Some time about the first of March he had an agreement with Mr. Williams and Mr. Whitley in order to keep the business open and going, that he could run the business in his own name, as his business, until he either bought or they found out what would be done with the business.

79 Q Did you claim that you conveyed this business to the Trustees subject to the mortgage?

A Yes, sir.

80 Q Then as I understand it you intended by your deed to convey the Undertaking business, but expected that the Trustees would pay from the proceeds of sale, first your father the sum of FIFTEEN HUNDRED DOLLARS (\$1500).

MR SEBRELL: Question objected to on the grounds that the deed is the best evidence.

(Question repeated or read).

A I don't know as I thought of it. I intended to assign to them what interest I had.

81 Q BY MR. WILLIAMS: When did Mr. J. B. Johnson take possession of this stock of goods?

A About the first of March, and since has been buying and selling.

82 Q

CROSS EXAMINATION

BY MR SEBRELL:

1 XQ Mr. Johnson, who drew your deed of assignment?

A I don't know.

2 XQ It was presented to you for your signature by Mr. E. H. Williams, was it not?

A Yes, sir. It was.

3 XQ Mr. Johnson, I understood you to say in your direct examination that the paper which Mr. G. F. Whitley prepared for you, and which is spoken of here, as the bill-of-sale, was intended by you as a security to your father for the FIFTEEN HUNDRED DOLLARS (\$1500) that you owed him, is that correct?

A Yes, for the sum of FIFTEEN HUNDRED DOLLARS.

4 XQ And that \$1500.00 was composed of \$500.00 which was evidenced by the note which was executed by you to him, and for cash money lent to you, and the remaining part were endorsements which he had made on notes which you had given other persons?

A Yes.

5 XQ After the bill-of-sale was made, you continued in possession of and continued to run the business on your own account until the deed of assignment to the Trustees?

A I did.

6 XQ You did not think that the effect of the paper which you made to your father was to be an absolute sale, and turn the business over to him did you? Or did you understand that the paper had the effect of securing your father for the \$1500.00, and would permit you to retain possession subject to the interest which the paper gave him.

A My intention ~~in~~ giving the paper was to secure my father for that amount. I expected to continue to run the Undertaking business.

7 XQ And you understood that in the event that your financial condition became such that your property would have to be sold to pay your debts, that your father would first be paid out of the Undertaking Stock the sum of \$1500.00.

A Yes, sir, I did.

8XQ Your real object was to so arrange your matters, that if the crisis came in your business, that your father should come in ahead of the other creditors?

A Well, I did in that business.

9 XQ The debt which you were securing in your transaction was a fair and honest one, was it not?

A It was.

10 XQ You did not make that paper with any intention to cheat or defraud anybody?

A I did not. I had promised my father when borrowing a part of the money that the Undertaking business would stand as a security to him, and as other people had asked for security, I thought it advisable to secure him also.

11 XQ You said that Mr. G. F. Whitley drew that paper for you?

A Yes, sir.

12 XQ And was he representing you as an attorney in this transaction?

A I secured his services to draw those papers.

13 XQ Did you acquaint him of the fact of how you owed your father?

A I did.

14 XQ And told him that you wanted to secure him, and wanted him to fix a paper in the best way to accomplish that purpose?

A I did.

15 XQ Was the paper which you signed, and which was put on record the only that Mr. Whitley prepared for you in response to this request?

A It was.

16 XQ Were you at that time sufficiently informed as to the effect of legal papers, so as to understand what effect certain papers had as to passing titles and giving securities and etc., or did you rely upon Mr. Whitley in that particular?

A I said to Mr. Whitley that I wanted to secure my father and asked

him, ~~and asked~~ to prepare the best paper that he could. It was my first experience, and I knew nothing about the legal effect of that paper. I was relying on Mr. Whitley for that.

17 XQ Do you remember whether Mr. Whitley advised you later with reference to a reconveyance of the property to himself and et als, as Trustees?

A I don't remember. I think not.

18 XQ I understood you to say that you, when threatened with bankruptcy proceedings, said that you would be willing to a reconveyance of the property to the Trustees, if the grantees in the several papers were willing. To whom did you make that statement?

A I made that statement, and I think to Mr. Williams and Mr. Whitley both.

19 XQ Do you know whether or not a paper was prepared which purported to be a reconveyance of the Undertaking Stock back from your father to the Trustees?

A There was one prepared.

20 XQ Who prepared that paper?

A I am not positive, but I think Mr. Whitley.

21 XQ At the time that paper was prepared, and at the time that you told Messrs. Williams & Whitley that you would be willing to reconvey if the other parties were, did Messrs. Williams and Whitley know that you had made a bill-of-sale to your father.

A They did.

22 XQ They also knew then at the time the deed of assignment was made that you had made a bill-of-sale?

A They did.

23 XQ At the time of the making of this bill-of-sale, did you acquaint your father with the fact that it had been made?

A Immediately after.

24 XQ How?

A By letter.

25 XQ You were asked by Counsel for plaintiffs if you did not tell Mr. E. H. Williams that your father did not know of the bill-of-sale at the time you made that deed of assignment. Is it not possible that you

may have told Mr. Williams, at the time suggested that your father did not know at the time that the bill-of-sale was made, that you made it, and that Mr. Williams misunderstood you?

A Of course, that is possible, but,--

26 XQ You are positive that you did not tell him that your father did not know of it at the time of the deed of assignment?

A I am positive of that.

27 XQ I understand that you conveyed to your father as security for your indebtedness to him, the Undertaking Stock only? Did you keep that separate from the Hardware business?

A It was kept separate entirely.

28 XQ And the Hardware business was conducted in the name of G. H. Johnson & Co., and the Undertaking business under the name of Johnson & Seward?

A That is right.

29 XQ Who owned any part of the Hardware business besides yourself?

A No one at all.

30 XQ Who owned any of the Undertaking business except yourself?

A No one at all.

31 XQ Did any one by the name of Seward ever have a cent's interest in that business?

A No.

32 XQ Then as I understand it you owned every dollar of the business from the time that you begun it until the deed of assignment. That Seward never invested a cent; never owned any interest in the business, and never received any profit derived therefrom. Is this correct?

A That is correct.

33 XQ And you used the name of Johnson & Seward simply as a means of distinguishing your Undertaking business, and keeping it separate from the Hardware business?

A Yes. And for a drawing card with his friends in Surry.

34 XQ Did you ever inform anybody that Seward was a partner in your business?

A I did not.

35 XQ Did you buy or sell goods to his friends in Surry?

A I sold to them.

36 XQ Then you did not use his name with the purpose of ^{obtaining} ~~gaining~~ any credit?

A I did not.

37 XQ You stated that the travelling men generally knew that you owned the business alone. Do you mean by travelling men, the salesmen from whom you purchased goods?

A That is what I mean. Yes, sir.

38 XQ Several letters and accounts have been filed as exhibits in this case, some from Hunter & Sims, and one from the National Casket Co. did you ever represent to either of these firms that anybody other than yourself was running the business?

A In what way?

39 XQ I mean in any way except such conclusions as they might have drawn from the appearance ~~of~~ the letter heads and your signing to orders the name of Johnson & Seward?

A I never did.

40 XQ Have you by any act or word ever caused them or given them any reason to believe that there was anything behind the name of Johnson & Seward, except a name undernwhich you were conducting business?

A I did not.

41 XQ Did you ever pay any of the obligations of Johnson & Seward with checks of G. H. Johnson & Co?

A Always, I think. Without exception.

42 XQ Seward certainly had no connection either by name or otherwise with your hardware business, did he?

A Not at all.

43 XQ As I understand the whole thing, Seward would clerk for you occasionally, and that when he did so, you would pay him for his day's work, and that is the only connection that he had with any part of the business. Is this right?

A That is right, sir.

44 XQ Did you understand that it would take all of the proceeds from the sale of the Undertaking Establishment to satisfy the indebtedness to your father, or did you think it would more than pay it?

A I did not know about that.

45 XQ I understood that an inventory of the Undertaking stock was made so that if the securities, or so that if the papers which you had given upon that property were released, or that there was anything remaining after discharging the securities given in those papers, that then the Trustees would know just what amount of stock you had in the Undertaking establishment. Is that right?

A I took inventory because these gentlemen (Williams & Whitley) asked me to.

46 XQ But you stated that their purpose in desiring the inventory was as I have stated.

A Yes, sir.

47 XQ A great deal has been said and insinuated about your failure to turn over certain accounts, notes and checks to the Trustees under your deed of assignment. Have you withheld intentionally or attempted to withhold any paper of any kind that you believed the Trustees were entitled to?

A I have not.

48 XQ I understand that some of the papers which you withheld were so withheld by you, under the belief that you had a right to same. And that belief was formed in your mind by reason of advice that you received from your attorney, Mr. Whitley in the matter?

A Yes, sir.

49 XQ I understand that Mr. Whitley before the assignment was made, advised you, as I think he had a right to advise you that you could assign to him or transfer to him certain accounts or notes to be collected by him for the payment of certain of your indebtedness, and that under this advice some of the papers which you had were not turned over to the Trustees until you were afterwards advised, whether rightly or wrongly, that you did not have a right so to do. Is that true?

A Yes, sir.

50 XQ I also understand that some of the other papers were misplaced and had gotten with your old papers, and were not turned over to the trustees, for the reason that you, yourself did not even know where they were, and that they were not being withheld. Is that so?

A I knew that they did not have all at that time, and I told them when I gave them the first package, that I had more, and would get them up. And when I gave them the last I told them that there might be more that I couldn't call to memory or find, and if I did, I would turn them over also.

51 XQ Did you ever purpose or intend to withhold any of these accounts or notes or checks with the purpose of realizing on them yourself and apply the proceeds to your own purposes?

A I did not.

52 XQ Mr. Williams in his examination in chief asked you if you did not tell him that you had some papers hid at the farm, and you replied that you did tell him so, but that when you went to the farm to look for these papers that you found them in your home. Did you mean that you hid them at the farm, or that you told him that they were at the farm, and that you were at that time under the impression that they were at the farm, and afterwards found they were not there.

A I had the notes up at the house, not hid. I had nothing hid, and this gentleman know that when they went there there was nothing hid.

53 XQ How about the farm? Did you hide them at the farm?

A I did not.

54 XQ Did you tell Mr. Williams that you hid them at the farm?

A Mr. Williams on the night that he told me that these notes should be transferred to him, pressed me to know where they were, and I told him at the farm.

55 XQ Did you not tell him that you hid them at the farm.

A I am not positive. I think not.

56 XQ Did you intend to convey ~~the~~ idea to Mr. Williams that you had se-
creted these papers at the farm ~~in~~ order to prevent the Trustees
from finding them?

A Well, I did not know why he wanted to know where they were so particularly, and that was why I would not tell him. After our conversation finished in Mr. Whitleys office; Mr. Williams and myself came down together, and then he went in the hotel, anyway as soon as I left him, I went back to Mr. Whitley and asked him if I should turn these papers over to the trustees, and he told me yes, as I

as I had not transferred them before the assignment that I had no right to, and that he couldn't handle them for me as was previously agreed to, and that he would advise me to turn them over. I then promised him to do it the next morning which I did,- what I had that I could get to that I knew of.

57 XQ Mr. Williams was threatening you with bankruptcy, criminal prosecution and search warrants, and you withheld from him information about these accounts that you ~~thought~~ you had a right to keep, until you consulted Mr. Whitley, your attorney, and upon being advised by Mr. Whitley that you should turn them over to the trustees, you then did so. That is right, is it not?

A Yes, sir.

58 XQ Have you received a single penny from any property included in the deed of assignment to the Trustees, since the deed of assignment, unless turning it over to the trustees?

A Not that I know of, unless they knew about it. There was I think, right at first a little money collected but was placed to the credit of G. H. Johnson & Co. in the bank.

59 XQ What became of that money?

A I think, I am not sure about it, that there was a bill or two paid, and the remainder was turned over to Mr. Williams.

60 XQ Have you used for your purpose any part collected by you since?

A No, sir.

61 XQ Now, Mr. Johnson, I am going to state in detail what I understand about the facts attending this whole matter. I want you to pay attention, and if I make any mistakes I want you to correct me.

That after commencing the Undertaking business, you borrowed some money from your father, and you had an understanding with your father that you would secure him with the Undertaking business. That some few days ago, being pressed by your creditors, a great many of the claims being in the hands of Mr. E. H. Williams. That you went to Mr. Whitley, another attorney, and told him that you owed your father certain money, and wanted to secure him, and you wanted him to fix it the best way he could. That he prepared the paper which was the bill-of-sale, and which you understood secured your

father for the amount of money which you owed him. That you signed the paper, had it put on record at the Clerk's office, and a day or two afterwards wrote a letter to your father telling him what you had done; that after this had been done, Mr. Williams threatened to put you into bankruptcy, and some talk was had about reconveying this property, and you expressed your willingness that same should be done, if the other persons, which included your father, should agree. That a paper was prepared to that effect but was never signed by your father. A short while before you had made a deed of assignment to Messrs. E. H. Williams, G. F. Whitley and J. U. Burges, trustees, conveying the property mentioned therein. That you turned over to them the property conveyed to them as far as was in your power as speedily as was expedient under the circumstances. That some of the accounts and papers were not turned over to the trustees along with the other part of the property, because some of them you had not been able to get together and straightened out, and others you had been informed by Mr. Whitley that you had a right to transfer to him to be collected by him and applied to the payment of certain obligations, and that you held them, believing that you had such right until you were later apprised by Mr. Whitley, that not having made the transfer before the assignment to the Trustees, that you then did not have any right to hold them; that it was your duty to turn them over to the Trustees, and that you did then turn them over to the trustees, and that you have not intended to withhold from the Trustees any species of property that should go to them. Is this correct.

A This is correct.

REDIRECT EXAMINATION

By MR. BURGESS:

1 Q When you started in the Undertaking business did you not receive inquiries from Commerical Agencies, such as R. G. Dunn Co. and Bradstreet?

A I received inquiries.

2 Q How were these inquiries answered. I mean did you say that Seward was or was not a member of the firm?

A I don't ever remember replying to the Undertaking business. I might.

3 Q You did know, did you not, that R. G. Dunn & Co. reported a firm known as Johnson & Seward being in the Undertaking business in Smithfield?

A Well I don't know that. I suppose I did.

4 Q Did Mr. Seward know that there was at one time a sign in the front of your store bearing the name of Johnson & Seward, and that your bill heads bore his name, and that you generally did business as Johnson & Seward?

A Yes, sir, he knew that.

5 Q How much of his time did he spend in your store?

A Very little. Only a day occasionally.

6 Q Did you ever notify the National Casket Co., Hunter & Sims or O. G. Williams & Co. that Seward was not a partner?

A I don't remember.

7 Q How far is your farm from Smithfield?

A I suppose you refer to the farm I rent. It is about 2 miles from Smithfield.

8 Q Did you live on this farm?

A No, sir.

9 Q Was the money that you borrowed from your father, or by means of his endorsements, used in the Undertaking business, and if not all, what part thereof?

+ A It was not all, what part I don't know.

10 Q Did you see your father between the time that the bill-of-sale was made, and the deed of assignment was executed?

A I did not.

11 Q Will you file in evidence all letters that you received from him during this time, bearing on the subject of the conveying of the Undertaking business to him?

A All I can find of them.

12 Q How many do you think you received?

A I don't think I received but one letter, I am not positive.

13 Q Do you remember what this letter stated about the Undertaking business?

A I do not remember.

14 Q Did the National Casket Co. or Hunter & Sims ever send a representative to Smithfield to see you?

A Hunter & Sims did, but National Casket Co. did not.

15 Q Did you tell the representative of Hunter & Sims that Seward was not a partner?

A I am not positive. If we talked about the business, I did.

16 Q Did other people ask you for a report as to your assets?

A No I am pretty sure that nobody ever did.

17 Q Do you remember what bills you paid with the money you spoke of having immediatly after the assignment?

A I do not.

And further this deponent saith not.

Signature waived by consent.

W. E. JOHNSON,

a witness on behalf of the defendants, being first duly sworn,
deposes and saith as follows on DIRECT EXAMINATION.

BY MR. SEBRELL:

1 Q State your name, age, and residence. And do you know the parties
to this suit?

A W. E. Johnson. Age 62, residence Ivor, Southampton Co. Va. And I
am one of the defendants in this suit.

2 Q Please state in what manner G. H. Johnson is indebted to you?

A \$500.00 with interest added for 18 months, I think.

3 Q How is it evidenced?

A By note. The note is herewith filed marked Exhibit X

4 Q What was the consideration for this note?

A \$500.00 in cash money.

5 Q Was that \$500.00 lent to G. H. Johnson at the date of the note?

A It was.

6 Q Has any part ~~####~~ therefor been paid back to you?

A Not one penny.

7 Q What other liabilities, if any, is G. H. Johnson under to you?

A \$1250.00 with interest.

8 Q How is this liability incurred?

A By a note of \$500.00 to J. H. Beaton, which I endorsed, one note
of \$500.00 to T. J. Herrin, which I endorsed, and one note that ^{my son,} G. H.
Johnson has been carrying in the Bank of Smithfield for \$250.00 with
interest, that I endorsed.

9 Q Has any part of these debts been paid?

A I think the T. J. Herrin interest has been paid part of the time,
but none of the principal. On the J. H. Beaton, no part paid.

10 Q What understanding did you have with your son, G. H. Johnson, when
endorsing ~~#####~~ these notes and lending the \$500.00 about his
securing you for same?

