

1872-007
Nansemond Co. (Suffolk)

Chancery Causes: Willet Launsbury vs John R. Kilby Trst etc

Cohon, McClenny, Frisbee

THE COMMONWEALTH OF VIRGINIA,

To the SHERIFF OF NANSEMOND COUNTY—Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON

John R. Kelby
Willis E. Cohoon William J. Cohoon Mr. McLenny
and Franklin Frobee.

to appear at the Clerk's office of the *County* COURT OF NANSEMOND COUNTY, at the Rules to be holden for the
said Court, on the first Monday in *November* next, to answer

a — Bill in Chancery, exhibited against *Thurmon*
in the said Court, by *Willitt Lunsberry*

and have then and there this Summons. Witness, WILLIS E. COHOON, Clerk of our said Court, at his office,
this *3rd* of day *October* 1871, in the *96th* year of the Commonwealth.

Willis E. Cohoon Clerk of the Court.

Copy for

Franklin Fussy

THE COMMONWEALTH OF VIRGINIA,

To the SHERIFF OF NANSEMOND COUNTY—Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON *John R. Kilby, Willis E. Cohoon, William J. Cohoon, Wm. McElenny and Franklin Fudge*

to appear at the Clerk's office of the *County* COURT OF NANSEMOND COUNTY, at the Rules to be holden for the said Court, on the first Monday in *November* next, to answer *a* Bill in Chancery, exhibited against *them* in the said Court, by *Willis E. Cohoon*

and have then and there this Summons. Witness, WILLIS E. COHOON, Clerk of our said Court, at his office, this *30th* of day *October* 187*1*, in the *96th* year of the Commonwealth.

Willis E. Cohoon Clerk of the Court.

Executed and a true copy delivered to John R Kilby
Willis E Cochrane William J Cochrane William McElenny each
Franklin Treasur Mr Resident -
M H Eley Dy for
A S Eley Sheriff

g. & b. pg
Mellie Naunsheng

25 { Sums in
Chy

John R Kilby & Co

1891

To

Member Rules

(Cir cb)

Pro Broth

page

53

To Willist Lumbury
Sir

Take notice that we shall
apply to the Hon. Geo. Blaw, Judge of the Circuit
Court of Staunund County Va. to dissolve
the Injunction awarded against us by Hon.

Judge Brumby, of the Corporation Court of
Norfolk City, and that this application
will be made by us at the Court house
in the City of Norfolk on the 15th day of
December (1871) next at 10 O'clock
A. M. - which Injunction is now
pending in the Circuit Court of
Staunund County Virginia

Franklin Inslee
John R. Kelly
Nov. 28 1871

Frisbee Jr
at
Lansbury
Morse Jr.

Executed Dec 2nd 1891 and a true copy delivered
to Thos J. Lansbury

Wm. C. Bayley
for a & copy struck off

\$2100.

on the first day of January, one thousand eight
hundred and sixty nine, I promise to pay unto John
R. Kilby Trustee for William E. Cohen & W. J. Cohen. in order
the sum of Twenty one hundred dollars, for value
received, to wit: balance of first deferred payment on
purchase of land this day made, with interest thereon
from the first day of January 1868, - for the true
payment of which I bind myself, my heirs, exors.
and admors. firmly by these presents - witness
my hand and seal December 12th 1867.

Witness

Willet Lounsbury Esq.



Willet Lounsbury
\$21.00

Sent 1. Jan. 1869
Rec'd 1 Jan 1868

Secured by Recd of Trust
or Lounsbury hence no stamp

Int from 1 Jan 1868
to 6 Jan 1869

S

\$21.00.00

128.10

\$2225.10

1869 Jan 6 Westport.

John D. Kelly
owner

Know all men by these presents that we
Wittell Xambsbury and Calvin B. Cartwright
are held and firmly bound unto John R. Kilby
trustee, Willis & Cohoon, William J. Cohoon
William L. McClenney and Franklin
Fusbee in the sum of Five hundred
Dollars, for the payment thereof well
and truly to be made unto the said John R.
Kilby, trustee, Willis & Cohoon William J. Cohoon
William L. McClenney and Franklin Fusbee,
we bind ourselves, our heirs executors and
administrators, jointly, severally, and jointly
by these presents, sealed with our seals and
dated this 29th day of October 1871. and in the
96th year of the Commonwealth.

