

The joint and separate answer of Mary E. Warburton, Robert Warburton, Thomas D. Harris and William L. Spencer, Trustees, to the bill of complaint and injunction exhibited against them by Robert McCandlish, in the Circuit Court for the City of Williamsburg and County of James-City.

These Respondents, severally saving and reserving unto themselves all manner of benefit and advantage of Exception to the said bill of complaint & Injunction, for its many errors, mistakes & false statements, for answer therunto, or to so much thereof as they are advised it is necessary and proper for them to answer unto, severally and respectively say.

That as regards the judgment, execution and return mentioned and referred to in the said bill, these respondents have no particular knowledge, and therefore, neither admitting or denying the allegations of the bill respecting them, they call for the requisite proof thereof. They admit the execution of the deed of trust referred to in the Complainant's said bill of the 13<sup>th</sup> of May 1857, but deny that the same was admitted record on the 14<sup>th</sup> of June 1857, as alleged in the said bill, and aver that the same was duly admitted record on the 14<sup>th</sup> of May 1857, as will appear by reference to the copy of said deed & certificate of the Clerk thereof annexed, exhibited with the Complainant's bill.

These Respondents, further answering, utterly deny that the said deed was made "in fraud of his (the Complainant's) rights, and to hinder and delay him in the collection of his debt aforesaid, but, on the contrary, they aver that the same is entirely fair & bona fide, and made with the bona fide and laudable intent to secure the payment of the just debts of this respondent Mary, so far as her means will extend. In doing this, it is true that this respondent Mary E. has given a preference to her son and brother, by directing to be first paid debts honestly

and justly due to them, principally on account of responsibilities incurred by them for her, as sureties, and moneys paid for her by them. Under the circumstances she deemed it her duty, to protect them from loss and injury, in the first instance, as provided by the said deed, and as she is advised she had a perfect right to do, the law recognizing the right of a debtor to give a preference amongst creditors, according to their own ideas of propriety & duty. These Respondents utterly deny that the said debts secured by the said deed to these Respondents Robert Warburton and Thomas D. Harris, or any part thereof are "fictitious, not real and bona fide debts;" on the contrary, they expressly aver that the same are real & bona fide debts, justly & honestly due from the said Mary E. Warburton. They also deny that the funds of the said Mary E. Warburton, or any part thereof, were used by the said Robert Warburton & Thomas D. Harris, or by either of them, in taking up or discharging any of the debts, liabilities, or responsibilities, out of which grow or arises the indebtedness of the said Mary E. to them. The said Robert & Thomas D. secured or intended to be secured by the said deed. They also deny that the said Robert and Thomas D. or that either of them, ever acted as the agent of the said Mary E. Warburton, in receiving her moneys & paying her debts, in a general way, whilst it is true that in particular cases, at her request, they have both received <sup>and paid</sup> money for her, but they deny that any moneys so received and paid by them, form any part of the consideration of the debts secured or intended to be secured by the said deed.

This Respondent Robert Warburton, further answering, says, that it is true, as alleged in the said deed, that a settlement or estimate of the indebtedness of the said Mary E. to them, as her guardian, was made which resulted in the said balance of One Hundred & thirty five dollars & thirty cents, mentioned in the said deed, and the same is fully sustained by

The record of the accounts returned to James City County Court by his said guardian, on which the said settlement or estimate was based. If necessary he will file copies of the said accounts in the progress of the cause. And in point of fact, he avers & charges that the said Mary E. Warburton, in the said settlement or estimate, did not account fully with him, to the full extent of her liability, as his guardian, but sundry matters of just and legal charge against her were omitted in that settlement, amongst which he will at present only specify her liability to him for wood cut and sold, during his minority, from his land, exceeding in quantity one hundred cords per annum, but which quantity she is expressly restricted by the will of his father John L. Warburton, and her liability growing out of the sale of a certain negro boy of the said Robert, called Daniel.

This Respondent Robert avers that the true object & intent of said deed was to secure to him as a preferred debt, the actual balance due to him from his said guardian, and the said sum of \$135.30 specified in said deed, was so specified & secured to be paid, as clearly & beyond all possible dispute or question due to him. If such shall be the fair & legal construction of the said deed, that is, to secure to him as a preferred debt, the balance fairly & factually due to him on the said guardianship, then he insists upon an account of the guardianship, & a decree for such balance as may be found justly & fairly due to him; though exceeding the said amount of \$135.30; and that the estate conveyed by said deed shall be first subjected thereto, before the completion or other creditors with whom he is charged in the deed, shall receive any thing therefrom.

As regards the debt of \$889.32, mentioned & specified in the said deed & thereby secured to this respondent Robert, he exhibits herewith a statement showing the debts, liabilities, responsibilities, incurred, paid, and assumed by him for the said Mary E., out of which the said indebtedness

statement, marked IV  
arose, which, with the evidence of debt therewith exhibited, he asks  
may be considered as part of this answer.

As regards the debt of \$338.30, mentioned in and secured by the  
said deed to this respondent Thomas D Harris, he, in like man-  
ner exhibits herewith a statement, marked II, showing the debts  
and liabilities, paid, incurred and assumed by him for the said  
Mary E. Warburton, some of which the said indebtedness arose,  
which statement, with the accompanying evidence of debt, he asks  
may be considered as part of this answer.

This Respondent Robert Warburton, further answering,  
exhibits herewith a copy of the will of his father John L. Warburton, ~~copy~~  
~~copy~~, marked I, as part of this answer, by which it will be seen  
that the testator devised to his wife, the said Mary E. Warburton, for  
her life, one moiety of his land, & the other moiety, with remainder  
in that given to the wife, to this respondent; and also gave to his said  
wife the liberty of cutting and selling annually from her part of  
the said land one hundred cords of wood. This is the same land  
referred to in the Complainant's said bill, and to which the order of  
injunction in this cause is intended to apply. This respondent  
now states that the said land has never been divided between  
the said Mary E. & herself; but, notwithstanding the said Mary  
E. has cut and sold from the said land a very large quantity  
of wood, largely exceeding one hundred cords per annum from  
the said testator's death. And he avers & charges that she has  
cut to the full extent of her rights under the said will, and  
that neither she, nor any one claiming or holding under her, is,  
or will be, entitled to cut any more wood from the said land for  
sale.