

This respondent William L. Spencer further answering, says, that he was present at the settlement referred to in the said deed, and at the execution of the said deed, and saw nothing whatever calculated to raise even a suspicion of fraud or unfairness in the transaction. On the contrary the arrangements and settlements were open & aboveboard, in the presence of sundry persons not interested in the matter; and the said deed was made with the fair and bona fide intention of securing the debts therein specified, and then all the just debts of the grantor.

These respondents Mary E. & Robert Warburton & Thomas D. Harris are advised, that the said deed, in the general provision therein made for the creditors of the grantor, provides for the payment of the complainant's debt in the bill mentioned, *pari passu*, with the other debts of the grantor, after satisfying the preferred debts therein named; but it is not competent for the complainant to claim <sup>both</sup> under and against the said deed. He must either accept or reject its provisions, and these respondents regard the complainant, by the ground assumed in his said bill, as rejecting the deed, and seeking to enforce his rights, under the judgment and execution aforesaid, in opposition to the said deed. If he claims under the said deed the benefit of the provision therein for creditors of the grantor generally, he must take such benefit on the terms it is offered, which is subject to the payment of the preferred debts. Claiming, therefore, as these respondents understand him, under his judgment and execution, and against the deed, all the creditors of the grantor, who elect to claim the benefit of said deed, will be entitled to be satisfied, in preference to the complainant, out of the trust fund, if the said deed shall not be successfully impeached for fraud. These respondents, therefore, denying all fraud

in the premises, require the Compl't to sustain by proof his charges to that effect, made in the most reckless manner, and without even the shadow of a foundation for their support. And these respondents call the attention of the Court to the singular oversight, that while the order of injunction awarded by the Judge in this cause, restrains these defendants & all others from cutting any more wood or timber on the land in the bill mentioned, and from removing any wood already cut, and from removing, or in any wise disposing of any part of the personal property covered by the said deed, whereby great and almost irreparable injury may result to these respondents, or some of them, yet the penalty of the injunction bond, to cover costs & damages, is fixed at only one hundred dollars, a sum scarcely sufficient in all probability to cover the costs of suit, should the injunction be dissolved. And, if the said injunction is to stand, these respondents insist that the Compl'tant be required to execute a bond, with good security, in a penalty amply sufficient to cover all damages & costs that may be sustained and awarded in the event of a dissolution of said injunction. This respondent Robert Warburton does not understand the bill of the Compl't as seeking to enjoin him from cutting wood on his own land, but the order of injunction is susceptible of that interpretation, and if such is the correct and proper construction of said order, then it is very certain that the damages resulting therefrom to this respondent Robert must be very great, as he has a considerable force, consisting partly of hired hands, engaged exclusively in the wood cutting business, which cannot now be otherwise profitably employed. Moreover, the said deed provides for a sale by the trustee for the purposes thereof, whenever he shall be thereto required by these respondents Robert and Thomas D. but as long as the said injunction stands, no sale can be made

under the said deed, however necessary for the payment of the debts secured by the said deed, or however great may be the loss & injury to these respondents from the sale not being made.

These respondents deny the right of the Compt. claiming as he does, against the said deed, to file a bill either on behalf of himself, or other creditor of this respondent Mary E, to have the benefit of said deed.

They are advised that the whole and sole question in issue between the parties in this cause, is the question of fraud raised by the said bill, which the Compt. must prove, the same being solemnly & unequivocally denied, or have his injunction dissolved & bill dismissed.

And now, having fully answered all the allegations of the said bill so far as it is necessary to do so, these respondents pray to be hence dismissed, with their costs by them about their defence in this behalf most wrongfully expended. That the said injunction awarded the Compt. be dissolved & this bill dismissed. Witness that that &c.

Southall & Co.

Mary E. Warburton  
Robt Warburton  
Thos D Harris  
Wm L. Spencer

City of Williamsburg &c:

This day personally appeared before me a Justice of the peace of said City, Robert Warburton, Thomas D Harris, and William L. Spencer, three of the respondents in the foregoing answer, & solemnly made oath that the matters & things therein set forth, are true to the best of their knowledge & belief. Given under my hand this 25<sup>th</sup> June 1857.

Geo A. Benceville J.P.

James City County Va:

This day personally appeared before me a Swear-  
tee of the peace of said County, Mary E. Warburton respondent in the fore-  
going answer, and made oath that the matters and things therein set  
forth are true to the best of her knowledge and belief.

Given under my hand this 25<sup>th</sup> day of June 1857.

George L. Richardson J.P.

Robert McDonald

or  
Mary E. Warburton

Mary E. Warburton

Filed June 30<sup>th</sup> 1857.