The Condition of the above obligation is such
that whereas the above bound Wittell Xambsbury
hath obtained from Judge of the Court
of the Corporation of Norfolk City, An in-
junction to stay until further order of
court all further proceedings of John R.
Kilby trustee to sell the land as advertised
under the deed therein referred to.

Now if the said Wittell Xambsbury shall
well and truly pay and satisfy all cost
and damages as shall be awarded against
him in case the injunction aforesaid be
discharged then this obligation to be void
else to remain in full force

our

Subscribed & Acknowledged before
Mrs.

Acknowledged in presence of.
H. E. Bohon Clark.

Willet Lounsbury Esq
Calvin B. Cartwright Esq

Willet Lounsbury

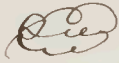
To & Bond

James B. Kelly Justice of the Peace

Whereas Willis E. Cohoon and Wm. J. Cohoon of
Hanseman County Virginia, being the owners, under
the last will and testament of their father Capt. John C.
Cohoon deceased of a tract of Land in said County
described as follows to wit. as containing seven hundred
and forty acres more or less, and adjoining the lands of
Re J. Saunders Rich^d H. Beamer, James H. Beamer
and the heirs of Edw^d H. Darden and Hanseman River,
and is on the East side of said River in the Lower
Parish of said County — and whereas on the 10th
day of April 1866 the said William J. Cohoon made and
executed a deed of trust to John R. Hilly trustee for the
benefit of Wm J. Beamer and others and conveyed
his undivided half of said Lands, with power to said
John R. Hilly trustee, as aforesaid to sell said real estate
privately or publicly for cash, or on a credit as he might
deem best — which said deed was recorded in the clerk's
office of Hanseman County — Court on the 10th day of April
1866. and whereas also Willis E. Cohoon died the 11th
day of April 1866 executed a deed of trust on his behalf
of said Lands to said John R. Hilly as trustee, for the
benefit of various persons, with the same powers
as to sell, and which deed was duly recorded in the
Clerk's office of said County on the 12th day of April 1866 and
whereas, also the said Willis E. Cohoon by his further deed
of trust dated the 10th day of September 1866 made a
further deed in said Lands to said John R. Hilly as trustee
for Sallie J. Cohoon, and which deed was recorded
in said Clerk's office on the 18th day of September

1866, and grants to said John R. Kelly trustee as aforesaid
the same powers as to a sale of said Lands and, whereas
in execution of the powers and authority ~~is~~ vested in the
said John R. Kelly as trustee as aforesaid & the other
several deeds aforesaid, he has sold the said tract
of Lands as herein before described unto Wm. Lumsbury
of the County of Albany and State of
New York, for Twelve Thousand dollars of which
three thousand dollars is cash, and the remainder
in bond, two and three years, credit, with interest
from date to be secured by Lien in said Lands
and in order to show the further consideration
and sanction of said Willis & Cohoon and
J. Cohoon, and to convey an absolute title to said Lands
unto said Wm. Lumsbury - they the said Willis & Cohoon
and William J. Cohoon and Sallie L. Cohoon wife of the
said William J. Cohoon have also executed this deed,
this deed therefore made this twelfth day of December
one thousand eight hundred and sixty seven, between
the said John R. Kelly Trustee as aforesaid and the
said Willis & Cohoon, and William J. Cohoon and
Sallie L. Cohoon, wife of Sanseman County - Virginia
of the one part, and the said Wm. Lumsbury
of the County of Albany and State of New York of
the other part, Witnesseth that the parties of the
first part in consideration of the said sum of
Thirteen thousand dollars paid in cash - & the sum
of four thousand dollars secured as aforesaid