A When my son first started in the Hardware business in Smithfield,
J. H. Beaton furnished \$500.00 secured by me, with no understanding
with Herbert (G. H. J.) that I should be secured. Later on T. J.
Herrin advanced \$500.00 by my securing said Herrin, and something

about the same time Herbert drew from the Bank \$250.00 by my endorsing note for him. In the meantime he had gone into the Undertaking business, and my understanding was it was separate and distinct from the Hardware business, and it has been understood between us that I should be secured with the Undertaking business, as I did not care to have anything to do with the Hardware business.

11 QI understand then that the loans and endorsements were made by you, with an understanding between you and your son, Herbert, that the Undertaking business should be a security to you, for the payment of those obligations?

A Certainly, that is correct.

12 Q At the time that the bill-of- sale which purported to convey to you the Undertaking business was written and filed in the Clerk's office, were you aware that it was being done.

A I was not, not at that time.

13 QWhat information, and when did you received about this paper?

A I cant say as to date, but I think it was some few days before it was filed in the Clerk's office. I am not sure, I think I have a letter at home which I received telling me about the same.

14 Q What was the information?

A The information was that he had sold me the Undertaking business to secure me.

MR. BURGESS: Question and answer objected to on the grounds that the letter itself is the best evidence there is; and the same is called for.

Witness promises to produce the same if it can be found?

15 Q Did he say for what purpose the conveyance of the Undertaking business was made?

A To secure me for his obligations to me.

(Same objection).

16 Q Did you understand the bill-of-sale to secure you the payments of your debt, or an actual sale to you?

A I did not consider it as a sale/sir, I considered it to secure his obligations to me so far as they went.

17 Q Did you ever agree to buy, or buy this stock?

A No, sir.

18 Q Did you take possession of this stock?

A I did not.

19 Q Have you received any of the proceeds of the business?

A Nothing at all.

20 Q Have you exercised any ownership over the same at any time?

A None at all, at no time.

CROSS EXAMINATION

BY MR. WILLIAMS:

1 XQ Did you object to the sale of it?

A No, sir, I did not, if there were any intentions to sell it.

2 XQ Did you inquire whether or not the Undertaking business was continued when the bill-of-sale was made to you, and whether or not the stock was being disposed of by G. H. Johnson?

A I have not made any inquiries about it, only, when I have seen people from Smithfield, I would ask " Was the boys doing much Undertaking business?".

And further this deponent saith not.

Signature waived by consent.

Sept 18-19, 1908

E. H. WILLIAMS
ATTORNEY-AT-LAW
SMITHFIELD, VA.

STENOGRAPHER'S MINUTES.

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY, VA.

E.H. WILLIAMS and others, trustees, Before

v.

D.S. Phlegar, Notary Public

JOHNSON et als.

Depositions

Norfolk, Virginia, Sept. 29, 1908.

INDEX.

WITNESSES.	DIRECT.	CROSS.	RE-DIRECT.	RE-CROSS.
G.F. Whitley,	2	12	25	--
H. C. Sims,	28	30	32	--
E.H. Williams,	33	37	42	--
J.B. Johnson,	43	47	--	--

MONTROSS & CLARKE CO., 51 NASSAU ST., N. Y.

D. S. PHLEGAR,
STENOGRAPHIC REPORTER
DEPOSITOR'S BUILDING, NORFOLK, VA.
3011 BRANT ST.

JKF

1

1 IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY, VA.
2
3

4 -----*
5 E. H. WILLIAMS and others, trustees, *

6 v. *

* Depositions

7 JOHNSON et als. *
8 -----*

9 Depositions of G.F. Whitley and others, taken before me,
10 D.S. Phlegar, a Notary Public for the City of Norfolk, in the
11 State of Virginia, by agreement, at the office of John N.
12 Sebrell, Norfolk, Virginia, September 29th, 1908, to be read
13 as evidence in the above entitled cause pending in the Circuit
14 Court of Isle of Wight County, Virginia.
15

16 PRESENT:

17 Messrs E.H. Williams, Geo. F. Whitley and J.U.

18 Burgess, for the plaintiffs.

19 Mr. John N. Sebrell, Jr., for the defendants.
20

21 -----oOo-----
22
23
24

25 D.S. Phlegar,
26 Shorthand Reporter,
Norfolk, Virginia.

1 G.F.WHITLEY, a witness on behalf of the plaintiff,
2 being first duly sworn, testified as follows:

3 Examined by Mr. Burgess:

4 Q. Mr. Whitley, state your name, age, residence, and
5 occupation, and if you know the parties to this suit?

6 A. Geo. F. Whitley; 27; attorney; I know the parties
7 to this suit; residence, Smithfield, Virginia; I am one
8 of the plaintiffs in this suit.

9 Q. Mr. Whitley, Mr. Johnson has testified that he made a
10 conveyance or bill of sale, in your office, prior to the
11 deed of assignment; he also stated that he has no objection
12 to your stating your understanding and recollection of what
13 took place at the time this conveyance was made. Will you
14 object to giving the conversation as nearly as you can that
15 took place between you and Mr. G.H.Johnson?

16 A. When the bill of sale was made I was acting as attorney
17 for G.H.Johnson, and as I do not recollect whether Mr. G.H.John-
18 son has given his consent for me to answer this question, I
19 prefer that Mr. Johnson now give his consent for me to answer
20 this question.

21 BY MR. SEBRELL: Counsel for G.H.Johnson says
22 that this is a suit in which the bill of sale and
23 its validity is involved, and the admission of the
24 witness is that he was attorney for G.H.Johnson
25 at the time, and is now attorney for the plaintiff
26 attacking the validity of that deed; if, under the

1 circumstances, the witness desires to make any
2 statement impeaching or contradicting the said
3 statement, counsel for G.H. Johnson has no objection.

4 By Mr. Burgess:

5 Q. Mr. Whitley, I read from the deposition of Mr. G.H.
6 Johnson the following question and answer:

7 "Q.48. Have you any objection to Mr. Whitley
8 explaining or testifying to any transaction which
9 took place between you and him?
A. Certainly not."

10 With this statement from the record, will you please state
11 your recollection of what took place between you and Mr.
12 Johnson on the occasion mentioned?

13 A. I do not understand from this question to what trans-
14 action the answer refers which Mr. Johnson gave.

15 BY MR. SEBRELL: Counsel for the defendants states
16 that consent is given to Mr. Whitley to testify
17 as to any facts material to this case.

18 A. (Continuing) Mr. Johnson came into my office, and
19 asked me to draw a paper, stating that his creditors were
20 after him, and that he wanted to save the undertaking business
21 from being broken up, and asked me to draw a paper by which
22 he could save it, stating during the conversation that he
23 owed his father, and I told him that the best thing to do
24 was to sell it straight out to his father, that probably
25 he could give a deed of trust on it, but under the circumstances
26 I did not think it would hold, but the best thing to do was
to make a bill of sale transferring the property to his father,

1 the absolute title, so that people could not touch it.

2 He submitted to it.

3 By Mr. Burgess:

4 Q. For what consideration was this bill of sale made?

5 A. As I remember, it was for \$1500, stating at the
6 time he knew that \$1500 would not pay his father, but
7 that he did not want to prefer him over any other creditor.

8 Q. Then, if I understand you, you understood the purpose
9 of this sale to convey to W.E. Johnson, the father of
10 G.H. Johnson, the undertaking business in satisfaction of
11 \$1500 of the debt due W.E. Johnson; is this correct?

12 A. That was certainly my understanding.

13 Q. Is this all that you recollect that took place between
14 you and Mr. Johnson at the time the bill of sale was made?

15 A. That is all that I can remember in reference to it.

16 Q. Were there any other negotiations or dealings between
17 you and G.H. Johnson?

18 A. Before the bill of sale, or after the bill of sale?

19 Q. After the bill of sale?

20 A. No other business as an attorney for G.H. Johnson that
21 I remember.

22 Q. Were there any negotiations before this bill of sale,
23 either as attorney or otherwise?

24 A. Not specially for G.H. Johnson.

25 Q. For anybody? A. For G.H. Johnson's creditors,
26 and that was to draw a deed of trust on the hardware stock

1 for G.H.Johnson's creditors.

2 Q. Who did this deed secure?

3 A. It secured Dr.R.Lee Seward and A.R.Chalmers.

4 Q. Any others?

5 A. I don't know. I have forgotten.

6 Q. How long prior to the bill of sale was the deed of trust
7 drawn?

8 A. Probably a week; I don't just remember.

9 Q. Were there any other transactions prior to the bill of
10 sale?

11 A. There was a transaction in regard to transferring the
12 accounts to me for collection.

13 Q. Tell us about this?

14 A. We were trying to satisfy some of the creditors for
15 G.H.Johnson & Co., and I told Mr. Johnson to transfer
16 some of the accounts to me, or to his creditors, and allow
17 me to collect them and credit these accounts.

18 Q. Was that done?

19 A. The accounts were never transferred. A deed of assign-
20 ment was soon afterwards made.

21 Q. Whom did you represent when the deed of assignment was
22 made?

23 A. A.R.Chalmers and Dr.R.Lee Seward.

24 Q. Tell us about the deed of assignment, what led up to it,
25 and all about the transaction?

26 A. Mr. Williams, who was representing some of the creditors,

1 was about to throw Mr. Johnson into bankruptcy, and we
2 thought the creditors would be benefitted more by having
3 an assignment made than they would be to go through a
4 bankrupt court.

5 Q. You say it was thought; who thought?

6 A. Mr. Williams and myself.

7 Q. Did Mr. Johnson agree to that?

8 A. Mr. Johnson did agree to it.

9 Q. Do I understand you to say, that you, Mr. Williams and
10 Mr. Johnson agreed that in order to avoid the bankruptcy
11 proceedings threatened by Mr. Williams, that it would be
12 better to make a general deed of assignment for the benefit
13 of all his creditors?

14 A. That was my understanding.

15 Q. What was to be conveyed by this deed of assignment?

16 That is, did Mr. Johnson agree to convey the undertaking
17 establishment by this deed?

18 A. The question of the bill of sale arose at the time we
19 were making this deed of assignment, and, as I understood
20 it, Mr. G.H. Johnson desired that the property conveyed
21 in the bill of sale be reconveyed in order that it might
22 be put in the deed of assignment - that is, that all of
23 his property and his rights of whatsoever nature might be
24 assigned for the benefit of his creditors.

25 Q. Did he say whether or not his father had accepted
26 or declined the property conveyed by the bill of sale in

1

satisfaction of \$1500 indebtedness?

2

A. He did not.

3

4

Q. Did he say whether or not his father knew that he had conveyed the property covered by the bill of sale to him?

5

6

A. At what time do you refer?

7

8

Q. At the time of the deed of assignment?

9

A. I don't remember.

10

Q. What was said about the conveyance to J.B. Johnson?

11

12

A. The conversation was similar to the one made in reference to W.F. Johnson.

13

14

Q. That is J.B. Johnson would re-convey the property, and that it could be administered by the trustees?

15

16

A. Yes, and this was done.

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

A. My understanding was that it was his desire to transfer the undertaking property as well as the hardware business.

Q. I used the word "claimed" in my question, and you, in your answer, used the word "desired"; do you intend to draw a distinction between those words? In other words, do you mean to say that Mr. Johnson expressed a desire, or

Handwritten signature/initials

1 intimated in any manner, that he did not have the right to
2 do it? In other words, did he say that he desired to make
3 the conveyance, but intimated that there was any doubt in
4 his mind as to whether he had the right to do it?

5 A. We told him that the property had been conveyed to his
6 father, and that the title stood in him, and in order for
7 us, as trustees, to get the title to the property, it would
8 have to be re-conveyed, and he was willing to do this.

9 Q. But if the title was vested in W.E.Johnson, it would
10 require the willingness and the act of W.E.Johnson also,
11 wouldn't it?

12 A. It would.

13 Q. Did he say W.E.Johnson would do this?

14 A. I don't remember whether he said that he would do it,
15 or not, but he told us to prepare a paper to that effect,
16 which we did.

17 Q. Was this paper sent to W.E.Johnson?

18 A. I think it was sent by J.B.Johnson.

19 Q. Did W.E.Johnson ever communicate to any of the trustees
20 what he proposed to do about this re-conveyance which you
21 say was prepared?

22 A. I phoned to W.E.Johnson in reference to this bill of
23 sale, whether or not he wanted to stand by it, and he
24 said he did not know, that he had turned his business over
25 to Mr. Sebrell, and that he would have to see him.
26

1 Q. As a matter of fact, the re-conveyance was never
2 delivered, was it?

3 A. It never was.

4 Q. After the deed was made and executed, what did you and
5 Mr. Williams do? Did you take possession of all the property,
6 that is the undertaking business as well as the hardware
7 establishment?

8 A. We took possession of the hardware establishment, and
9 we so much expected that Mr. W. E. Johnson would re-transfer,
10 or transfer, the property, that we were inclined to take
11 possession of the undertaking business.

12 Q. Was an inventory taken of the undertaking establishment,
13 and, if so, by whom?

14 A. Mr. Williams told me he thought he had better take
15 an inventory of the stock, and he said that he was going
16 to get Jesse Minton to go down with Mr. Johnson and take
17 an inventory.

18 Q. Was that inventory turned over to the trustees?

19 A. Mr. Williams had this part in charge.

20 Q. Mr. Johnson was asked a question about a conversation
21 which took place in your presence between him and Mr. Williams,
22 in Mr. Williams office, in regard to the bill of sale made
23 to his father. Will you please state what Mr. Johnson
24 said to Mr. Williams on that occasion?

25 A. We were asking Mr. Johnson what his intention was in
26 reference to this bill of sale, whether or not he intended it

1 as a security, or as a sale, and he stated that he did not
2 intend it to be a security; that, in fact, he had antici-
3 pated our reason for calling him up there, that Mr. Sebrell
4 had asked him the same question, but he had to tell him like
5 it was.

6 Q. Then, if I understand you, Mr. Johnson said to you
7 and Mr. Williams that he intended the bill of sale to con-
8 vey or to sell to his father the undertaking establishment.
9 Did he say for what purpose this sale was made?

10 A. I think he stated that the purpose was to keep the
11 undertaking business intact, - that is to keep it from
12 being destroyed by his creditors.

13 By Mr. Williams:

14 Q. Mr. Whitley, will you please give your recollection
15 of what took place in reference to the concealment of certain
16 notes and accounts by Mr. G. H. Johnson which were not turned
17 over to the trustees at the time the deed of assignment was
18 made?

19 A. As trustees we had an idea that all of the accounts
20 and notes had not been turned over, and we asked Mr. Johnson
21 for those accounts and notes, but he refused to turn them
22 over to us.

23 Q. Tell us all that transpired in reference to this that
24 you remember?

25 A. Upon feeling that we had not gotten all of the accounts,
26 we had a search warrant served on Mr. Johnson, which would

9
3
4

1 give us authority to go and search for whatever accounts
2 he still retained in his possession.

3 BY MR. SEBRELL: So much of the foregoing answer
4 as pertains to a search warrant and its purport
5 and effect, is objected to on the ground that the
6 search warrant and return of the officer thereon,
7 if any exists, is the best evidence. Counsel
8 for the defendant also calls attention that
9 several days ago, when taking depositions in this
10 case at Smithfield, he called upon counsel for
11 the plaintiff, including the witness, to produce
12 this distress warrant, and the same has not been
13 done.

14 By Mr. Williams:

15 Q. State whether or not Mr. G. H. Johnson turned over his
16 books to the trustees, and whether or not many of the
17 accounts had been marked "paid", when, in fact, they have
18 not been?

19 A. As I remember, some of the accounts were marked "paid",
20 and notes were drawn but have never been signed.

21 Q. Did not Mr. Johnson turn over to you a small book,
22 in which he had a list of accounts amounting to eight hundred
23 and some dollars, which has not been turned over to the
24 trustees, with his books?

25 A. He did.

26 Q. Did he tell you at that time that those accounts were all

Dist

1 which he had not turned over?

2 A. I can't remember whether he did, or not.

3 Q. State whether or not the notes, amounting to several
4 hundred dollars, were not turned over to the trustees by
5 Mr. G. H. Johnson subsequent to the time the accounts were
6 turned over, and whether or not the notes were not turned
7 over under compulsion or threats of prosecution?

8 A. Some notes and probably accounts were turned over to
9 the trustees after we had suggested that if they were not
10 turned over we would have to prosecute him.

11 Q. Was this after he had turned over a little book con-
12 taining a list of the accounts?

13 A. It is not clear to my mind whether it was after or
14 before.

15
16 CROSS

EXAMINATION

17 By Mr. Sabrell:

18 Q. Mr. Johnson came to you to get you to advise him as
19 to how he should prevent the general creditors from getting
20 his undertaking stock; is that what I understand you to
21 say?

22 A. And breaking up the business which he had established
23 after four or five years of hard work.

24 Q. And you advised him that a bill of sale conveying the
25 property to his father was the best way in your opinion?

26 A. That his father being a creditor, the sale would be valid.

Omit

Omit all X Eye

1 Q. And he acted upon your advice?

2 A. He did.

3 Q. You prepared the bill of sale yourself?

4 A. I did.

5 Q. He told you that his creditors were pushing him, and that
6 he owed his father the sum of five hundred dollars for
7 money lent, and that his father was also endorser for him
8 upon notes amounting to one thousand dollars, and that he
9 wanted to make him safe, as I understand from your testi-
10 mony in chief?

11 A. He told me that his creditors were pushing him, that
12 he owed his father, that he did not want to prefer his father
13 over others; that his purpose in making the sale was to
14 save the business, which he had tried for some time to
15 establish.