Leo. grant with general warranty as to the said
 Willis E. Cohoon & William J. Cohoon & special warranty
 as to the said John R. Kelly trustee as aforesaid, unto
 the said William Lansing and to his heirs and assigns
 forever, the Lands above described with all its
 privileges, rights, and appurtenances, and the said
 Willis E. Cohoon and William J. Cohoon, covenants
 that they have the right to sell the said Land
 in conjunction with said John R. Kelly trustee
 as aforesaid: that the grantee shall have
 quiet possession of said premises, and that
 all further assurances thereof hereof and hereafter
 shall be executed with the following
 signatures & seals.

John R. Kelly	
W. E. Cohoon -	
Wm J. Cohoon	
Salina L. Cohoon	

The above is a true copy of the deed from John
 R. Kelly & others to William Lansing -

Willis E. Cohoon Clerk,

John R. Kelly writes
for W. E. & J. Cohen

to & send

Willet-Lansburg

Dec 78

VALUABLE LAND!

On Nansemond River, in Nansemond Co.

FOR SALE!

By virtue of a Deed of Trust from Willet Lounsbury, I will offer for sale before the court-house door of said county, on

Monday, Nov. 13, '71,

that valuable farm formerly owned by Capt. John C. Cohoon, containing

OVER 700 ACRES,

and adjoining the lands of Col. Schriver, Dr. R. H. Beamon, and others. This land lies on Nansemond river and on the County road leading from Suffolk to Norfolk, and about seven miles from Suffolk. It has a good landing on Nansemond river. The lands are good. Has large Dwelling and out-houses, and is in a pleasant neighborhood, and can easily be divided into two parcels.

Terms liberal and made known at the sale.

JOHN R. KILBY, Trustee.

October 9, 1871.

ТОНИ В. КИТВА ГЛЫРОВА

1890

1890

Handwritten notes:
73
Kell
H. 10

ИТАСГОТ

1890

ИТАСГОТ

Agreement made this 23^d day of March

1870 between Franklin Frisbee of Albany
County New York of the one part and
Willet Lounsbury of Nansemond Cou-
nty Virginia of the other part. Witne-
ssth that whereas the said Willet Lounsbury
owns a farm on Nansemond River
in Nansemond County, on which is a
Deed of Trust to secure several debts
one of which Debts due by Bond & for
\$3000. is now held by the said Frisbee and
another of said Bonds for \$3000. is now
held by R. H. Beman. Now the said Frisbee
covenants to pay to said Beman the Debt
of 3000. held by him & all the Interest that
may be due thereon from the 1st day of
January 1870. and the said Lounsbury
on his part covenants to pay to said
Frisbee Ten percent pr annum on the Debt
of 3000 now held by said Frisbee from
the 1st day of January last until paid.
And also ten percent on the 3000 Debt now
held by said Beman from same date
from which last Interest two percent is to
be deducted on such amount as the said
Frisbee shall not actually have paid
off. and the said Lounsbury further
covenants to pay all Taxes on the said
Land & to keep the Fences Land & Buildin-
gs in good Repair. and should he sell
any portion of said Lands this or future
years One Third of the profits over and
above Original Cost. to be the property
of said Frisbee & the other Two Thirds
of the profits & the whole of the said sales
to be applied to pay the claims held by
said Frisbee

Witness the following signat-
ures & seals

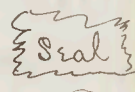
signed by * Franklin Frisbee ^{scribes}
Witnefs & Willet Lounsbury
John R. Eiby

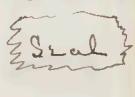
Frisbee &
Lounsbury's
Agreement

Lounsbury
7 3 4 $\frac{1}{2}$ "
Kelly &c

This Deed, made this Twelfth day of December one thousand eight hundred and sixty seven, between Willet Lounsbury, late of Albany County State of New York, but now of Hansemond County Virginia, of the one part, and John R. Kilby chosen Trustee of the other part, Witnesseth that the said Willet Lounsbury doth grant with general warranty, unto the said John R. Kilby Trustee as aforesaid the following real estate, to wit: a tract of land in the Lower Parish of Hansemond County and State of Virginia, on the East side of and adjoining the Hansemond river, and containing seven hundred and forty nine acres, more or less, and adjoining the Lands of Ro. D. Saunders, Richard. H. Bramer on James. H. Deermis and the heirs of Edward. H. Barden deceased, together with the appurtenances belonging to the same, which land was this day conveyed to said Willet Lounsbury, by John R. Kilby Trustee, and Willis E. Cohoon and William D. Cohoon & wife, by deed duly recorded. In Trust to secure in the first place and in full without any abatement the sum of Nine hundred dollars to Wm. D. McClenny with Interest from the 1st January 1868 and due by Bond dated this day and due 1st January 1869. and after the payment of said Debt and all costs and expenses, then pay to said John R. Kilby three several Bonds held by himself as Trustee for Willis E. Cohoon and Wm. D. Cohoon being deferred payments on said Land this day sold to said Lounsbury as aforesaid, To wit: the sum of Twenty one hundred dollars due on the 1st of January 1869. The sum of Three thousand dollars due on the 1st of January 1870. and the sum of Three thousand

dollars on the first day of January 1871. which three Bonds are dated this day and all carry Interest from the 1st day of January 1868. and power is hereby conferred upon and granted to the said John R. Kilby, Trustee as herein first named, to make sale of the lands aforesaid whenever default shall be made in any one of said payments, whenever thereafter directed by any creditor or he may deem proper, and in making such sale may do so for cash, or any credit as in his judgement he may think proper and in all other respects shall execute this deed as the Law directs. Witness the following signatures and seals.

Willet Lounsbury 

John R. Kilby Trustee 

In the Clerk's office of Nauset County Court, the 12th day of December 1867. This deed of Trust was acknowledged by Willet Lounsbury and John R. Kilby Trustee and thereupon admitted to record. The requisite stamps of \$9.00 having been affixed and cancelled

Teste:

Patric. B. Proutie, Clerk.

Copy.

Teste:

Miss E. Bohon Clerk

'Millet Lounsbury

No. 3 Bard of Trust

John R. Kilby Trustee

for
W. E. Cohoon & W. J. Cohoon

Lounsbury

No. 3 Ex. A'

Kilby

The matters in Controversy between
myself & Franklin Fisher having
all been settled I hereby declare that
the Injunction still now pending
in the Circuit of Tauxemund County
be dismissed.

Dec 15 1871

Willet Lounsbury

Miss Lowry
under
to Miss

The answer of Franklin Fisher to a Bill in Chancery & Injunction, exhibited in the Circuit Court of Hanover County by Willist Lounsbury, against John R. Kilby Trustee, & others.

This Respondent says that it is true as stated in said Bill, that the said Willist Lounsbury did on the 12th day of December, 1867 execute a deed of Trust to John R. Kilby, ^{conveying} the land referred to, but that said deed of Trust was to said Kilby as Trustee to secure the debt to Wm D. McElenny as referred to of \$900, and then to said Kilby, as Trustee for W. E. Cochran & W. J. Cochran the three Bonds of \$2100 & \$3000. & \$3000, as referred to.

That it is true the said Bonds were given for the deferred payments on said Land.

That this respondent knows nothing of the payment of any Interest by said Lounsbury to said McElenny.