16 Q. You did not answer my question, and I repeat: Did you
17 not say in your examination in chief that G.H. Johnson, when
18 he came to you to advise with you about this transaction,
19 told you that he wanted to make his father safe? Did you
20 say that, or not?

21 A. I did not.

22 Q. As I understand, then, that he did not tell you that
23 he wanted to make his father safe, and that if you ever
24 made any such statement you were in error?

25 A. I don't remember that any conversation in reference
26 to making his father safe took place between Mr. Johnson

1 and myself at the time of drawing this bill of sale.

2 Q. You do remember, you say, that he told you that his
3 purpose in making the conveyance was to prevent the creditors
4 from getting his undertaking business, and breaking it up,
5 and that he did not intend to secure his father; is that
6 correct?

7 A. I don't remember that he stated anything in reference
8 to securing his father, but that he did mention the fact
9 it was the purpose of the sale the saving of the undertaking
10 business.

11 Q. He told you, then, that that was his intention?

12 A. He did.

13 Q. Did you know that on March 26, 1908?

14 A. I did.

15 Q. Did you not write me, on March 26, 1908, that you
16 did not know what his intention was at the time he made this
17 bill of sale?

18 A. I don't remember.

19 Q. If you did write me so, what you said was a fact was
20 it not?

21 A. I would not like to swear to it, whether it was a fact,
22 or not. We were trying to get together at that time.

23 Q. And do you mean in your effort to try to get together
24 with me on the matter, that you made statements which you
25 would not swear to?

26 A. I was not on my oath at that time, and I did not feel the

1 solemnity of the occasion under which I wrote that letter.

2 Q. Your mind is not any clearer now as to what happened
3 on the first day of February, 1908, than it was on the 26th
4 of March, is it?

5 A. After thinking over the matter, my memory has been probably
6 refreshed, and things are probably clearer to me now, and
7 being under oath I think more seriously than when I wrote
8 you.

9 Q. I hand you letter dated March 26, 1908, marked exhibit
10 No.1 with your deposition; that is the letter, is it not?

11 A. Yes.

12 Q. On the occasion of this visit of G.H.Johnson to your
13 office, did he acquaint you with the kind and character
14 of his indebtedness, the persons whom he owed, or any of
15 them, the attorneys who represented the creditors, and his
16 financial condition generally, in order for you to properly
17 advise him as to what was the best paper to prepare?

18 A. He had acquainted me with his financial conditions
19 previously to the drawing of the bill of sale.

20 Q. And he told you about his creditors and the attorneys
21 who were pressing him, and made you generally acquainted with
22 the conditions surrounding his business?

23 A. He did.

24 Q. And, in addition to advising him as to what paper he
25 should give his father, you also advised him with reference to
26 paying or securing all other indebtedness, did you not?

1 A. I think it was at this time that he mentioned his
2 brother, J.B. Johnson, whom he owed and desired to satisfy,
3 and that a bill of sale was drawn selling certain articles
4 to him paying some notes. As to securing any one else I
5 don't remember, or as to paying any one else.

6
7 Q. What action was taken with reference to the claims of
8 Dr. Seward, Mr. Chalmers, and some debt due the bank?

9 A. Prior to the making of this bill of sale a deed of
10 trust was written securing certain notes on which Dr. Seward
11 was an endorser (I think endorser) and also a certain note
12 with A.R. Chalmers, which deed of trust was given on the
13 hardware stock.

14 Q. Who prepared that?

15 A. I prepared it.

16 Q. How long before the bill of sale to his father did you
17 prepare the deed of trust to Chalmers and others?

18 A. I don't remember. It was not very long. Whether it
19 was one day or three days I don't know.

20 Q. It was along about the same time, within the same week?

21 A. Yes, I think so.

22 Q. You advised him as to his rights in making that deed of
23 trust?

24 A. I did not.

25 Q. You stated a while ago that you had some doubt of his
26 ability to give a deed of trust upon his undertaking stock
to his father; did you advise him on the day before, or two

1 days before, when you wrote a deed of trust on the hardware
2 stock, that such a paper would be invalid?

3 A. I did not. I was employed by the bank to draw a deed
4 of trust on the hardware business of G.H. Johnson & Co. to
5 secure these papers, without any question as to the validity
6 or the legal force such papers would have.

7 Q. You knew, at the time, that the deed of trust would be
8 invalid, did you not?

9 A. I was undecided. I thought it would be invalid. In
10 fact, I did not think much about it when I was drawing the
11 paper as to whether it would be invalid, or not.

12 Q. And I understand that you did not say to either the bank,
13 or Mr. Johnson, anything as to whether or not the paper
14 would be valid or invalid?

15 A. At the time of writing it I did not.

16 Q. When did you first suggest to them, or either of them,
17 that it would be invalid?

18 A. I don't remember.

19 Q. You certainly did not tell them until after the deed of
20 assignment, did you?

21 A. I don't remember when I told them.

22 Q. I understand, however, that you do remember that you
23 had not told them when Johnson signed it?

24 A. That is correct.

25 Q. Is it not a fact that after you, as attorney for Johnson,
26 had advised him with reference to his rights with regard to

1 the matters that he had submitted to you, and had prepared
2 for him, in accordance with your advice, the bill of sale
3 to his father and another to his brother, and the deed of
4 trust also to secure the debts which you have mentioned, that
5 Mr.F.H.Williams, an attorney representing other creditors
6 of G.H.Johnson & Co., saw you and talked with you about
7 getting Johnson to make a re-conveyance, or else that he
8 would be obliged in the discharge of his duty to his clients
9 to institute bankruptcy proceedings, and that you then saw
10 Johnson, and advised him that it would be best for him to
11 make a re-conveyance?

12 A. Mr. Williams never had any conversation with me in
13 reference especially to the transfer of the undertaking
14 business, but he said that he was willing for his creditors
15 to share as others, and that if Mr. Johnson would put all
16 of his stuff together, and let all the creditors share and
17 share alike, that he would not institute bankruptcy proceed-
18 ings.

19 Q. Did you not then go, after this talk with Williams to
20 G.H.Johnson, and advise him to get a re-conveyance of the
21 property made?

22 A. Mr. Johnson asked me about the proposition. I told him
23 I thought by putting all of his property in, and letting the
24 creditors share and share alike, that he could pay more of
25 his debts in that way than he could by having bankruptcy
26 proceedings instituted.

1 Q. From whom did Johnson learn of the proposition made to
2 you by Williams?

3 A. I don't remember whether Mr. Williams told Mr. Johnson
4 in the first instance, or told me. I don't remember ever
5 going to Mr. Johnson. To the best of my recollection Mr.
6 Johnson came to me.

7 Q. Was that in obedience to a phone call from you, or any
8 other request from you?

9 A. I can't remember.

10 Q. You are unwilling to say that it was not?

11 A. I am.

12 Q. Did you prepare any re-conveyances?

13 A. I did not.

14 Q. Did you request W.E. Johnson to sign a re-conveyance?

15 A. I did not.

16 Q. I hand you copy of a letter written by me to you of
17 date March 30, 1908, filed as exhibit No.2 with your deposition,
18 and your reply thereto dated April 1, 1908, filed as exhibit
19 No.3 with your deposition. Will you please look at them,
20 and say whether or not you received my letter, and wrote
21 the other?

22 A. I know I wrote that, and I think I received that.

23 Q. I also hand you carbon copy of letter written to you
24 by me on April 4th, with your reply of April 7th, offered
25 as exhibits Nos. 4 and 5 with your deposition; do you identi-
26 fy them?

A. Yes.

1 Q. In my letter to you I state that my information was that
2 you had called Mr. W. E. Johnson up over the phone, and asked
3 him if he was going to sign that paper, and he referred you
4 to me; is that true?

5 A. That is true.

6 Q. And Mr. Johnson testified that previous to his deed of
7 assignment, that he was advised by you that he would have a
8 right to transfer accounts and other evidences of debt to
9 you to be collected by you, and applied to the payment of
10 certain creditors; is this true?

11 A. In satisfaction of debts, yes.

12 Q. And is it not a fact that having failed to make the
13 transfer to you before his assignment to the trustees,
14 that upon his asking for your opinion, you advised him
15 that he did not then have a right to withhold from the
16 trustees those choses in action?

17 A. After the deed of assignment was made.

18 Q. It is a fact, is it not, that Williams was doing the
19 pressing and threatening, and not yourself, until the deed
20 of assignment was made?

21 A. Until the deed of assignment was made, Mr. Williams was
22 doing the pressing and threatening.

23 Q. And you were being approached by Johnson for advice with
24 reference thereto?

25 A. That is true.

26 Q. Who prepared the deed of assignment?

1 A. Mr. Williams and myself.

2 Q. You stated that Mr. Williams told you he was going to
3 have an inventory made of the undertaking business; was
4 that before or after the assignment?

5 A. It was before.

6 Q. At that time there was no deed of trust upon the under-
7 taking business, but the bill of sale to the father only?

8 A. To my knowledge there has never been a deed of trust
9 on the undertaking business.

10 Q. Was the conversation in which Williams said that he
11 was going to have an inventory taken of the undertaking
12 stock before or after the preparation of the reconveyance
13 intended for W.E. Johnson?

14 A. I don't remember, but it seems to me that the inventory
15 was taken after, to the best of my recollection.

16 Q. When did the conversation take place between Johnson
17 and you and Williams, which you detailed in your evidence
18 in chief, with respect to his purpose in making the bill
19 of sale and his conversation with me?

20 A. It took place probably a week or more before the deposi-
21 tions in this suit were taken in Smithfield.

22 Q. Was that conversation had with him at your request,
23 or at his suggestion?

24 A. At Mr. Williams and my request.

25 Q. You knew he was my client, did you not?

26 A. I did not know that he was your client.

1 Q. Had you taken upon yourself, as one of the attorneys for
2 the plaintiff in this case, to read the answer which I had
3 filed for him, signing myself as his attorney?

4 A. I read a copy of the answer.

5 Q. You knew I had filed it as his attorney, did you not?

6 A. No, I was under the impression that you were representing
7 W.E.Johnson. I never knew that G.H.Johnson employed an
8 attorney. I knew that you intended for Mr.G.H.Johnson
9 to be a witness from the fact that Mr. Johnson had told me
10 he had been down to see you, or that you had asked him to
11 come down, or had sent some paper up for him to sign.

12 Q. You, of course, were acquainted with the manner in which
13 the suit was instituted, were you not?

14 A. Yes.

15 Q. Did you know that service of process was acknowledged
16 by me as attorney for the defendants?

17 BY MR. BURGESS: The question is objected to on
18 the ground that the information it seeks to elicit
19 is in no way material to this issue, and involves
20 only a question of professional ethics, and counsel
21 for the complainants submits that if G.H.Johnson
22 had made an assignment to Mr. Whitley and others
23 as trustee, and that there was some question be-
24 tween Mr. Johnson and the trustees as to what he
25 had conveyed, and for what purpose he had made this
26 conveyance, that the trustees not only had a right,

1 but it was their duty, before administering this
2 trust, to find out if there was any difference
3 between them and Mr. Johnson in their opinion as
4 to the meaning of this trust, for if Mr. Johnson
5 and the trustees agreed, it was unnecessary to
6 further prosecute this suit and entail upon the
7 trust the additional expense necessitated thereby.

8 A. Yes, sir.

9 By Mr. Sebrell:

10 Q. I understand, then, that it was after the institution
11 of this suit by you against Mr. G.H. Johnson, after you had
12 notice of the fact that he had acknowledged service of
13 process through me, as attorney, and after you had seen
14 a copy of the answer which I had filed for him as attorney,
15 that you and Mr. Williams requested him to go to the office
16 of Mr. E.H. Williams, and that you there engaged him in a
17 conversation, putting to him questions with reference to
18 the matters involved in this suit; is that true?

19 BY MR. BURGESS: The question is objected to for
20 the reasons heretofore given.

21 A. When we were getting ready to institute this suit,
22 we talked this matter over, Mr. Burgess, Mr. Williams and
23 myself, as to whether or not we should make G.H. Johnson a
24 party to this suit, and we decided that we would. After
25 the suit was instituted I talked to Mr. Johnson several
26 times in regard to the case, just to find out what his position

1 was in the matter, and I told him that there was a claim
2 which his father was presenting for the trustees to settle
3 of \$500 which he desired to be paid out of the undertaking
4 business, and after that having been done he wanted to
5 share with the other creditors ratably, and Mr. Johnson
6 said that he did not want that to be done, and I never
7 felt that Mr. Johnson was a client of yours.

8 By Mr. Sebrell:

9 Q. Whose client did you think he was - yours?

10 A. I did not think that in this suit he really had any
11 claims to assert, or special rights to defend.

12 Q. Did not you charge in your bill that the bill of sale
13 which you, yourself, drew was made by him with the intent
14 to hinder, delay and defraud his creditors?

15 A. That charge was made.

16 Q. And still you do not think that he had anything to
17 defend in this suit?

18 A. No.

omit

19
20 RE DIRECT EXAMINATION

21 By Mr. Burgess:

22 Q. Mr. Whitley, if I remember correctly, we first
23 discussed instituting a suit against the firm of Johnson
24 & Seward, on account of a debt due by the partnership;
25 is not this correct?

26 A. That is right.

Q. What was your understanding of what we discussed, or

1 what kind of suit we were going to bring?
2

3 A. A chancery suit.

4 Q. The purpose of this suit was to have the court instruct
5 the trustees as to the proper distribution of the proceeds
6 from the assignment, was it not?

7 BY MR. SEBRELL: The question is objected to as
8 leading.

9 A. It was.

10 By Mr. Burgess:

11 Q. Do you desire to make any explanation in regard to the
12 letters introduced in evidence by Mr. Sebrell? If you do,
13 you may do so?

14 A. Exhibit No. 1 is all right.

15 Q. Mr. Sebrell has filed a letter written by you on April
16 1, in which you say your client is mistaken as to our wanting
17 him to sign a paper. He then produced a letter written
18 by him dated April 4, stating that he has been informed by
19 Mr. Johnson that he had been requested to sign a deed re-
20 conveying the undertaking establishment. In your letter of
21 April 7, replying to his letter of the 4, you state that his
22 information is correct. Do you mean to say by that that his
23 information was correct, that the trustees wanted Mr. W. F.
24 Johnson to sign the deed, or that they had asked him whether
25 or not he intended to sign it?

26 A. I meant to say that the trustees did not want Mr. Johnson
to sign this bill of sale; that it was not any benefit to

1 them whether he signed it or not; that they only asked him
2 whether or not he was going to sign it so that they would
3 know what his position was. I did not take Mr. Sebrell's
4 letter and dissect it and answer every word and phrase in
5 it, nor have the trustees at any time requested Mr. Johnson
6 to sign the bill of sale.

7 Q. Is it not a fact that the trustees have had doubts
8 as to how they should proceed with this matter by reason
9 of the conflicting conveyances?

10 A. It is.

11 Q. And, as I understand you, it was for the purpose of
12 finding out whether Mr. Johnson agreed with the trustees
13 as to their understanding of the conveyance that you and
14 Mr. Williams talked with Mr. Johnson, who had prior to that
15 time conveyed, as you understood it, all of his property
16 to you and others for the benefit of his creditors? In
17 other words, you talked to Mr. Johnson to know if you and
18 he understood the transaction alike, and, if not, for what
19 purpose did you talk to Mr. Johnson?

20 A. At what time?

21 Q. I refer to the conversation in Mr. Williams office a
22 few weeks ago?

23 A. The purpose of that conversation?

24 Q. Yes?

25 A. The purpose of that conversation was to learn whether
26 or not we understood the transaction as Mr. Johnson understood

1 it.

Insert all Intro Evidence

-----oOo-----

2
3
4
5 H.C.SIMS, being duly sworn, on behalf of the
6 plaintiffs, testified as follows:

7 Examined by Mr. Burgess:

8 Q. State your name, age, residence and occupation, and if
9 you know the parties to this suit?

10 A. H.C.Sims; 1819 Grove Avenue, Richmond, Virginia; coffin
11 and casket manufacturer, of the firm of Hunter & Sims. I
12 to-day met the parties to this suit.

13 Q. Mr. Sims, has your firm a claim against G.H.Johnson,
14 G.H.Johnson & Co., or Johnson & Seward, and, if so, for what
15 amount?

16 A. We have a claim against Johnson & Seward for \$158.73.

17 Q. To whom were these goods sold?

18 A. To Johnson & Seward.

19 Q. How long had you been dealing with Johnson & Seward?

20 A. I think it was 1893 that they commenced dealing with us.

21 Q. Had you dealt, prior to that time, with the owner of
22 that establishment?

23 A. Up to that time we had been selling a Mr. Harvey, who
24 sold to Johnson & Seward, and the account was continued with
25 Johnson & Seward.

26 Q. Did you receive a report as to the firm from Mr. Harvey?

1 A. We did.

2 Q. What did this report state?

3 BY MR. SEBRELL: Objected to on the ground that the
4 report would be the best evidence of what the re-
5 port says, and, further, that no report made by a
6 person other than the defendants in this case would
7 be relevant, and hearsay.

8 A. He stated to us that he had sold out his undertaking
9 business to Johnson & Seward, and that Mr. Johnson was
10 personally responsible, that he had a hardware store in
11 connection with the undertaking business, and the account
12 would be perfectly safe. This is as near as I can remember
13 as to the conversation.