That as to the two Bonds each of \$3000. they are now held by this Respondent -

That at the earnest solicitation of said Lounsbury he agreed to take up & pay the said sums to the then holders thereof - not to cancel the same, but simply to take the place of the original creditor, & hold the said Bonds & ~~were~~ the security of the deed of Trust on said Land so as to enable the said Lounsbury ^{to get} him to pay the

same if he could - That the Deed of Trust, expressly provides for the payment of said debts and directs the said John R. Kelly the Trustee therein to see for cash or on credit, the said Land, as in his Judgment he might think proper - and the Law (which is a part of said deed) directs that such sale may be made when required by any, creditor -

That your Respondent advanced the money on the express understanding with said Lomdshury that the Land was to remain bound for the same under the Deed of Trust then on it, and he took an assignment of said Bonds, without recourse only to the party assigning the same, so as not to hold them personally liable, should the Land prove insufficient to pay the same or the said Lomdshury fail to do so - That

Your respondent did on the 23^d day of March 1870 enter into the agreement referred to in said Bill, by which he agreed to pay ^{only one of said bonds} ~~the said bonds~~ ^{as he already owned the other} ~~Bonds~~ of \$3000 each, expressly referring in said Agreement to the fact that the Land was under a Deed of Trust to secure them, for which sum, an increased rate of Interest was to be paid & in order not to disturb the Lien of the Deed of Trust no change was made in it - no release of the same, but an outside agreement, in addition

thence, for an increased rate of Interest.

That the said agreement further binds the said Sourdby to keep the fences, and buildings in good repair; which he has not done, but on the contrary the fences are greatly out of order, not kept up, the houses gone to decay from neglect, & the farm generally greatly depreciated because of the wreck into which it is falling, because of the said Sourdby's failure to comply with his said agreement. — That the agreement confers no direct authority on said Sourdby to sell any of said Land but he is thereby allowed to contract for such sale, but only to be completed by a Release from him as the holder of said Bonds.

Your Respondent denies that there is any necessity for said Impression because of the reasons alleged — Because the two unpaid debts of \$3000 each need no Commissioner to calculate, but are easily known —

That the said Sourdby ^{& the Interest thereon} failing to pay said debts, and they became due, and as the property was, & is daily depreciating for the causes aforesaid, this Respondent, ordered sale of said Land; That at the special request of said Sourdby the sale was delayed till November term 1871

of Lancaster County Court, Va.

That the Terms as named in ~~the~~ notice of sale by said Kilby Justice, are advertised to be "Liberal" - This the said Somersbury has no just reason to Complain of, for by the deed of Trust, the Justice has the power to sell for Cash, and in voluntarily offering liberal terms is to the advantage of said Somersbury & an act of which he has no right to Complain & is no ground for preventing a sale of the said Land.

That the Lien of said deed of Trust as aforesaid is not discharged, nor was it intended to be & this was well known to said Somersbury, but was suffered to remain under the old Lien at his request,

That ~~there~~ is no matter involved, of which any inquiry need be made to furnish any information on - No one has a right to Complain but your Respondent, if he chooses to take the Debt & six percent Interest thereon as secured by the Trust & abandon the claim for greater Interest, or look to Somersbury on his Contract therefor, the said Somersbury has no right to Complain - and the amount of said Debt & the Interest due thereon are not uncertain -

That the market for Land is not so

depreed as to give a Court of Equity ^{power} to enjoin a sale of Land, &c in the opinion of the Deftor they may be better - But that such delay is intended to enable the Deftor to hold sure the premises, against the rights & wishes of the Creditor and to make all he can off the premises, & pay nothing to the Creditor while the premises are going down in decay every day.

That it is not true that the said John R. Kelly Trustee as aforesaid has not consulted with said Lomdibury about said sale, but on the contrary this Respondent is informed that repeated consultations have been had with him & the sale delayed till Nov. from last spring at the special request of said Lomdibury.

That the objection to the sale being made by said Kelly because he was a Creditor in said Debt of Trust is no sufficient reason to delay said sale. The said Kelly had no personal Interest in said Debt was merely Trustee, not a creditor in his own right, and that no objection was ever urged by said Lomdibury to his acting as said Trustee, but on the contrary he has been all the time conferring with him, when necessary, as to such sale.

This Respondent took the said Bond with

an assignment without recourse only to the party who assigned them, or as not to hold them personally liable as aforesaid, looking to the deed of Trust Soundly for payment & security, & your Respondent denies that he has lost the benefit of the Lien of said deed of Trust under which he claims just a vendor's Lien.