14 Q. From whom did you receive your first order from this
15 firm?

16 A. Through one of my traveling salesmen, taken in the name
17 of Johnson & Seward.

18 Q. How did you render bills to them?

19 A. Johnson & Seward, Smithfield, Virginia.

20 Q. How were the letters which were addressed to you in regard
21 to the undertaking business signed?

22 A. Johnson & Seward, in every instance.

23 Q. I believe you stated that all your bills were rendered
24 against Johnson & Seward?

25 A. Yes, sir.

26 Q. Did they give you any notes?

1 A. They did, often.

2 Q. How were these notes signed?

3 A. Johnson & Seward.

4 Q. Then, as I understand your testimony, upon representa-
5 tions received from letters, from notes and from the fact
6 that bills rendered against Johnson & Seward were paid or
7 settled by notes signed Johnson & Seward, you inferred
8 that you were dealing with a partnership composed of the
9 said Johnson & Seward.

10 BY MR. SEBRELL: The question is objected to
11 as leading.

12 A. I did.

14 CROSS EXAMINATION

15 By Mr. Sebrell:

16 Q. Were any of those bills paid by check?

17 A. I think they were, yes.

18 Q. Whose check?

19 A. G.H. Johnson, on account of Johnson & Seward.

20 Q. The drawer of the check was G.H. Johnson?

21 A. I think so, with the instructions that the amount be
22 placed to the credit of Johnson & Seward.

23 Q. That I may know that I understand you, I will state
24 my understanding of your answer to see if I am correct;
25 you furnished goods to Johnson & Seward?

26 A. Yes, sir.

1 Q. And charged them on your books to Johnson & Seward?

2 A. Yes, sir.

3 Q. And made the bills out to Johnson & Seward?

4 A. Yes, sir.

5 Q. That sometimes notes were taken, signed by Johnson &

6 Seward?

7 A. Yes, at all times.

8 Q. But that the checks with which the accounts were paid

9 and the notes were paid, were signed G.H. Johnson, and that

10 with the check thus signed and sent to you was a letter or

11 an advice directing you to apply that check to the payment

12 of the account of Johnson & Seward; is that right?

13 A. So far as my recollection of the matter you are correct,

14 but if I mistake not, on one or more occasions we received

15 checks signed by Johnson & Seward, though I would not be

16 willing to swear to this statement.

17 Q. What was the name of the traveling salesman that took

18 your order?

19 A. I really could not swear to that, because we have had

20 so many, but for the amount now due us, I think the order

21 was taken by Mr. W.P. Bostwick and M.B. Leath (they are my

22 last two traveling men), who were with us at the time the

23 account was made. Do not understand it was at the time the

24 account was started, but at the time of the account owing now.

25 Q. Did you ever ship goods to persons doing business under

26 some firm name differing from the name of the owner of the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

business?

A. I have never knowingly.

Q. How long have you been doing business with this firm?

A. Since 1893, I think.

Q. I suppose your sales in that time would amount to several thousand dollars?

A. With this party?

Q. Yes?

A. I really could not say, but I think not.

RE DIRECT EXAMINATION

By Mr. Burgess:

Q. How did you say the checks were signed?

A. G.H. Johnson, as well as I remember.

Q. Was there anything said on the check "for account of Johnson & Seward"?

A. I could not say positively, but we were instructed either that way or by letter.

Q. Either by check or letter?

A. Yes; the checks will show for themselves.

Q. Mr. Sebrell eliminated from his question the statement which you made in your answer that these goods were sold on orders signed Johnson & Seward. Is it, or not, a fact that the orders were signed this way?

A. It is a fact. Since considering the question, I do remember in several instances where the checks were written

1 and embedded in the checks were "to the credit of Johnson
2 & Seward."
3

4
5 *Omit testimony of E.H. Williams*
6

7 E.H. WILLIAMS, on behalf of the plaintiff, being
8 duly sworn, testified as follows:

9 Examined by Mr. Burgess:

10 Q. State your name, age, residence and occupation, and
11 do you know the parties to this suit?

12 A. E.H. Williams; Smithfield, Virginia; attorney at law;
13 thirty, and I know the parties to this suit.

14 Q. Mr. Williams, give an account of your dealings in this
15 matter with Mr. G. H. Johnson?

16 A. I represented right many claims against the firm of G.H.
17 Johnson & Co. and Johnson & Seward. A few days after the
18 first of February, of this year, I happened to be out at the
19 courthouse, and I saw where there had been recorded a deed
20 of trust to the Bank of Smithfield, a bill of sale to J.B.
21 Johnson conveying stuff on his farm, and a bill of sale to
22 his father, W.E. Johnson, conveying the undertaking establish-
23 ment. I came back, and, to use a common expression, immediate-
24 ly got busy. I think I saw Mr. Whitley, and told him that
25 unless the parties would consent to release their claims
26 and consent to Johnson making the deed of assignment for the

1 benefit of all his creditors, we would immediately institute
2 bankruptcy proceedings. This was agreed upon between all
3 of the parties except Mr. W. E. Johnson; we could not reach
4 him, but I understood through G.H.Johnson that he would
5 agree to a reconveyance. On the 20th of February Mr. Whitley
6 and Mr. Johnson came to my office, and there was some discussion
7 about what property was to be conveyed to the trustees, and
8 I told him all the property that he had must be in this con-
9 veyance, and I understood it was to be in the conveyance. Mr.
10 Johnson also told me, at that time, that Mr. W.E.Johnson
11 did not know that the bill of sale of the undertaking es-
12 tablishment had been made. So the deed was dictated to my
13 stenographer, and after the deed was dictated, and while
14 it was being written, Mr. Jesse Minton and Mr. G.H.Johnson
15 made an inventory of the undertaker's stock. The deed was
16 signed and forwarded to the court house.

17 Q. Was this inventory of the undertaking establishment
18 incorporated or made a part of the deed of assignment?

19 A. Yes, sir.

20 Q. Was it attached to the deed before it was executed by
21 Mr. Johnson?

22 BY MR. SEBRELL: The question and the preceding
23 question are objected to as the deed is the best
24 evidence.

25 BY MR. BURGESS: The question is withdrawn.
26

1 Q. (By Mr. Burgess) Now, go ahead with your statement?

2 A. Mr. Johnson then turned over to me his books and some
3 three or four notes, and also the key to the store in which
4 the hardware and undertaking business were. It was understood
5 at that time that we would have the possession of the under-
6 taking business, and the two Mr. Johnsons figured on buying
7 the undertaking stock from the trustees, and asked us to
8 defer selling it until they could make some arrangement to
9 raise the necessary amount of money to pay for the stock. In
10 the meantime they had some calls for burials, and came to
11 me and got my consent to use some of the coffins in stock
12 to bury the parties, with the understanding that the amount
13 of the bill was to be turned over and collected by the trustees,
14 and Mr. G.H. Johnson did turn over some of the accounts to me
15 as one of the trustees. In looking over the books, I saw a
16 good many of the accounts marked "paid". Some of them I had
17 reasons for knowing that they had not been paid, and pro-
18 ceeded with a quiet investigation to ascertain whether or not
19 these accounts were still owing to the firm of Johnson & Se-
20 ward, and, if so, who had the accounts. I obtained evidence
21 of the fact that Mr. Johnson had a list of accounts and
22 notes in his possession, and immediately demanded that he
23 turn over to the trustees these accounts and notes. He first
24 denied having any such notes and accounts in his possession,
25 but when confronted with the evidence finally admitted that
26 he did have some accounts and notes, and turned over to the

1 trustees a batch of small accounts which amounted to about
2 \$800. I knew that this was not all the accounts and notes
3 which he had in his possession, and demanded that he turn
4 over the remainder, which he did; after we had threatened
5 him with a prosecution, he turned over some more of the
6 accounts. Then later we had a search warrant issued, and
7 found some notes and accounts and checks.

8 BY MR. SEBRELL: So much of the above answer
9 as applied to witness' opinion as to obtaining
10 evidence, and so forth, and the answer with
11 reference to the search warrant and other immaterial
12 parts of said answer, are hereby objected to for
13 the reason that the statement with reference to
14 the evidence is a matter of opinion; that the
15 matters with reference to the distress warrant
16 are secondary evidence, grounds for which have
17 not been laid, and that the other parts of the
18 answer are irrelevant.

19 By Mr. Burgess:

20 Q. To whom were these checks made payable?

21 A. Either to G.H. Johnson & Co. or Johnson & Seward.

22 Q. I understand that they have not been collected?

23 A. No.

24 Q. Will you please continue with your statement?

25 A. We never turned the stock of goods over to Mr. J.B.
26 Johnson. With reference to what Mr. Johnson said in my

1 office, about two weeks ago, as I remember it, Mr. Johnson
2 stated willingly that this bill of sale to his father was
3 not intended for a security, but was intended to hold the
4 business intact.

5
6 CROSS EXAMINATION

7 By Mr. Sebrell:

8 Q. Is it not a fact that you and Mr. Whitley entered
9 into negotiations with Mr. J. B. Johnson to sell him the
10 undertaking business at eighty-five per cent of the in-
11 ventory price; that you finally agreed on \$650 as the
12 purchase price therefor, and that he took possession, and
13 that later you advised him that the bill of sale having
14 conveyed it to W.E. Johnson that you had no right to make
15 the sale?

16 A. Just a few days after the assignment was made, Mr. J.
17 B. Johnson, a brother of G.H. Johnson, came to me and said
18 he wanted to buy the undertaking establishment, it being
19 understood at that time between all the parties that
20 Mr. W.E. Johnson would sign the reconveyance, and we did
21 agree upon a price, provided he could raise the money, and
22 we could give him a good title. The possession of the
23 stock was never delivered to him, not by me.

24 Q. Did you not subsequently tell him that by reason of
25 the prior conveyance to W.E. Johnson that you could not
26 carry out your agreement to sell it to him for \$650?

1 A. Whether I told him that, or not, his father did not sign
2 the reconveyance, and under the circumstances I did not
3 want to convey him any property about which there could be a
4 question about the title. I may have told him that, but
5 whether I did, or not, I don't remember.

6 Q. Who now holds the keys to this undertaking establishment?

7 A. Mr. G.H. Johnson has had the management, and I presume
8 the possession of the undertaking establishment since -
9 we allowed him to remove it out of the house in which it
10 was to W. Joe Edwards since that time. Certainly I know
11 that he has possession of the horses and hearse.

12 Q. Was this property moved before or after your negotiations
13 with J.B. Johnson?

14 A. I think it was moved afterwards.

15 Q. How long ago has that been?

16 A. About six months ago.

17 Q. Has not the undertaking business been carried on since
18 that time?

19 A. Yes; he has been doing some business since that time
20 - somebody. Mr. G.H. Johnson is the man who goes out with
21 the hearse, and conducts the business.

22 Q. Do you know whether goods have been bought for that
23 undertaking establishment, and shipped there?

24 A. Yes, sir.

25 Q. In whose name?

26 A. I think it came in J.B. Johnson's name.

1 Q. Do you know whether there is any license for the conduct
2 of that business at that place?

3 A. I don't know. I presume it is licensed, but I don't
4 know whose name it is in.

5 Q. Do you not know that J.B. Johnson, since your negotiations
6 with him, has been carrying on that business, buying and
7 selling in his own name?

8 A. He has ordered some coffins in his own name. That is
9 all I know. I just have his word for that, but I think that
10 is so.

11 Q. Have you, as trustee, ever demanded of him why he should
12 be adding to this stock with his own purchases, or made any
13 objection thereto?

14 A. I never made any objection to J.B. Johnson. I made
15 objection to G.H. Johnson.

16 Q. What receipts from the said business have you had
17 within the last three months?

18 A. None.

19 Q. What receipts in the last five months?

20 A. I can answer to several of those questions. I never
21 had any receipts, but only had a statement. A few days
22 after the deed of assignment was made, Mr. G.H. Johnson
23 understood he was working for the trustees, and we were dis-
24 posing of the coffins. We were to pay Mr. Johnson for his
25 services, and Mr. Johnson was to bury people, and render to
26 the trustees a statement of the expense of the burials. He

1 asked that this be done, that they expected to buy the
2 establishment, and did not want to lose any custom in
3 the meantime.

4
5 Q. That was before your agreement to sell to J.B.Johnson?

6 A. That was while that agreement was pending, or while
7 negotiations were pending.

8 Q. Since your promise to sell to J.B.Johnson for \$650,
9 provided title could be arranged, and so forth, have you
10 received a single penny from that business?

11 A. No. You understand the undertaking accounts which he
12 had at that time were turned over.

13 Q. I am talking about the business since that time?

14 A. No.

15 Q. Have you made any demand for them?

16 A. This question arose since Mr. W. E. Johnson refused
17 to take any position, or did not sign the reconveyance;
18 then we decided to institute this suit, and find out the
19 position of the trustees in the matter, and whether we had a
20 right to demand.

21 Q. You say you swore out search warrants. Have you in-
22 stituted any action of detinue, or other action, to recover
23 this undertaking stock?

24 A. I think it was by agreement of counsel, by agreement
25 with you and the trustees, that this kind of suit should be
26 instituted in order to determine the rights of the trustees.

Q. But that was in June, was it not?

1 A. I don't remember the date.

2 Q. It was about the time of the institution of the suit?

3 A. Some time prior to that time, yes, sir.

4 Q. You stated in your examination in chief that you went
5 to the courthouse, and there found out about the conveyance
6 which G.H. Johnson had made, and that you came back and got
7 busy, and went to see Mr. Geo. F. Whitley; will you please
8 state why you went to Mr. Whitley?

9 A. I went to Mr. Whitley because I saw that he had
10 acknowledged the papers, and understood that he was representa-
11 ting Johnson.

12 Q. Did Whitley agree to advise Johnson to have a reconveyance
13 of all the property.

14 BY MR. BURGESS: The question is objected to as
15 immaterial and irrelevant.

16 A. After a while.

17 By Mr. Sebrell:

18 Q. Was the inventory of the undertaking stock intended
19 to be used as a part of the assignment only in the event
20 that W.E. Johnson re-conveyed his interest therein?

21 A. It was understood at the time the deed of assignment
22 was made that there would be absolutely no question about
23 Mr. W.E. Johnson signing the reconveyance, and, therefore,
24 it was understood between all the parties that both the
25 hardware and undertaking establishment were included in the
26 deed of assignment, and to carry out that agreement Mr. G.H.

1 Johnson delivered to me the keys, and asked my consent to
2 make a burial a few days after that.
3

4
5 RE DIRECT EXAMINATION

6 By Mr. Burgess: Letter of John N. Sebrell, Jr., attorney
7 for W.E.Johnson, to G.F.Whitley, dated March 2nd, 1908, is
8 here offered in testimony marked exhibit No. ____.

9 Q. Mr. Williams, did you, as trustee, receive, prior or
10 subsequent to March 21, any proof of claim or demand from
11 W.E.Johnson, or his attorney, John N. Sebrell, other than
12 that contained in the letter herewith filed?

13 A. I received a letter from Mr.W.E.Johnson, containing
14 a statement of his account against the trustees.

15 Q. Do you recall when this statement was received?

16 A. Within a few weeks after the deed of assignment was made.

17 Q. Have you that?

18 A. I have it on my file, in my office.

19 BY MR. BURGESS: Mr. Sebrell, I will send you
20 this statement, and if you have any objection
21 thereto, Mr. Williams will be pleased to testify
22 and answer any questions you may desire to ask
23 him. If not, we ask that this statement be filed
24 as of to-day.

25 BY MR. SEBRELL: Since you adopt such an ingenious
26 method of having me to commit myself upon a paper
that I have not seen, I announce to you now that I

1 shall object to the introduction into the record
2 of this case every paper and all other testimony
3 until it shall have been presented according to the
4 rules provided by the laws relating to evidence.
5

6
7
8 *Amend this testimony*
9

10 J.B. JOHNSON on behalf of the defendants, being
11 duly sworn, testified as follows:

12 Examined by Mr. Sebrell:

13 Q. State your name, age, residence, and occupation, and
14 do you know the parties to this suit?

15 A. J.B. Johnson; Smithfield, Virginia; 29; I know all
16 the parties to this suit; I am the brother of G.H. Johnson,
17 and son of W.E. Johnson.

18 Q. Please state what transaction you have had with E.H.
19 Williams and others trustees, under a deed of assignment
20 from G.H. Johnson with reference to the purchasing of the
21 undertaking business formerly carried on by said G.H. Johnson
22 under the name of Johnson & Seward?

23 A. Some time the latter part of February Mr. Williams
24 and Mr. Whitley agreed to sell me the undertaking business
25 at the price of \$650, which was eighty-five per cent of
26 the inventory price. On the 29th day of February, or a
day or two before that, they gave me a paper to carry to

1 Ivor to my father, W.E. Johnson, and the 29th of February was
2 Saturday, and Mr. Williams told me that they would con-
3 sider it a sale from that date, and what work done from
4 that on was to come to me. However, I did not go to Ivor
5 Sunday. It was a rainy day. I think the next Sunday I
6 went to Ivor and carried the paper. I gave it to my father,
7 and did not advise him to sign it, or anything of the kind.
8 I told him he could read it, and act as he saw proper. When
9 I went back to Smithfield some time after that, I don't
10 remember exactly how long, I went to Mr. Williams in regard
11 to getting some money on what the estate owed me, and during
12 that conversation he sent me to Mr. Whitley, and during
13 the conversation with Mr. Whitley he told me he considered,
14 or they considered, the undertaking business at that time
15 belonged to my father.

16
17 Q. Have you been in possession of this undertaking business
18 since that talk with Mr. Williams?

19 A. I have.

20 Q. What connection has Mr. G. H. Johnson had with it other
21 than being employed by you to accompany the hearse, and
22 superintend such burials as you have consented to attend
23 to?