Your respondent prays that the said Injunction may be dissolved & that the sale of said Land may be allowed to be made, but if not that a Receiver may be appointed to take charge of said premises, rent the same out, so that the proceeds may go to reduce the debt due to your Respondent, but retained by said Soundly while he is paying nothing towards said debt but appropriating all the proceeds of said Land to his own use, & while neglecting the fences, houses & allowing all to go to decay & wreck, so that when a sale is made the farm will be so much impoverished & injured as to cause it to sell for so small a price as to entail heavy loss on your Respondent, a statement of amount due your respondent is annexed.

And having answered &c.

Franklin Frisbee

Statement of Amos. due Franklin Fisher
by Miller Townsend as referred to in said
foregoing answer.

1st Bond assigned to him by
John R. Kelly, Justice of the Peace \$3000.00
Int. from the 1st Jan'y 1869 to
1 Nov. 1871 - 2 yrs. 10 mo. } 570.00

2^d. Bond assigned as above \$3000.00
Int. from same time 570.00

\$7020.00

Due Wm. S. McHenry 900.00

Hanseman County to wit.

I, John R. Kelly a Notary
Public in and for said County do
certify that Franklin Fisher whose
name is signed to the foregoing
answer, personally appeared before me
and made oath that the facts & statements
set forth therein, are true to the best of
his knowledge & belief.

Given under my hand Nov.
24 1871

John R. Kelly
Notary Public

Louisa

21

Trisbee to

Arms of
Trisbee

nam^d. Cir. ct.

The answer of John R. Kilby to a Bill in Chancery exhibited in the Circuit Court of Nansemond County Virginia by Willt Lounsbury against said Kilby & others

This Respondent says that he adopts the answer of Manuklin Trustee filed in this case as his own, being cognizant of the facts therein stated.

Your Respondent further says that the Bonds referred to which were held by him as Trustee, were assigned to said Trustee, in accordance with the wishes of said Lounsbury & as agreed on by him & said Trustee, and with the express understanding that he should hold the Lien on the Land, & that there should be no cancellation of such Lien, but that said Trustee should hold ~~on~~ the security on said Land conveyed by the deed of Trust, that the said Kilby as Trustee held, and that when a sale was ordered by said Trustee; at the special instance of said Lounsbury it was delayed till November - That as under the Law

and deed if I must the said Land
could have been sold for cash, yet
as said Mischee was willing to give
liberal terms, it was so stated on
the notice - That this is not a
matter, of which said Lumsbury
can complain - That the
farm has greatly gone down since
it has been in said Lumsbury's possession
as this Respondent knows from personal
examination, and as your Respondent
believes will be now still more
neglected by said Lumsbury, if he is
allowed to retain possession another
year - That said Lumsbury's family
have gone North, but whether to remain
or return, this Respondent knows not
That this farm will never be
now as it is likely ever to sell in
its present condition, That it is
not believed by this Respondent that
it will ever pay the debt due on it,
so greatly has it depreciated by bad
management, and that said Mischee
must buy it to save himself, if
that will do it - That there seems
to be no hope of said Lumsbury's paying
the amount due & that he only desires

to prevent a sale & retain possession
as long as possible & finally abandon
it - such your Respondent believes
from the Circumstances.

That he namely Justice in
holding the debt secured by said
deed is not deterred from selling
a Justice on that account, That Wm L.
McClenny has also asked a sale of said land to pay his debt.
That the sale may not only
procure by said Justice but incurred
in by this Respondent a necessary to
save the debt secured. And so

signed

John R. Kelly

Notarissimo Clerk's Office to wit
This day John R. Kelly personally appeared before
me, and made oath that the foregoing state-
ments in the foregoing answer are true
to the best of his knowledge & belief
Nov 27th 1871 H. E. Bohoon Clerk

Somby, N

Kilby, N

Kilby's answer

Cir. et. Nant

To Hon Geo. Blount Judge of the Circuit
Court of Hancock County.

Respectfully Complaining sheweth
unto your Honor, your brother Willet
Loomsbury that on the 12th Dec. 1867
he conveyed to Geo. R. Kilby the following
real estate to wit: a Tract of land in the
Lower Parish of Hancock County and
State of Virginia on the East Side of
and adjoining the Hancock River
and containing 749 acres more or less
and adjoining the lands of Rev. J.
Saunders, Richard H. Keaman
James H. McCormick and the heirs of
Edward H. Thurden, together with all
the Appurtenances belonging to the same.
in Trust to secure in the first place
and in full without any abatement the
sum of \$500 to Wm McClemmy with
interest from the 1st Jan. 1868 and due
by bonds dated on the 12 Dec. 1867, and
payable on 1 Jan. 1869, and in the second
place to pay to the said Geo R Kilby three
several Bonds held by him as trustee for
Willis E. Cohoon and W. J. Cohoon, one for
\$2100 due on 1 Jan. 1869, one for \$3000-
due on 1 Jan. 1870 & the other for \$3000-
due on 1 Jan. 1871 all of which bonds
bear date 12 Dec 1867 & bear interest

from the 1 Jan 1868, as will more fully appear by a certified copy of said deed herewith filed marked "A" as a part of this bill.

That the said bonds were given for the deferred payments of the purchase of said land for which your complainant purchased for \$12000, of which he paid \$3000. in cash.

That since the execution of said deed your complainant has regularly paid all interest on the bond of Wm. Clancy as it has accrued - he has also paid in full the said bond of \$2100 -

That the other two bonds of \$3000. each in the said deed mentioned have been paid to the said Geo. R. Killy Trustee, and the lien of the said deed of trust to secure the same has been satisfied & discharged - in the following manner to wit: One Franklin Friess agreed with your complainant to pay the said two bonds, on consideration that your complainant would pay to him the amount of said two bonds with interest on a part thereof at the rate of ten per cent per annum, and with interest on the other part thereof at the rate of eight per cent. per annum, and for the further consideration that

your Complainant would agree to pay him one
third of whatever profits your Complainant might
realize on the sale of the said land or any part
thereof over and above the original costs of the
same, and in the further agreement the your
Complainant would apply the proceeds of any
sales made by him & his two thirds of the said
profits to the payment ^{to the said Trustee} of the said debts,

All of which is evidenced by the written
agreement entered into between the said
Fairbairn & your Complainant bearing date
on the 23 March 1870, and herewith filed
as a part of this Bill marked "B".

By which agreement and contract your
Complainant is advised & therefore charges
and claims that the debt of the said bonds
for your Complainant to J K Kelly Trustee
or to his assignee has been paid & discharged
by the payment thereof, which has been done,
on behalf of your Complainant by the said
Fairbairn, and that the said land under
said deed is not liable nor subject to
any lien for the payment of your Complainant's
debt to the said Fairbairn. Your Com-
plainant is advised that the said Fairbairn
has possession of the said bonds, and that he
claims that they were assigned to him with
recourse, and he is now seeking to secure
the payment thereof under the said deed of

Trust, and that for this purpose he
has directed Jno R. Kilby the Trustee
under said deed to sell the said
property, who has advertised the said land
to be sold under said deed on the 13th of
Nov next, as will appear by a copy of
said advertisement herewith filed
marked "C" - Your complainant has
reasons for believing, and therefore
charges, that the said Trustee is proceeding
to sell under said deed not at the
request of Wm H^d Cleary, but at the
sole instance of the said Trustee -
Your complainant prays that the said
Jno R. Kilby Trustee may be restrained
from making sale under the said deed
upon the following, among other
grounds -