24 A. The understanding with my brother was that I was to
25 run the business, and what orders came to me I would give
26 them to him, and he would fill them. I mean by that, that
he was to look after it for me. As soon as the business was

1 straightened up, then we would get together, and see how
2 much he owed me, and how much I owed him.

3 Q. From the business?

4 A. From the business.

5 Q. In other words, you employed him to attend to the
6 business for you?

7 A. Yes, sir.

8 BY MR. BURGESS: The question is objected to as
9 leading.

10 By Mr. Sebrell:

11 Q. State whether or not you have been buying and selling
12 since that time?

13 A. I have since that time. There was very little stock
14 on hand and stuff we could use, and right at the time I
15 started buying in my name and paying in my name, and not
16 only have caskets and stuff bought from away, but paid for
17 digging graves, for horses sometimes to accompany the hearse,
18 and other expenses pertaining thereto.

19 Q. Who has a license for carrying on that business?

20 A. The license is made out J.B.Johnson.

21 Q. Now, you have stated that the licenses are made out
22 in your name, and that the bills have been bought in your
23 name, and have been paid for in your name. Do you mean
24 by that, or not, that it is your business?

25 A. I do.

26 Q. You were doing the buying and selling, and you were paying

1 the money?

2 A. Yes, sir.

3 Q. Has G.H.Johnson any part in that business now except as
4 your employee?

5 A. None at all.

6 Q. From whom did you get possession of that property?

7 A. After the undertaking stock had been in the same place
8 for not quite two months we were trying to get some place
9 to put it, and on the last of March it was moved to a place
10 belonging to W.Joe Edwards. I paid the rent for the ware-
11 house, which set in for February and March.

12 Q. To whom?

13 A. D.W.Chapman & Co. He was then the lessor of that build-
14 ing my brother had formerly occupied.

15 Q. Was that known to the trustees?

16 A. I could not tell you about that.

17 Q. Did the trustees know that you had moved the stock?

18 A. I could not tell you about that. I don't see anything
19 to prevent them from knowing.

20 Q. Have they made any demand upon you to deliver the
21 stock, or any of the proceeds of the business?

22 A. Not at all.

23

24

25

26

CROSS EXAMINATION

By Mr. Burgess:

Q. Who did you consider that you bought this business from, Mr. Johnson, - the trustees or your father?

A. As I stated, first Mr. Williams told me that night that he would consider it a sale, and then in talking with Mr. Whitley he said that they considered it belonging to my father, but I considered I bought the undertaking from the trustees.

Q. How much do you consider that you owe the trustees for the business?

A. I consider that I owe somebody \$650.

Q. Have you ever offered to pay it to the trustees?

A. No, sir.

Q. Have you ever offered to pay it to your father?

A. I have not.

Q. Do you consider that you own the property? In other words, whose property is it to-day?

BY MR. SEBRELL: The question is objected to, because it is asking the witness to decide the very question which is at issue in this suit.

BY MR. BURGESS: The question is withdrawn.

Q. (By Mr. Burgess) To whom do you consider the property belongs to-day?

BY MR. SEBRELL: Objected to as calling for a legal opinion from the witness, when he is not

1
2 qualified.

3 A. I don't know.

4 By Mr. Burgess:

5 Q. If you don't know who it belongs to, or who had a right
6 to sell it, and you do know you have not paid for it, why
7 do you claim possession of it, and why have you been dealing
8 with it as yours?

9 A. I told Mr. Whitley from the start that they had the
10 inventory of the stuff, and whenever it was decided who
11 I was to pay the money to, I would pay it.

12 Q. Then, if I understand you, you have simply taken
13 possession of this property under an agreement with the
14 trustees that you should manage it, and that when it was
15 definitely settled to whom it belonged, that you would
16 make settlement with the proper parties?

17 BY MR. SEBRELL: The question is objected to on
18 the ground that counsel has stated what the
19 witness has not said; that the witness has at no
20 time said that he took it under an agreement with
21 the trustees to manage it for them.

22 A. I did not tell them I would manage it for them.

23 By Mr. Burgess:

24 Q. Mr. Johnson, will you state by what authority and by what
25 right you have charge of this property?

26 BY MR. SEBRELL: He has already answered that to
you twice and to me.

1 A. I do not see any need of answering it any more.

2 By Mr. Burgess:

3 Q. Mr. Johnson, if you do not care to answer it again
4 I cannot force you to do so, but it is not clear to my
5 mind what answer you have made. Now, if you have no ob-
6 jection to repeating your answer, I would be glad to have
7 you do so?

8 By Mr. Sebrell: Go ahead, Mr. Johnson, and answer it.
9 My objection is addressed to the court and not to you.

10 A. Since I have paid rent and taxes and all expenses for
11 the concern, and, as I stated before, I told Mr. Whitley
12 that they had the inventory of the stock, and when they
13 decided who I should pay it to I was ready to pay it.

14 By Mr. Burgess:

15 Q. Pay how much?

16 A. Pay \$650 for the whole inventory price.

17 Q. Then, if I understand you, you first started to buy
18 the property from the trustees, and when these negotiations
19 were pending, you took possession of the establishment; that
20 when afterwards notified that your father had declined to
21 re-convey the property, and that the trustees considered
22 that it was his property, that you continued to hold
23 possession of the property, stating to the trustees that
24 when they decided to whom it belonged you would pay them
25 \$650; is this, or not, correct?

26 A. The trustees told me that as soon as it was decided who

1 it belonged to, I could pay it to whoever it was decided
2 it belonged to.

3 Q. Then, if I understand you, it was upon this statement
4 of the trustees that you continued to manage the property?

5 A. No, not to manage it, but to own it.

6 Q. Then you consider that you now own the property, and,
7 of course, owe some one \$650 for it?

8 A. Yes.

9 Q. And when told who is the proper party, you will make
10 that payment?

11 A. Yes.

12 Q. Has your father ever authorized you to take possession
13 of this establishment, and use it, and manage it, until
14 its true ownership was determined?

15 A. I don't remember.

16 Q. Certainly if you do not remember, you have not considered
17 it material what he said or did about it; is this not true?

18 A. I was simply waiting to see what the courts would
19 decide in the matter.

20 Q. And, in the meantime, holding the property in pursuance
21 of the conversations you have heretofore related, which you
22 had with the trustees?

23 A. Yes.

24 Q. And nothing that your father has said or done caused
25 you to take possession of the property?

26 A. No, sir.

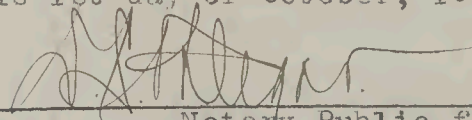
-----oOo-----

1 VIRGINIA,

2 City of Norfolk, To-wit:

3 I, D.S.Phlegar, a Notary Public for the City of Norfolk,
4 in the State of Virginia, certify that the foregoing depositions
5 of G.F.Whitley, H.C.Sims, E.H.Williams and J.B.Johnson were
6 duly taken and sworn to at the time and place and for the
7 purpose in the caption mentioned, and that signatures thereto
8 were waived by counsel.

9 Given under my hand this 1st day of October, 1908.

10 

11 Notary Public for the
12 City of Norfolk, Virginia.

13 Fee

\$22⁹⁵

14
15
16
17 -----oOo-----
18
19
20
21
22
23
24
25
26

Reported by D. S. P.
Transcribed by R. S. P.
Compared by C. L. H.

STENOGRAPHER'S TRANSCRIPT.

190

Sept 29, 1908

No.-----

Plaintiff-----

Address-----

Defendant-----

Address-----

When Received-----

Amount, \$-----, Date-----

Nature-----

From-----

Receipt Acknowledged-----

Suit Entered-----

REMARKS:

E. H. WILLIAMS,
Attorney at Law, SMITHFIELD, VA.

Yards

10

No.

2035

Color

wht n

NE PLUS ULTRA

CASKET LINING.

MANUFACTURED BY

NATIONAL CASKET CO.

Made by

88

Examined by

134

If not perfect
in every respect
please notify us
and return this
ticket.

1-07 Form 01.

G. H. JOHNSON & CO.,

* HARDWARE *



PAID 7 1/2

SMITHFIELD, VA.,

July 25th 1908

Nat. basket Co.

Baltimore Md

Gentlemen:-

Please ship to me at once
1 Black cloth coatlet 6 feet long same as one just recd. \$1.60
1 set Black satin Rope handles same " " " \$1.30
1 child's white plush coatlet, 4 foot. medium price
1 set Handles to match child's coatlet.
10 yds lining for adult, same as just recd. for enclosed ship off other lining. \$0.35

Please ship at once without fail.

I enclose check for \$50.00

OK 50.00

Yours very truly

Johnson Howard

OK

OK

966

Have no back order

For July

Give Receipt to mems. of what
they now owe to me

Exhibit 1.

Smithfield Va
Nov 6th 06

Mess Hunter & Sons

Richmond Va

Gentlemen:-

Please ship to us
at once without fail.

1 # 12 B.C. Casket 6⁰⁰

1 # 14 " " 6³⁰

1 # 11 1/2 white Enamel Coffin 2³⁰

Please nest Coffin in Casket

10 yds 30% Lining #109

10 " Lining a little better grade
say about 40% or 50% want the lining
for above Caskets.

We are entirely out of these ~~articles~~
items please rush them through.

Yours Very Truly
Johnson & Howard
per J. H. Johnson

SHIPPED

Nov 7 - 1906

Exhibit 2

Smithfield V^d

Nov. 28th 06

Mess Hunter & Sons

Richmond V^d

Gentlemen:-

Please ship the following items to us as quick as you can conveniently we are entirely out of these sizes.

✓	1	Rose wood casket medium price	# 5 in R.	6 ⁰
✓	1	" " Coffin	# 3	5 ⁰ 6/3
✓	1	" " "	# 1	4 ⁶
✓	1	" " "	# 1	5 ⁰ 5/3

Please forward at once will send another check first of next week. yours Very Truly

H. B. Johnson for Colonel Johnson & Howard
Casket & coffin for G. H. Johnson

SHIPPED

Dec 3-1906

✓

Exhibit 3

$$\begin{array}{r} 430 \\ 215 \\ \hline 645 \\ 7 \\ \hline 4515 \end{array}$$

$$\begin{array}{r} 3120 \\ 17 \\ \hline 534 \\ 25 \\ \hline \end{array}$$

Smithfield Va

Sept 13th 06

Miss Hunter Wims

SHIPPED

Richmond Va 3 1906

Gentlemen:-

Please ship to me at once

- ✓ 1 # 16 Silver Gray ^{cosket} 6-3 full size
 - ✓ 1 # 16 " " " 5-9
 - ✓ 1 # 14 1/2 White Plush ^{cosket} 6-0
 - ✓ 1 Black Cloth Cosket ^{same as before} draped with fringe 6-0
 - ✓ 1 " " " # 14 5-9
 - ✓ 1 Rose wood cosket cheap quality 6-0
 - ✓ 1 White Plush cosket # 8 - 4-0
 - ✓ 1 White Enamel Coffin # 4 1/2. 3-0
 - + 1 " " " # 4 1/2. 4-3
 - ✓ 1 " " " # 4 1/2. 5-0
 - + 1 " " " # 4 1/2. 6-0
 - ✓ 1 " " " # 1 1/2. 4-6
 - ✓ 2 " " " # 1 1/2 2-0
 - ✓ 1 Rose wood " # 1 5-0
- continue

Ship to Johnson & Howard

1/2 Box 45- Cask

1/2 Box escutcheons to match #46- though some

40 yds ~~#1410~~⁷⁵⁰⁸ lining same as last order

Please ship what of these goods
you can at once. our stock is
running low. we ~~have~~ been doing
right much business for some
weeks, we are right much
in need of the most of
these goods,

Very Truly yours
Johnson & Howard
per G. H. Johnson

Hardware & Lining for the
in 4/6 # 1/2 cask

Exhibit 4

JAMES HUNTER, JR.

STATEMENT.

H. C. SIMS.

Folio

Richmond, Va.

July 10 1907

M

IN ACCOUNT WITH

HUNTER & SIMS.

MANUFACTURERS OF

COFFINS AND CASKETS.

SCREEN DOORS AND WINDOW SCREENS.

DEALERS IN

UNDERTAKERS' SUPPLIES.

OFFICE AND FACTORY:

1500-1600 W. MARSHALL ST.

Nov	7	To mdse	38 75	
Dec	3	" "	35 50	
Feb	27	" "	10 00	
Mch	23	" "	22 00	
			106 25	
Apr	13	By Cash	100 00	15
			6 25	
To note due	Mch 23		100 00	
"	"	Apr 23	100 00	
"	"	May 23	105 98	
			312 23	
To interest @ 6% from Jan'y 23				
on \$305 98 until paid				

According to our usual custom, unless previously remitted, we will draw on you

..... for \$.....
in which case please honor draft and oblige,

Yours respectfully,

HUNTER & SIMS,

Exhibit 3-

4/20

\$ 100⁰⁰

NO PROTEST.



Smithfield
 Richmond, Va., January 23rd 1867
 Three Months after date, We promise to pay to
 Hunter and Sims or order, without offset,
 One Hundred Dollars,
 and interest at 6% per Annum
 Negotiable and payable at The Bank of Smithfield
 Value received. The drawer and endorser of this note hereby waive the
 benefit of Homestead exemption as to this debt.
 Due April 23 - Apr. 23

100

No. 3

Johnson Heward

21946

4/30

N.P.

PAY TO THE ORDER OF
STATE BANK OF VIRGINIA,
RICHMOND, VA.
HUNTER & SIMS.

Exhibit 6

ENDORSEMENT ERASED

~~Pay to the Order of
State Bank of Virginia,
Richmond, Va.
HUNTER & SIMS.
APR 22 1907
Petersonburg Savings & Insurance Co.
Petersonburg, Va.
Rayon M. Pollard, Cashier.~~

5720

NO PROTEST.

\$ 105 ⁹⁸/₁₀₀



Smithfield
 Richmond, Va., January 23rd 1907
 Four Months after date. We promise to pay to
 Hunter and Sims or order, without offset,
 One Hundred and Five ⁹⁸/₁₀₀ Dollars,
 and interest at 6% per Annum
 Negotiable and payable at The Bank of Smithfield
 Value received. The drawer and endorser of this note hereby waive the
 benefit of ~~May 23~~ Homestead exemption as to this debt.
 Due May 23 - Johnson and Seward

No. 220421

COLLECTION.

Exhibis 77

ENDORSEMENT ERASED

260

Pay to the Order of
First National Bank
Federal Reserve Bank
Washington, D.C.
\$200.00
Headquarters Insurance Co.
Pollard, - - - Cashier

PHONE NO. 28.

PROMPT AND EFFICIENT
SERVICE.

ECONOMICAL
PRICES.

G. H. JOHNSON.

W. T. SEWARD.

Smithfield, Va.,

Jan 7th 1907

Mr. H. H. McCalland, Adm. F. H. Atkinson, Est.

To JOHNSON & SEWARD,
FUNERAL DIRECTORS AND EMBALMERS.

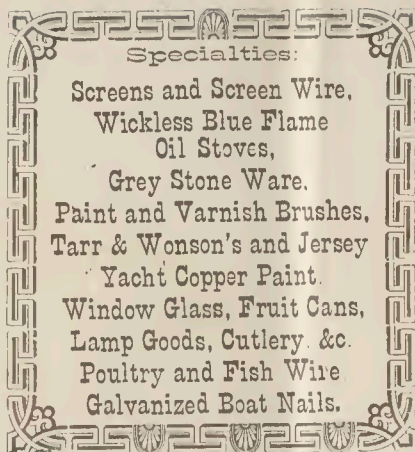
Complete Line of Metallics, Couches, Caskets,
Coffins, Robes, &c.

Location: G. H. JOHNSON & Co.'s Hardware Store.

1906	Nov	27 To Burial Expenses of Mr F. H. Atkinson	35-00	
1907		27 By Cash for Mr Earnest Atkinson		20 00
Jan		7 By Cash " " W. H. McCalland		15 00
			35 00	35 00

J. H. C. Krimm

24



Screens and Screen Wire,
Wickless Blue Flame
Oil Stoves,
Grey Stone Ware,
Paint and Varnish Brushes,
Tarr & Wonson's and Jersey
Yacht Copper Paint,
Window Glass, Fruit Cans,
Lamp Goods, Cutlery &c.
Poultry and Fish Wire
Galvanized Boat Nails.

Smithfield, Va., Nov 16th 1903

No Daniel Lyner Estate
BOUGHT OF *J. H. Johnson & Co.*
— DEALERS IN *Seward*

Hardware, Sash, Doors, Blinds, Mantels,
MOULDING, &c.

Agents for the Pure L. & M. Ready-Mixed Paints.
Every Gallon Guaranteed to Give Satisfaction.

1903

Nov	14	To 1 Cochet & Neame	4500	
		" 500 Hard Bruck	425-	
		" 1/2 Bbl Cement	450	
		" Hauling Bruck &c	550	
		" Birchling Grove	450	
				6375-

Paid.

Johnson & Seward
for
J. H. Johnson

11-17-1903

Exhibit 8

Expense of burial
expense



E. Lombard St. near Jones Falls *Baltimore, Md.* 9/22/08 190

E.H. Williams, Atty.,
Smithfield, Va.

Dear Sir:-

Your favor of the 19th inst., received and noted. We are led to believe that there is some crooked business going on in connection with the firm of Johnson & Seward. We cannot see that it is necessary for us to take the time and go to the expense of coming to Norfolk in person in reference to this case.

We herewith enclose you the correspondence between Johnson & Seward and ourselves, and you will note on August 9th when they first wrote us for catalogue and pricelist, the letter was written on a Johnson & Seward letter head and was signed by them, and so on all through the correspondence, the letters are signed by Johnson & Seward.

We sold the goods in good faith to Johnson & Seward regardless of which of either would be the responsible party, being a firm we took it for granted as is customary in business, to hold either one responsible. If Johnson would not have the means to pay, we would look to Seward, and vice versa.

Very truly yours,

NATIONAL CASKET CO.

G. H. JOHNSON

W. T. SEWARD

JOHNSON & SEWARD,

FUNERAL DIRECTORS AND EMBALMERS.

COMPLETE LINE OF METALLICS, COUCHES, CASKETS,
COFFINS, ROBES, &C.

LOCATION:
G. H. JOHNSON & CO.'S
HARDWARE STORE.

PHONE No. 28

Smithfield, Va., *Nov 9th* 1906

National Casket Co

Baltimore Md

Rec'd NOV 10 1906

Dear Sir

*You will please send
us Catalogue of Coffins + Caskets
with price list also of Hardware
and Trimmings with price list
and oblige yours Respt
Johnson + Seward
Dr Hancock*

Please Return as soon as possible

NLS

G. H. JOHNSON

W. T. SEWARD

JOHNSON & SEWARD,
FUNERAL DIRECTORS AND EMBALMERS.

COMPLETE LINE OF METALLICS, COUCHES, CASKETS,
COFFINS, ROBES, &c.

LOCATION:
G. H. JOHNSON & CO.'S
HARDWARE STORE.

PHONE No. 28

Smithfield, Va., *Nov 28th* 1906

National Casket Co
Baltimore Md
Gentlemen

RECEIVED NOV 28 1906

Please ship us at once
✓ *Casket Each style #106 int Rosewood 64x63*
✓ *" " " 106 1/4 " Oak 60*
✓ *" " " 88 " Oak 60*

and oblige

Yours Respt
Johnson & Seward

W. T. Seward

Recd FEB 12 1908

SMITHFIELD, VA., Feb 19th 1908

National Basket Co

Baltimore md

Gentlemen:-

- Please ship to us at once
- 1 Black Cloth Costlet. Dropped with about the same quality dropping as your #1310 but ~~send~~ ^{send} one of your new shotes, let it cost dropped from \$20.00 to \$25.00
 - 6 feet in length
 - 10 yds of lining to cost about 50¢ per yard
 - 1 set Black satin handles same as in last order
 - 1 Box Cop lifts #160
 - 1 " " " #60
 - 1/4 Doz Pss Silver Rope Box handles #6300 BX
 - 1 Coffin ^{style} #2 Am. Rosewood 6 foot

Please ship at once

ck 100.00

4/1
1/1

G. H. Johnson & Co.

Rec'd DEC 20 1906

Smithfield 1/4
Dec 22nd 1906

National Casket Co

Baltimore Md
Gentlemen

Please ship us at
once style No Inatily

1 Casket	"	1220	11.	59
1	"	1219	(Silver Gray)	60
2 Coffins	"	28		20 + 20
1/2 Doz Br/Handles	#6300	UX		
1/2 " " "	"2660	UX		
1/2 " " "	2550	UX		
1/2 " " "	1580	y.v.e		
1 Br Extension	"3820	X		

Please next small coffins
and oblige yours
Respt

Johnson & Seward
H

Ivor - Va.

Mar. 7th / 08.

Mr E. H. Williams,
Smithfield Va.

My Dear Sir.

Your request was rec'd
Late this Am - so could not reply by
return mail.

My account against E. H. Johnson & Co.
is Seventeen Hundred & Fifty (\$1750 ⁰⁰)
dollars without interest being added.

Very Respectfully -

W. E. Johnson

~~was.~~
I. ~~Then~~ ^{was} there a partnership so far as the
creditors are concerned which would
be liable to the creditors -

II. ~~Can~~ ^{Can} a ~~man~~ ^{man} sole owner of property
with the consent of another have
had such other act as a partner
in such manner as to subject
him to liability for the partnership
debts, make a valid sale of
the property owned by him the
such business

Question as to fraud limited to whether
or not an insolvent member of a
partnership can give a lien on the
assets of said firm to satisfy an
unsecured debt.

These two cases began on these notes
that creditors were satisfied -

Etapph. Jordan & Thompson

STEPHENSON & TAYLOR
ESTABLISHED 1894

REAL ESTATE, RENTS, LOANS AND INSURANCE

ROOMS 311-314 MONTICELLO ARCADE

NORFOLK, VA. December 14, 1910.

Mr. J. U. Burges,
Suffolk, Virginia.

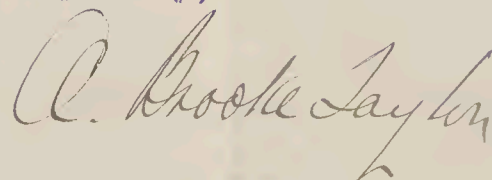
Dear Jim:-

Upon receipt of your letter, I took up the matter of the Johnson lots with the party who made the offer of \$400.00, and he agreed to increase it to \$450.00, which is the best he will do.

This will net your co-trustees and yourself \$422.50, which I think will be as much as you could hope to get net if sold at public auction, after paying auctioneers' fees, advertising bill, etc.

Take up this offer with your associates and let me know as early as possible what you will do with it.

Yours very truly,



Dec 14, 1916

2.....Hon. B. D. White,

Williams and Whitley were to sell for \$50.00. This should be added to the assets.

Of course, if you think it absolutely necessary for me to be present on Saturday please call me over the 'phone, reversing the call, and I will come down, but it will greatly inconvenience me to do so.

Yours truly,

B/M
Enclosures.

Samuel Gurgay

$$\begin{array}{r} 11000.00 \overline{) 15000000.13} \\ \underline{11000000} \\ 4000000 \end{array}$$

J. U. BURGESS,
ATTORNEY AT LAW,
COMMONWEALTH'S ATTORNEY FOR NANSEMOND COUNTY
SUFFOLK, VA.

October 5th, 1911.

Hon. B. D. White,
Norfolk, Va.

Dear Judge:

In re Johnson's trustees.

I find that it will be impossible for me to come to Norfolk on Saturday. I am, therefore, enclosing Sydney Johnson's report and decree. I find that the file of correspondence which I sent Sydney has either not been returned or, if returned, has been mislaid in my office. I have recently changed my filing system and am not sure but that the papers may have gotten in some other file. However, I enclose a letter from Brooke Taylor stating that the sale would net us \$422.50 and this seems to be in accordance with Johnson's report.

Now in regard to the fees. I find that I made two trips to Smithfield, ^{and} three to Norfolk in taking depositions and arguing the case. This does not include a trip to Smithfield that I made in the month of March, spending a day and night in an effort to get a distribution. I believe there is no question about the fact that a trustee is entitled to counsel fees in a suit instituted in order to secure the proper administration of the trust. Mr. Sebrell notified us that he would hold us personally liable unless we conceded his demand. We were of the opinion that this was not a proper disposition of the funds and were forced to institute suit. On the other hand, I have never in my practice known the court to allow fees to counsel on the other side. The trustees acted for all the creditors, while Mr. Sebrell represented one creditor asserting his claim and demanding payment in full.

However, you are thoroughly familiar with the circumstances and any decree you may enter will be satisfactory to me. If you see fit to allow John Sebrell a fee and take it out of ours I could raise no objection. In fact, while the fee named will not compensate me for the time, trouble and expense that this suit has caused me, I am anxious to get it off the docket and rather stand a material loss than keep the creditors out of their money longer.

I note from the report that there is not listed with the assets some old undertaking accounts, which I understood

JOHN N. SEBRELL, JR.
Attorney and Counsellor at Law
NORFOLK, VIRGINIA
525-527 SEABOARD BANK BUILDING

Oct. 20, 1911.

E. H. Williams and others, Trustees

of G. H. Johnson,

to

John N. Sebrell, Jr., Attorney,

Dr.

To fee for services in connection with real estate of

G. H. Johnson in Norfolk City, ...\$25.00

Oct 20, 1911

W. E. Johnson.

VS) REPORT OF TRUSTEES.

Williams, et als, Trustees.

Filed Oct 26/1912

GEO. F. WHITLEY

ATTORNEY-AT-LAW

SMITHFIELD, VA.

✓ J. W. Gwaltney & Co. Interest from April 30th. 1907.	50.93 7.73	38.66	⁴⁶ 7.47 ✓
✓ Frank T. Clark Co. Ltd. Interest from Jan. 30th. 1908	21.55 4.41	25.96	⁴⁷ 5.02 ✓
✓ T. J. Cox & Son Interest from Sept. 5th. 1907	39.14 12.96	52.10	⁵⁰ 10.08 ✓
✓ Atlantic Paint Works Interest from Dec. 31st. 1907	93.95 20.72	114.67	⁵¹ 22.21 ✓
✓ Giles M. Quarles Co. Interest from Feb. 14th. 1907	72.90 19.50	92.40	⁵² 17.90 ✓
✓ Giles M. Quarles Co. Interest from April 14th. 1906	23.58 7.18	30.76	⁵³ 5.96 ✓
✓ B. L. Roberts Interest from April 4th. 1906.	500.00 197.15	657.15	⁵⁴ 127.50 ✓
✓ B. L. Roberts Interest from Jan. 29th. 1906	1000.00 305.00	1305.00	⁵⁵ 253.40 ✓
✓ B. L. Roberts Interest from April 4th. 1907	20.00 5.08	25.08	⁵⁶ 4.85 ✓
✓ B. L. Roberts Interest from Jan. 29th. 1907	40.00 10.60	50.60	⁵⁷ 9.79 ✓
✓ Belknap Hardware & Mfg. Co. Interest from Oct. 3rd. 1906	76.99 21.24	98.22	⁵⁸ 19.05 ✓
✓ The Republic Metalware Co. Interest from Sept. 17th. 1907	50.44 11.65	62.09	⁵⁹ 12.05 ✓
✓ R. Lee Seward Interest from March 16th. 1908	500.00 98.75	598.75	⁶⁰ 116.17 ✓
✓ A. R. Chalmers Interest from March 23rd. 1908	500.00 98.71	598.71	⁶¹ 116.16 ✓
✓ W. E. Johnson Interest from March 9th. 1911	1561.15 28.86	1590.01	⁶² 308.81 ✓
✓ J. B. Johnson Interest from March 9th. 1911	1023.50 18.69	1042.19	⁶³ 302.20 ✓
✓ A. R. & N. O. Gwaltney (judgment) Interest from Dec. 31st. 1906 Costs	1000.00 271.50 6.67	1278.17	⁶⁷ 247.85 ✓
✓ Home Telephone Co. Interest from Sept. 26th. 1908	30.00 5.27	35.27	⁶⁵ 6.80
✓ J. B. Johnson Interest from Oct. 8th. 1908	35.00 5.80	40.80	⁶⁶ 7.87 ✓
✓ J. B. Johnson Interest from Oct. 21st. 1909	125.00 12.65	137.65	⁶⁷ 26.65 ✓
✓ J. B. Johnson Interest from Oct. 18th. 1909.	25.00 2.43	27.43	⁶⁸ 5.32 ✓

\$11188.95 ~~\$2187.27~~
2170.37

VIRGINIA, IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

Williams et als, trustees.....Complainant.

vs.

Johnson et als.....Defendants.

This cause came on this day to be again heard on the papers formerly read, and upon the report of Commissioner A. S. Johnson, filed herein on the 1st day of July, 1911, and to which there is no exception, and was argued by counsel.

On consideration whereof, the Court, approving said report, doth adjudge, order and decree that the same be, and it is, hereby ratified, approved and confirmed.

And it is further adjudged, ordered and decreed that the said trustees do proceed to pay out, according to the said report and the statement therewith filed, the balance now in their hands as such trustees, and to file vouchers with the papers in this cause for such payments. *make report for want of their proceeds hereunder.*
And it is also adjudged, ordered and decreed that the clerk of this court do record the said report, together with the said statement, in the current book containing the accounts of fiduciaries in his office.

~~And nothing further remaining to be done in this cause it is ordered to be stricken from the docket.~~

for Journal -
 J. A. Beery
 Geo. R. Whalley } Trustees
 E. W. Adams

19 Nov 1897
 Dec. 4.

Enter this
 B. D. W.

O. D. B. 47 - Page 93

VIRGINIA, IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

Williams et als, trustees.....Complainant.

vs.

Johnson et als.....Defendants.

This cause came on this day to be again heard on the papers formerly read, and upon the report of Commissioner A. S. Johnson, filed herein on the 1st day of July, 1911, and to which there is no exception, and was argued by counsel.

On consideration whereof, the Court, approving said report, doth adjudge, order and decree that the same be, and it is, hereby ratified, approved and confirmed.

And it is further adjudged, ordered and decreed that the said trustees do proceed to pay out, according to the said report and the statement therewith filed, the balance now in their hands as such trustees, and to file vouchers with the papers in this cause for such payments.

And it is also adjudged, ordered and decreed that the clerk of this court do record the said report, together with the said statement, in the current book containing the accounts of fiduciaries in his office.

And nothing further remaining to be done in this cause it is ordered to be stricken from the docket.

VIRGINIA: CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT

JUNE 3RD. 1911.

Johnson's Trustees

vs) Chancery

Johnson et als.

This cause came on this day to be again heard upon the papers formerly read, and was argued by counsel: On consideration whereof, it appearing to the Court from the papers in this cause, that E. H. Williams, Commissioner of Accounts for this Court, is one of the parties to this suit, the Court doth adjudge, order and decree that the papers in this cause be referred to A. S. Johnson, who is hereby appointed a Special Commissioner for the purpose, who shall take, state and report to Court the assets realized by E. H. Williams, George F. Whitley and James U. Burges, Trustees, that have been administered by those trustees, the amount realized therefrom, together with a statement of the indebtedness of the said G. H. Johnson, with priorities, if any. And the said Commissioner is directed to report to Court on the 19th. day of June, 1911.

And from said funds be the hands of said E. H. Williams, G. F. Whitley and J. U. Burges

Johnson's Trustees

vs)

Johnson et als.

221

Enter June 5th. 1911.

P. D. W.

C. O. B. 7 Page 73

IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT, VIRGINIA:

OCTOBER TERM, 1912:

W. E. Johnson,.....Plaintiff,

- VS) In Chancery

Williams, et als, Trustees,.....Defendants.

-----oOo-----

TO THE HONORABLE B. D. WHITE,

JUDGE OF THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY:

The undersigned trustees of G. H. Johnson, trading as G. H. Johnson & Company, and Johnson & Seward, beg leave to report that, pursuant to a decree entered in the above styled cause on the _____ day of _____, 19____, ~~that~~ they have disbursed the funds in their hands as trustees of the said G. H. Johnson, trading as G. H. Johnson & Company, and Johnson & Seward, and that said disbursements were made according to the report of Special Commissioner, A. S. Johnson, a copy of which is filed herewith as a part of this report.

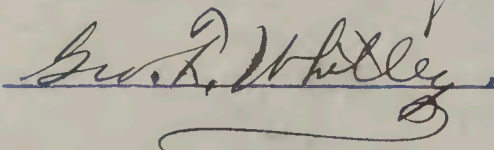
Respectfully submitted,



Trustee



Trustee



Trustee

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT.

Trustees of G. H. Johnson & Co.

vs) Chancery

W. E. Johnson et als.

TO HONORABLE B. D. WHITE,

JUDGE OF THE CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT.

The undersigned, one of the Commissioners in Chancery of Your Honor's Court, who was appointed a Special Commissioner to ascertain and report the receipts of the trustees of G. H. Johnson, trading as G. H. Johnson & Co., and as Johnson & Seward, by a decree entered in the above entitled cause, on the 3rd. day of June, 1911, and who was instructed by said decree to make report June 19th. 1911, begs leave to report that he proceeded, at once, after the entry of the decree aforesaid to execute the same, but was unable, on account of lack of details, to take, state and report the account as directed on the said 19th. day of June, 1911, as directed, but did make and state the said account and filed the same with the Clerk of the said Court on the 1st. day of July, 1911.

After having collected all the information obtainable he finds that the total receipts of the said trustees is \$4166.55. That of this amount there are liabilities amounting to \$1996.18 which have priority over the several amounts shown to be due the general creditors, and which have been or should be paid at the rate of one hundred cents to the dollar. That there are amounts due general creditors aggregating the sum of \$11188.95 to be paid out of the difference between the total assets (\$4166.55) and the total of amounts paid or to be paid at the rate of one hundred cents to the dollar, as aforesaid, (1996.18), namely \$2170.37, which will be at the rate of nineteen and three tenths (plus) cents to the dollar.

Your Commissioner has made a full statement of the assets and liabilities, stating separately the items paid or to be paid out

of the assets, as to their priority. He has also made a statement of the several amounts due and owing to the general creditors, showing the accrued interest thereon as well as the amount to be paid out on each claim at the rate of nineteen and three tenths (plus) cents to the dollar, which said statement is filed herewith as a part of this report.

Your Commissioner has filed with the said report all claims and vouchers turned over to him upon which this report is based.

Your Commissioner believes that this report should be entered of record in the current book containing fiduciary accounts in this court, and recommends that the same be ordered to be done.

So far as Your Commissioner can ascertain all of the assets and liabilities of said concern have been here stated and reported, and that there is nothing further remaining to be done in this cause, save to make distribution of the amount in the hands of the said trustees in accordance with this report.

Respectfully submitted,



Commissioner in Chancery.