1. That the debt of the said two bonds of
H3000. each to Jno R. Kilby Trustee
for W. L. Coburn & U. J. Coburn has
been paid to him, and the lien of the
said deed as to the said debt fully
satisfied and discharged -
2. That whether this be so or not, it would be
improper for a sale to be made until
this matter, and the other matters in-
volved in the above said agreement

between your complaint & the said Fisher
are adjudicated -

3. Upon the supposition that the two
said bonds now held by said Fisher,
are in his hands still secured by a
lien under said deed, still
the amount which this complaint over
him on account of said bonds and
the interest due thereon are uncertain
and unascertained -

4. That the sale of so valuable a tract
of land at the present time under
the depressed condition of the
market for lands, at public auc-
tion would be ruinous and of irrepa-
rable mischief close to your com-
plaint - and this he alleges -

5. That the terms of the sale advertised by
the said Trustee are not made known -
and said terms are all in doubt and
known only to the Trustee & are at his
will - the said Trustee has not consul-
ted with your complaint as to the said
sale or the terms thereof -

6. That the said property was conveyed to
the said J. M. Kelly as trustee to secure
a debt due to him - In contem-
plation of law he is thereby rendered
an improper person to execute the

18th Inst:

A- 387-401.

1. Rand. p

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18 Sept. 74
120

said deed of trust. And your Complainant
objects to his executing the said trust.
3. That if the said Frisbee holds the said
bonds by assignment, they were assigned
to him without recourse, and he takes
them without any equitable lien passing to him

In tender consideration of the foregoing
premises, your Complainant prays
that the said Jos. H. Kilby Trustee
under said deed, and the said Jos
H. Kilby as Trustee of Willis E. Cohen
and W. J. Cohen, Wm M. Cleary
and the said Franklin Frisbee, may
be made parties defendant to this
bill & that they may be required to
answer the same - That this said
Jos. H. Kilby Trustee may be restricted
from all proceedings to sell the
said land under the said deed of
trust, that it may be adjudicated
whether whether there is any lien
under said deed on the said land
to pay the said two bonds of \$3000.00
owed to the said Frisbee, that
all other and further relief
which you can claim that it
may be proper to grant & he will
ever pray for. Willet Lounsbury

city of Portsmouth, New Hampshire

J. F. Lusk

a meeting public for said city do
certify that Willet Luskbury
whose name is signed to the
foregoing bill, personally ap-
peared before me in my city
after and I made oath that the
statements made in the said bill
are true to the best of his
knowledge & belief -

Given under my hand this
21st of Oct 1871

J. F. Lusk

(Notary)

On motion of the Plaintiff Willet Lonsbury
 an injunction is granted him according to the
 prayer of his Bill, restraining the defendants
 John R. Kilby Justice, Willis E. Cochran, W. J.
 Cochran, Wm. McBlaney, and Franklin
 Frisbee from proceeding to sell the land in the
 bill mentioned until the further order of the
 Court. But this injunction is not to take
 effect until the Plaintiff or some one for him
 shall enter into bond before the Clerk of the Circuit
 of Hannum County with securities by him deemed
 sufficient, in the penalty of \$500 - conditioned
 to pay all costs that may be awarded against him,
 and all such damages as shall be incurred in case
 this injunction shall be dissolved. Veto 24th 1871

To the Clerk of the Circuit
 Court of Hannum
 County

W. H. Burroughs

Lonsbury
 }
 }

Kilby, &c

1871 Nov 8: Spence mtd
 Enr. noted on 1st Deft's
 24 Sept Frisbee & alibi
 as to him Bill filed &
 Peace. Miss vs Deft's
 1871 Dec 4: Bill vs Enr.
 vs all Defts except Frisbee
 Answers of Kilby & Frisbee
 Bond replevied and set
 for hearing as to all
 Defts.
 1872 April 12: Burroughs

1. 10. 11. 12. 13. 14. 15. 16. 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. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 8

1875

1875

Wiltell Lounsbury

vs

John R. Kilby-
Trustee for

W. E. Cokoon & al

Injunction to stop
sale of Land

come to hand

26th Oct-1871

W. E. C.