THE ESTATE OF G. H. JOHNSON, TRADING AS G. H. JOHNSON AND COMPANY, AND AS JOHNSON & SEWARD, IN ACCOUNT WITH E. H. WILLIAMS, GEORGE F. WHITLEY AND J. U. BURGESS, TRUSTEES.

ASSETS.

Receipts from Undertaker accounts,.....	\$ 88.00
Received from sale of stock and collections,.....	2831.55
Received from sale of lot of land in Virginia Place (Norfolk),.....	450.00
Received as interest on deposits in bank,.....	120.00
Received from sale of Undertaker stock,.....	650.00
Received as interest on last named amount,.....	27.00
Total assets,.....	\$ 4166.55

Liabilities.

The several claims next stated are either already paid or to be paid at the rate of one hundred cents to the dollar:

Rent to D. W. Chapman & Co.....	\$ 50.00 ✓
Installment paid on lot in Virginia Place,.....	25.00 ✓
Balance on lot in Virginia Place,.....	310.00 ✓
To paid Jno. N. Sebrell, Jr. Attorney fee and for recording deed for lot in Virginia Place,.....	28.50 ✓
To paid J. U. Burgess, E.H.H. Williams and George F. Whitley, Attorneys, fee for conducting suit,...	300.00
To paid R. W. Withers, Attorney, fee for service in Court of Appeals,.....	50.00 ✓
✓ To paid Court costs,.....	107.33
To paid for drawing deed of assignment,.....	10.00

To paid for recording deed of assignment,.....	\$ 9 6.50 ✓
To paid Commissioner for taking, stating and re-	
✓porting this account,.....	14 45.00
To paid crier at sale,.....(A.R.Whitehead).....	11 2.50 "
+ To paid Stephenson & Tayler for selling Virginia	
Place lot,.....	12 22.50 ✓
To paid taxes for 1907,.....	13 11.95
To paid D. S. Phlegar, Stenographer,.....	14 22.95
To paid Mrs. L. W. Sykes, Stenographer,.....	15 18.00
* To paid for printing brief,.....	16 21.25
To paid taxes for 1910,.....	17 37.54
To reserved to pay taxes for 1911,.....	18 41.78
+ To paid Jno. N. Sebrell, Jr. , Attorney for W. E.	
Johnson, amount received from sale of undertaking	
stock, together with earned interest,.....	19 677.00 ✓
+ To paid commissions on \$4166.55 receipts,.....	20 208.38
Total,.....	\$1996.18

The several claims next stated, none of which are paid, are to be paid at the rate of nineteen and three tenths (plus) cents to the dollars

(interest computed to July 1st. 1911)

✓ Hunter & Sims (see evidence)	158.73		
Interest from Jan. 1st. 1908.	33.18	191.91	21 37.28 ✓
✓ J. E. Warren	38.63		
Interest from July 1st. 1907	9.26	47.89	22 9.27 ✓
✓ White Hardware Company,	61.43		
Interest from June 1st. 1906	18.70	80.13	23 15.57 ✓
✓ Claremont Herald,	10.50		
Interest from Jan. 1st. 1909	1.50	12.00	24 2.32 ✓
✓ The O. G. Williams Mfg. Co.	11.00		
Interest from March 15th. 1907	2.48	13.48	25 2.62 ✓
Marbury Pegram Co., Inc.	17.90		
✓ Interest from Jan. 1st. 1908	3.36	21.26	26 4.13 ✓

Marbury Pegram Co., Inc.
Interest from Jan. 1st. 1908

✓ Barrett Mfg. Co. Interest from Jan. 1st. 1907	50.52 13.50	64.02	²⁷ 12.43 ✓
✓ G. H. Guy. Interest from March 11th. 1908	10.70 1.98	12.68	²⁸ 2.45 ✓
✓ Clauss Shear Co. Interest from Nov. 1st. 1906	75.68 20.81	96.49	²⁹ 18.72 ✓
✓ Virginia-Carolina Hardware Co. Interest from Jan. 25th. 1908	128.63 26.47	155.10	³⁰ 20.13 ✓
✓ Virginia-Carolina Hardware Co. Interest from Dec. 31st. 1907	177.72 37.32	215.04	³¹ 41.82 ✓
✓ Virginia-Carolina Hardware Co. Interest from Jan. 15th. 1908	128.22 26.61	154.83	³² 20.10 ✓
✓ National Casket Co. Interest from March 9th. 1908	253.78 70.20	423.98	³³ 81.58 ✓
✓ C. A. Woolsey Paint & Color Co. Interest from March 10th. 1908.	38.30 7.54	45.84	³⁴ 8.89 ✓
✓ Stockley-Gibraltar Paint & Roofg. Co. Interest from Feb. 3rd. 1908	45.00 9.22	54.22	³⁵ 19.42 ✓
✓ G. Fred Johnson Interest from May 24th. 1904	438.57 186.83	625.40	³⁶ 121.60 ✓
✓ The H. B. Davis Co. Interest from Dec. 26th. 1905	100.00 33.07	133.07	³⁷ 25.82 ✓
✓ The H. B. Davis Co. Interest from Jan. 1st. 1906	100.00 32.75	132.75	³⁸ 25.72 ✓
✓ The H. B. Davis Co. Interest from June 10th. 1907	75.63 18.41	94.07	³⁹ 18.20 ✓
✓ M. F. Jordan Interest from May 18th. 1907	59.47 14.41	73.88	⁴⁰ 14.30 ✓
✓ Simmons Hardware Corporation Interest from May 18th. 1907	135.14 28.62	163.76	⁴¹ 31.76 ✓
✓ Red "C" Oil Mfg. Co. Interest from March 7th. 1908	45.00 8.90	53.90	⁴² 10.41 ✓
✓ V. W. Joyner Interest from Feb. 14th. 1908	25.54 5.30	30.84	⁴³ 5.97 ✓
✓ The O. C. Williams Mfg. Co. Interest from Nov. 21st. 1907	15.50 3.35	18.85	⁴⁴ 3.65 ✓
✓ The Geo. H. Jung Co. Interest from Oct. 9th. 1907.	17.00 5.68	20.88	⁴⁵ 4.03 ✓
✓ Cream City Sash & Door Co. Interest from Oct. 4th. 1907	262.89 58.89	321.78	⁴⁶ 62.35 ✓
✓ American Linseed Co. Interest from Dec. 19th. 1907	24.12 5.10	29.22	⁴⁷ 5.65 ✓

✓ J. W. Gwaltney & Co. Interest from April 30th. 1907.	30.93 7.72	38.65	48 7.47 ✓
✓ Frank T. Clark Co. Ltd. Interest from Jan. 30th. 1908	21.55 4.41	25.96	49 5.02 ✓
✓ T. J. Cox & Son Interest from Sept. 5th. 1907	39.14 12.96	52.10	50 10.08 ✓
✓ Atlantic Paint Works Interest from Dec. 31st. 1907	93.95 20.72	114.67	51 22.21 ✓
✓ Giles M. Quarles Co. Interest from Feb. 14th. 1907	72.90 19.50	92.40	52 17.90 ✓
✓ Giles M. Quarles Co. Interest from April 14th. 1906	23.58 7.18	30.76	53 5.96 ✓
✓ B. L. Roberts Interest from April 4th. 1906.	500.00 197.15	657.15	54 127.50 ✓
✓ B. L. Roberts Interest from Jan. 29th. 1906	1000.00 305.00	1305.00	55 253.40 ✓
✓ B. L. Roberts Interest from April 4th. 1907	20.00 5.08	25.08	56 4.85 ✓
✓ B. L. Roberts Interest from Jan. 29th. 1907	40.00 10.60	50.60	57 9.79 ✓
✓ Belknap Hardware & Mfg. Co. Interest from Oct. 3rd. 1906	76.99 21.24	98.22	58 19.05 ✓
✓ The Republic Metalware Co. Interest from Sept. 17th. 1907	50.44 11.65	62.09	59 12.05 ✓
✓ R. Lee Seward Interest from March 16th. 1908	500.00 98.75	598.75	60 116.17 ✓
✓ A. R. Chalmers Interest from March 23rd. 1908	500.00 98.71	598.71	61 116.16 ✓
✓ W. E. Johnson Interest from March 9th. 1911	1561.15 28.86	1590.01	62 208.81 ✓
✓ J. B. Johnson Interest from March 9th. 1911	1023.50 18.69	1042.19	63 202.20 ✓
✓ A. R. & N. O. Gwaltney (judgment) Interest from Dec. 31st. 1906 Costs	1000.00 271.80 6.67	1278.17	64 247.85 ✓
✓ Home Telephone Co. Interest from Sept. 26th. 1908	30.00 5.27	35.27	65 6.80
✓ J. B. Johnson Interest from Oct. 8th. 1908	25.00 5.80	40.80	66 7.87 ✓
✓ J. B. Johnson Interest from Oct. 21st. 1909	125.00 12.63	137.65	67 26.65 ✓
✓ J. B. Johnson Interest from Oct. 18th. 1909.	25.00 2.43	27.43	68 5.32 ✓

\$11188.95 ~~\$2187.37~~

2170.37

W. E. Johnson,

VS) DECREE.

Williams, et als, Trustees.

1912
Oct 25
Entered this
12 Dec.
6037 p 152

if

GEO. F. WHITLEY
ATTORNEY-AT-LAW
SMITHFIELD, VA.

IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT, VIRGINIA:

OCTOBER TERM, 1912:

W. E. Johnson,.....Plaintiff,
VS) In Chancery
Williams, et als, Trustees,.....Defendants.

-----oOo-----

This cause came on this day to be again heard on the papers formerly read and on the report of E. H. Williams, George F. Whitley and J. U. Burges, Trustees of G. H. Johnson, trading as G. H. Johnson & Company, and Johnson & Seward, this day filed, and to which there is no exception, and was argued by counsel.

On consideration ~~whereof~~^{and vouchers shown}, it appearing from said report, that the money in the hands of the said trustees has been disbursed by said trustees according to the report of A. S. Johnson, ~~Special~~^{Special} Commissioner, which was filed in the Clerk's Office for the County of Isle of Wight in the Current Fiduciary Book, page _____, as directed by a former decree filed herein, the Court doth confirm the said report.

And nothing further remaining to be done in this cause, it is ordered to be stricken from the docket.

Musson's Trustees -
vs- Fidei Donum
Musson & al -

CO 13 #65620

JAMES U. BURGESS,
ATTORNEY AT LAW,
POST OFFICE BUILDING,
SUFFOLK, VA.

ALYAN BUSHNELL CO., LAW STATIONERS, 542 MARKET ST., PHILADELPHIA, PA.

of the debt due W. E. Johnson.

And the Court doth further adjudge, order and decree that said trustees do pay to the attorneys who instituted and prosecuted this suit for their services rendered the sum of \$ _____.

And it appearing that there is nothing further to be done in this cause it is ordered that the same be stricken from the docket and that defendants do pay the costs of this suit.

The defendants, by counsel, having signified their intention of applying for an appeal to the Supreme Court of Appeals of Maryland, the execution of this decree is suspended for the period of sixty days upon the said defendants, or some one for them, returning into a bond with surety to be approved by the clerk of this court in the penalty of \$500⁰⁰ and conditioned according to law.

All of which is certified to the clerk of this court to be entered in the shewing order book.

R. D. White

Virginia: Clerk's Office of the Circuit Court of the County of Isle
of Wight June 22nd, 1909 at. This vacation decree was received and
entered of record.

Teste,

Wm. H. H. H.
Clerk.

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY, VIRGINIA.

In Vacation, June 19, 1909

E. H. Williams, George F. Whitley and

James U. Burges, trustees for the creditors

of G. H. Johnson.....Complainants.

vs.

W. E. Johnson and G. H. Johnson.....Defendants.

This cause, in which it appears that process has been duly served upon the defendants in the mode prescribed by law, came on this day to be heard upon the complainants bill and the exhibits filed therewith; the defendants' answer to the bill; the complainants' replication to the said answer; and the depositions taken and filed on behalf of the complainants and the respondents; and was argued by Counsel.

On consideration whereof, the Court being of the opinion that W. E. Johnson acquired no rights in the property mentioned and described in the bill of sale from G. H. Johnson, to him (which is duly recorded in the Clerk's Office of Isle of Wight County, in D. B. No. 75, page 418) save and until all of the creditors of the said G. H. Johnson, trading as Johnson & Seward, have been paid in full, the Court doth adjudge, order and decree that said E. H. Williams, George F. Whitley and James U. Burges, trustees for the creditors of G. H. Johnson, do collect from J. B. Johnson, to whom the undertaking establishment has been sold, the purchase price thereof, to-wit: the sum of six hundred and fifty dollars (\$650.00) with interest thereon from the 29th day of February, 1908, until paid, and, distribute the same after the payment of the costs of this suit among the creditors of G. H. Johnson, trading as Johnson & Seward, share and share alike, and should a balance remain after the payment of the creditors of said Johnson & Seward said balance shall be paid on account

FACTS IN JOHNSON'S TRUSTEES vs. JOHNSON ET ALs.

G. H. Johnson was the sole owner of a hardware store in Smithfield, Virginia, which was conducted under the name of G. H. Johnson & Company. He ~~also~~ was also the sole owner of an undertaking business in the same town, which was conducted under the name of Johnson and Seward. Seward owned no part of the business, received none of the profits but was simply an occasional clerk and received a ^{per} ~~xxx~~ diem for his services. With Seward's knowledge his name appeared on the sign in front of the place of business, and also on letter heads, bill heads, and stationery generally. Orders for goods were signed Johnson & Seward and notes evidencing indebtedness were signed Johnson & Seward, G. H. Johnson doing the writing/

On _____ G. H. Johnson being indebted to W. E. Johnson in the sum of \$1500.00 for cash advanced to said G. H. Johnson, executed to said W. E. Johnson a chattel mortgage conveying horses, harness and other property, used ^{in the undertaking business} and being in the undertaking business conducted under the name of Johnson & Seward, amounting in value to \$650.00. And on _____ the same G. H. Johnson executed to E. H. Williams, G. F. Whitely & J. U. Burges, trustees, a deed of assignment conveying all of his property of every kind in trust for the benefit of his creditors pro rata, the deed being in the following words and figures:

(Deed to be inserted here.)

There are a great number of creditors, part of whom are creditors whose accounts were with Johnson & Seward and a part with G. H. Johnson & Co.

(The indebtedness of "Johnson & Seward", independently of the claim of W. E. Johnson is _____)

The assets of "Johnson & Seward" are \$650.00.

The indebtedness of "G. H. Johnson & Co." is \$ _____

The assets of "G. H. Johnson & Co" are \$ _____

The evidence, and all the evidence with reference to the ostensible partnership between Johnson & Seward is as follows:

(Insert question and answers 13 to 37 inc. direct examination and 1 to 6 inc. and 14 to 17 inc. of re-direct examinations, and evidence of Sims.)

No fraud has been shown and the allegations thereof are abandoned.

Johnson vs. Johnson.

In the case of Coons vs. Coons, 106 Va. 572; 56 S. E. 576 the syllabus of the Court is as follows:

"As between the partnership and third parties a partnership may exist without an agreement to that effect between the partners, if they have so held themselves out and dealt with the public as to estop the members of the partnership from denying its existence."

Keith, president, in delivering the opinion of the Court said:

"To constitute a 'partnership' in the legal acceptance of the word, according to Lindley on Partnership, p. 1, it is requisite that the partners 'shall share something by virtue of an agreement to that effect, and that that which they have agreed to share shall be the profit arising from some predetermined business ~~engagement~~ engaged in for their common benefit. An agreement that something shall be attempted with a view to gain, and that the gain shall be shared by the parties to the agreement, is the grand characteristic of every partnership, and is the leading feature of nearly every definition of the term."

"Collyet defines a 'partnership' to be, as between the parties themselves; 'a voluntary contract between two or more persons for ~~contracting between themselves~~ ~~contracting between themselves~~ joining together their money, goods, labor, and skill, or any or all of them, under an understanding that there shall be a communion of profit between them, and for the purpose of carrying on a legal trade, business or adventure.

~~XXXXX~~ An agreement, therefore, or contract, to form a partnership is, as between the parties to the partnership, an essential element. As between the partnership and third parties, a partnership may exist without an agreement to that effect between the parties, if they have so held themselves out and dealt with the public as to estop the members of the

partnership from denying its existence. But no such question arises in this case."

In the appeal of Scull (Penn) 7 Atlantic Report 588, the syllabus of the Court is as follows:

"Assuming the correctness of the foregoing conclusions, in connection with the admitted fact that the liens of appellees' executions were prior in time to the attachments, we have a state of facts which brings the case within the rulings of this court in *Doner v. Stauffer*, 1 Pen. & W. 198; *Baker's Appeal*, 21 Pa. 76; *York Co. Bank's Appeal*, 32 Pa. 446; and other cases affirming the same principles.

In the case last cited, Keys and Moore executed articles of copartnership, in which they agreed, among other things, that Keys should be the exclusive owner of the capital stock until Moore should contribute thereto certain sums of money, which he failed to do. An execution, issued against Keys by a separate creditor, was levied on the stock. Afterwards another execution against the firm was levied on same goods, and they were sold on both writs. In a contest between these execution creditors, it was held that the former was entitled to the proceeds, on the ground that the equities of the firm ~~creditors~~ creditors could be worked out only through the equities of the partners themselves; and, Moore having no equity against Keys, the joint creditor could have none against the prior individual creditor of Keys. Mr. Justice Thompson, delivering the opinion of the Court in that case, said: "Between partners themselves the assets of the firm constitute a fund for the payment of their joint liabilities, and each member has an equity which he can enforce to accomplish this result, and consequently a lien to that extent, (*Ex parte Ruffin*, 6 Ves. 129; *Ex parte Williams*, 11 Ves. 3; *Story, Partn.* paragraph 360) provided he has an interest in the assets.....When a joint creditor levies

Johnson vs. Johnson.

on property of the firm, his execution fixes and attaches to this right to the same extent that it existed in the partners, and hence the preference over a ~~separate~~ execution creditor in the distribution. But this is predicated solely on the fact that there is joint property. Where there is no joint property, there is, of course, nothing on which the rule can operate. The mere nominal ownership is not enough. There must be an equity. If that equity never existed, a creditor's execution could not attach to any right, amounting to a lien, to have the assets appropriated to a partnership debt. That Moore had no interest in the firm property is found by the auditor. That this was a necessary conclusion from the article of copartnership, and a failure to comply with it, cannot be doubted.....The property was all individual property, and priority of seizure gave priority of ~~priority~~ right in the distribution. To the complaint that the property was in appearance firm property, and that it is ~~so~~ a fraud on a creditor of the firm not to hold so in fact, notwithstanding it is in reality not so, it may be answered that a creditor can seize no more than belongs to the debtor, and succeeds only to his rights as defined by the law, and that he can blame no one but himself for becoming a creditor. But, if the rule were not so held, the separate creditor might with more reason complain. He might point to the fact that the property was separate, not joint, and claim that, as he was first in lien and seizure, he ought not to be last in distribution, because the property was but partnership in appearance, while separate in fact. He might with propriety complain if a fiction should prevail over the reality."

In view of the conclusive finding of the learned auditor that the property from which the fund in court was realized was the separate property of Howard D. Thomas, and

Johnson vs. Johnson.

not the property of the alleged firm, the reasoning of the learned judge, in the case quoted from, applies with great force in this case. Some of the cases relied on by appellants take a different view of the subject, but we regard the doctrine of our own cases as more consonant with reason and the weight of authority.

It follows from what has been said that the controlling fact in the case is that the property represented by the fund for distribution was the separate property of Thomas, and not the joint property of the alleged firm composed of Thomas, Skeffington, and Reinstein. But assuming, for the sake of argument, that it is not so, and that the case turns on the question whether Skeffington and Reinstein are not estopped by the advertisement, their own acts, etc. from denying that they were Thomas' partners, we think the conclusions of the learned auditor as to that question are correct. The advertisement, signed by Thomas alone, wherein he announces that "having bought the interest of Dabis S. Burns, Jr., in the above business, I will continue it under the firm of Howard S. Thomas & Co., admitting Nathan Skeffington and Frederick E. Reinstein to interests from this date," did not warrant the inference that they were admitted as partners. It is entirely consistent with what the auditor found the facts to be; viz., that their "interests" were not those of partners, but merely contingent interests in profits, dependent on the realization of net profits in excess of \$25,000. The fixed salary of the former was \$2,500. and that of the latter \$2,000. payable in monthly installments, coupled with the additional contingency of 7-1/2 per cent. on the excess of net profits over \$25,000. The announcement was that Thomas himself would continue the business in the name of Howard D. Thomas & Co., At most, this was calculated to prompt a prudent man to make inquiry. If so,

Johnson vs. Johnson

it was the duty of appellants to inquire what was meant by admitting Skeffington and Reinstein "to interests". If they had performed that duty, they would have ascertained that the parties named were merely employees, and not partners.

There is nothing in the acts shown to have been done by Skeffington and Reinstein in the course of their employment that would estop them from denying the alleged co-partnership relation. While Thomas' declarations, made in their absence, and without their knowledge, might estop him, they were not bound thereby. The existence of a partnership may be proved by the separate declarations of each of the alleged partners; but neither of them is bound by the separate ~~declarations~~ admissions of the others of which he has no knowledge. But it is unnecessary to pursue the inquiry further. The learned auditor has clearly shown that the evidence is insufficient to estop either of the two parties named from denying that they were partners of Thomas.

Decree affirmed, and appeal dismissed, at the costs of appellants.

2182.57 12.5 0000₂.0006

Apr 20/1906

W. H. Thomas

to New York City

D. B. No. 76, p. 9,

"Exhibit - 1"

G. H. Johnson & Co.,

To) Assignment,

E. H. Williams, Geo. F. Whitley and J. U. Burges, Trustees.

THIS DEED, Made this 20th. day of February, 1908, by and between G. H. Johnson trading as G. H. Johnson & Company, of the County of Isle of Wight, Virginia, party of the first part, and E. H. Williams and Geo. F. Whitley of the County and State aforesaid, and J. U. Burges, of the County of Nansemond, Virginia, chosen as Trustees, parties of the second part, and the creditors of the said G. H. Johnson, trading as G. H. Johnson & Company, parties of the third part:

WHEREAS, the said party of the first part is embarrassed in his pecuniary affairs, and desires to secure his creditors in the payment of their respective claims against him, as far as his property will admit of, and with that object in view, he has determined to convey his property in trust as hereinafter contained:

NOW, THEREFORE, THIS DEED WITNESSETH: That the said party of the first part in consideration of the premises and of the sum of ONE DOLLAR to him in hand paid by the said parties of the second part, hath granted and conveyed, and doth hereby grant and convey unto the said parties of the second part all his, the said party of the first part's property, real personal and mixed, of every kind and description, the same being enumerated and described as far as remembered, in the schedule hereunto annexed, marked "Schedule A". To have and to hold the said property aforesaid unto the said E. H. Williams, Geo. F. Whitley and J. U. Burges, their heirs or assigns forever.

IN TRUST to collect, sue for, demand, receive or recover all such sums of money as may be due and owing to the said party of the first part, and to sell and dispose of all the property mentioned in the said Schedule "A", in bulk or in part, either at public auction or private sale as may be deemed best by the said trustees or any two of them; and from the proceeds of such sales and collections as afore-

said, after paying all the reasonable and proper costs, charges and expenses, including a reasonable fee and 5% commissions to the trustees, the said trustees being allowed to give fifteen per centum for the collection of the book accounts, and other evidences of debt mentioned in the said Schedule "A", shall pay to each and all of the creditors of the said party of the first part, their respective pro rata share of the said proceeds, a full and complete list of which creditors is as far as remembered contained in schedule "B" hereunto annexed. Should any creditor or creditors of the said party of the first part not be embraced in schedule "B", his or their rights hereunder are not to be prejudiced thereby.

In witness whereof, the said party of the first part has hereunto set his hand and affixed his seal, the day and year first above written as a date thereof.

G. H. Johnson,

(SEAL)

State of Virginia,

County of Isle of Wight, to-wit:

I, Geo. K. Nelms, a Notary Public in and for the County aforesaid, in the State of Virginia, do hereby certify that G. H. Johnson, whose name is signed to the above deed dated February 20th. 1908, has acknowledged the same before me in my County aforesaid.

Given under my hand this 21st. day of Feby. 1908.

Geo. K. Nelms, N. P.

My commission expires Oct. 21st. 1908.

Schedule "A" referred to in the annexed deed.

Stock of hardware, <u>saws</u> , doors, blinds, etc.,	\$2355.00
Sundry notes and open accounts,	400.00
10 yds. lining,	2.00
2/3 doz. coffin handles,	6.38
One lot coffin handles,	1.00
1-5/6 doz " "	5.30

$\frac{1}{2}$ gross thumb screws,	1.42
$\frac{1}{2}$ gross escutcheons,	1.50
1 lot escutcheons and thumb screws,	.85
1 lot tin studs,	1.40
6 name plates,	2.00
8 ornaments,	1.60
1 lot of odd escutcheons,	.15
1 doz child corpse lifts,	1.80
2 door crepe	2.00
1 lot of screws,	.50
1 lot of tools,	3.00
$\frac{1}{2}$ gross box screws,	.70
$\frac{1}{4}$ gross casket rests,	.35
1 coffin,	1.50
1 stretcher,	8.00
1 gray plush couch,	23.00
1 oak casket,	15.00
5 childs plush caskets,	36.25
2 white " "	26.00
1 enamel coffin,	3.40
2 white enamel coffins,	4.25
2 copper linings,	35.00
7 coffins,	22.75
3 coffin boxes,	9.00
1 damaged coffin,	1.00
1 coffin,	1.00
20 yds lining,	3.00
15 coffin boxes,	25.00
1 buggy and harness,	20.00
1 blind horse,	50.00
1 black horse,	175.00
1 hearse,	200.00
1 set double harness,	30.00
1 carriage,	25.00

2 prs. stools,	10.00
1 pr. straps,	.50
2 buggy robes,	3.00
1 cart and wheels,	5.00
1 shroud,	1.50
58 bags peanuts at \$2.50 per bag,	145.00
4 bbls. corn " \$3.50 " bbl.	14.00
700 lbs. fodder at \$1.25 per C.	8.75
1 ton of hay,	12.00
1 lot peanut vines,	4.00
1 female calf,	10.00
5 sows at \$5. each	25.00
28 pigs at \$1.00 ea.	28.00
1 male hog,	5.00
3 plows and plow harness	10.00
farming implements and tools,	13.00
Equity- 2 lots in Virginia Place, Norfolk, Va.,	160.00
2 shares water stock,	25.00

Schedule "B" referred to in the annexed deed.

The Geo. H. Jung Co., Cincinnati, O.	17.00
Simmons Hdw. Co., New York City,	134.14
<u>J. T. Cox & Son</u> , Smithfield,	39.14
J. M. Gwaltney, Norfolk, Va.,	30.93
Hunter & Simms, Richmond, Va.,	150.00
Virginia-Carolina Hdw. Co., Richmond, Va.,	434.57
Cream City Sash and Door Co., Milwaukee, Wis.	262.89
American Linseed Co., Richmond, Va.,	24.12
Belknap Hdw. & Mfg. Co., Louisville, Ky.	76.99
H. B. Davis Co., Baltimore, Md.	75.66
C. A. Woolsey Paint & Color Co., Hersey City, N. J.	38.30
O. G. Williams, Mfg. Co., Chicago, Ill,	11.00
White Hdw. Co., Norfolk, Va.,	66.69

Giles M. Quarles Co., Baltimore, Md.	96.48
Clauss Shear Co., Fremont, Ohio,	45.68
Frank T. Clark Co., Ltd. Norfolk, Va.,	21.55
Marbury-Pegram Co., Norfolk, Va.,	17.90
Stoakley-Gibraltar Paint Co., Norfolk, Va.,	~~~~~
National Casket Co., Baltimore, Md.	300.00
<u>J. N. Guy</u> , Smithfield, Va.,	10.70
J. E. Warren, Smithfield, Va.,	~~~~~
Bank of Smithfield, " "	1450.00
B. L. Roberts, Treasurer, Windsor, Va.,	1680.00
B. L. Roberts, Treasurer, Windsor, Va.,	20.00
V. W. Joyner, Smithfield, Va.,	~~~~~
W. E. Johnson, Ivor, Va.,	1500.00
A. R. & N. O. Gwaltney, Comet, Va.,	1060.00
J. Fred Johnson, Marion, S. C.	450.00
J. B. Johnson, Smithfield, Va.,	792.00
Atlantic Paint Works, Baltimore, Md.,	93.95.

Virginia: Clerk's Office of the Circuit Court of the County of Isle of Wight, March 6th. 1908, at two o'clock P. M. this deed was received, and, with the certificate annexed, admitted to record.

Teste, A. S. Johnson, Clerk.

A copy, Teste,

A. S. Johnson C.C.

Due \$125'

"Exhibit 2"

D. B. No. 75, page 418.

G. H. Johnson,
To) Bill of Sale.

W. E. Johnson,

Know all men by these presents, that, I, G. H. Johnson, of the County of Isle of Wight, State of Virginia, in and for the consideration of the sum of FIFTEEN HUNDRED DOLLARS (\$1500.00) to me in hand paid by W. E. Johnson, of the County of Southampton, State aforesaid; at and before the sealing of these presents, the receipt whereof is hereby acknowledged, do hereby bargain, sell, assign and deliver unto the said W. E. Johnson, the goods and chattels following, namely; Two Black mares named "Mary and Ida" one Hearse, one carriage, one buggy, one cart and wheels, two sets of double harness, one set of single harness, three buggy robes. All of my undertaking stock, consisting of coffins, caskets, hardware, trimmings tools and etc. To have and to hold the said goods unto the said W. E. Johnson, and his assigns forever. And I, G. H. Johnson, for myself and my heirs, do covenant with the said W. E. Johnson, and his assigns, that the said goods are sound, and of good and merchantable quality; and further that I will warrant the title to the goods above mentioned to the said W. E. Johnson and his assigns forever, free from the claims of all persons whatsoever..

Witness my hand and seal, this 1 day of February, 1908.

G. H. Johnson, (SEAL)

State of Virginia,

County of Isle of Wight, to-wit:

I, Geo. F. Whitley, a Commissioner in Chancery for the Circuit Court of County aforesaid, State of Virginia, do certify that G. H. Johnson, whose name is signed to the foregoing writing, bearing date on the 1st. day of February, 1908, has acknowledged the same before me in my County aforesaid.

Given under my hand this 1 day of February, 1908.

Geo. F. Whitley,
Commissioner in Chancery.

Virginia: Clerk's Office of the Circuit Court of the County
of Isle of Wight, February 1st. 1908, at four o'clock P. M.
this deed was received, and, with the certificate annexed, ad-
mitted to record.

Teste, *A. Johnson* C.C.

A copy of
*Teste, *A. Johnson**

See for copy 50.

D. B. No. 75, page 417.

G. H. Johnson,

To) Bill of Sale.

"
Exhibit - 3"

J. B. Johnson,

Know all men by these presents, that I, G. H. Johnson, of the County of Isle of Wight, State of Virginia, in consideration of the sum of SEVEN HUNDRED AND NINETY TWO DOLLARS (\$792.00) to me in hand paid by J. B. Johnson, of the County of Isle of Wight, State of Virginia, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, do hereby bargain sell assign and deliver unto the said J. B. Johnson, the goods and chattels following, namely; Sixty bags peanuts, thirty barrels of corn, one thousand pounds of fodder, five tons of hay, one female calf, six sows and twenty eight pigs, one male hog. All of my household and kitchen furniture, consisting among other things, of beds bedding rugs and matting, chairs, tables, sideboards, stoves and cooking utensils, vases and pictures. To have and to hold the said goods unto the said J. B. Johnson and his assigns forever. And I, the said G. H. Johnson, for myself and my heirs, do covenant with the said J. B. Johnson, and his assigns, that the said goods are sound and of good and merchantable quality; and further that I will warrant the title to the said goods to the said J. B. Johnson, and his assigns forever, free from all claims of all persons whatsoever.

Witness my hand and seal, this 1st. day of February, 1908.

G. H. Johnson,

(SEAL)

State of Virginia,

County of Isle of Wight, te-wit:

I, Geo. F. Whitley, commissioner in Chancery for the Circuit Court of the County aforesaid, in the State of Virginia, do certify that G. H. Johnson, whose name is signed to the fore-

going writing, bearing date on the 1 day of February 1908, has acknowledged the same before me on my county aforesaid.

Given under my hand this 1 day of February, 1908.

Geo. F. Whitley,
Commissioner in Chancery.

Virginia: Clerk's Office of the Circuit Court of the County of Isle of Wight, February 1st. 1908, at four o'clock P. M. this deed was received, and, with the certificate annexed, admitted to record.

Teste, A. S. Johnson, C.C.

A copy, Teste, *A. S. Johnson* C.C.

*Fee for copy
50¢*

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals in the City of Richmond, on the 18th day of June, 19 10. The following copy of an order of this court, entered at its place of session at Wytheville was this day received by the clerk here:

"VIRGINIA:

"In the Supreme Court of Appeals held at the Courthouse of Wythe County,
in the town of Wytheville,
on Thursday the 9th day of June, 19 10.

W. E. Johnson	Appellant
against	
E. H. Williams, George F. Whitley and James	
W. Burges, trustees for the creditors of	
G. H. Johnson & Co. and G. H. Johnson	Appellees.

Upon an appeal from and supersedeas to a decree pronounced by the circuit court of the County of Isle of Wight on the 19th day of June, 1909.

"This cause, which is pending in this court at its place of session at Richmond, having been fully heard but not determined at said place of session; this day came here the parties by counsel, and the court having maturely considered the transcript of record of the decree aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is error in the decree complained of.

It is, therefore, adjudged, ordered and decreed that the decree aforesaid be reversed and annulled and this cause remanded to the said circuit court to be proceeded with in accordance with the views expressed in the written opinion of this Court.

And it is further adjudged, ordered and decreed that the Appellant recover of the Appellees his costs by him in this behalf herein expended.

Which is ordered to be entered in the order book here and forthwith certified, together with a certified copy of the opinion in this case, to the clerk of this court at Richmond, who will enter this order in the order book there and certify it to the said Circuit Court of the county of Isle of Wight.

Appellant's costs
at Wytheville, \$1.77

A copy

TESTE: J. M. Kelly C. C.

TESTE: *Stewart Jones* C. C.

A copy
Teste: Stewart Jones, C.C.

Appellants costs
at Richmond:

Attys fee writ tax \$26.50

Printing & not in-
cluding transcript) 41.50

Clerk's fees 4.82

\$72.82

17 Teste: Stewart Jones, C.C.
71.59

Virginia: Clerk's Office of the Circuit Court of the County of Isle of Wight July 7th. 1910, this decree of the Supreme Court of appeals of Virginia, was received and entered of record.

Teste, *Johnson* C. C.

Manuscript \$500
Memo 1.25
Lent 1.00
Enter the decree 50
Copies 60
In con 4
Copy 25
Total 91.5