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Record No. 919

J. C. CROPP

v.

G. W. AND JOHN F. KINSEY

FROM THE CIRCUIT COURT OF RAPPAHANNOCK COUNTY.

"The briefs shall be printed in type not less in size than small pica, and shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed records along with which they are to be bound, in accordance with Act of Assembly, approved March 1, 1903; and the clerks of this court are directed not to receive or file a brief not conforming in all respects to the aforementioned requirements."

The foregoing is printed in small pica type for the information of counsel.

H. STEWART JONES, Clerk.

156

VA

102

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

J. C. CROPP

vs.

G. W. AND JOHN F. KINSEY.

PETITION FOR WRIT OF ERROR.

To the Honorable Judges of the Supreme Court of Appeals of Virginia:

Your petitioner, J. C. Cropp, respectfully shows unto Your Honors that he is aggrieved of a certain judgment of the Circuit Court of Rappahannock County, entered the ninth (9th) day of July, 1929, in a certain action at law on attachment, then pending in said court under the style of J. C. Cropp vs. G. W. and John F. Kinsey.

I.

STATEMENT OF THE CASE.

The essential facts in this case are that G. W. Kinsey and John F. Kinsey, father and son, owners of over two thousand acres of land in Rappahannock and in Madison County, and of personal property valued at more than ten thousand dollars, became insolvent and being threatened by their many creditors, adopted the following plan: SOME of their LARGER creditors were taken into their confidence, and the "Proposition" put before them that George Kinsey convey all of his property (subject to existing mortgage indebtedness) to John F. Kinsey; then John F. Kinsey was to convey the property to trustees to secure the joint indebtedness to only those creditors who would join in the agreement. The property (all of the real estate and personalty of these

debtors) was to be held and kept off the market for three years, during which time the Kinseys would remain in corporal possession and receive compensation from the same for their services. If an advantageous price should be offered, the trustees would have the right to sell privately, but no sale could be forced by any creditor in the agreement, for an additional two years, provided the property was yielding interest and taxes.

Record, Testimony of E. H. Gibson, pages 5 and 6. Only the larger Joint creditors were invited to participate, the underlying purpose being to protect John F. Kinsey on debts for which he had endorsed for G. W. Kinsey. Record, Testimony E. H. Gibson, pages 5 and 6.

This plan was accepted by all of the creditors present, but the Alexandria National Bank (present at the meeting by counsel) declined afterward to have anything to do with it—withdraw.

Frank Moffett and William Wood were delegated to confer with the plaintiff, J. C. Cropp, who called at the latter's home to inform him of the plan and secure his approval, but Cropp was not at home. Record, E. H. Gibson, page 6, also William G. Wood, page 8. A message was left with plaintiff's wife. Mr. Wood afterward saw plaintiff and repeated the details of the plan; but he would not accept, saying he would have to see his counsel. He did confer with W. C. Armstrong (counsel for some of the participating joint creditors) when the same plan was repeated by him, but plaintiff not satisfied, consulted R. A. McIntyre of Warrenton (in no manner involved in the Kinsey affairs) and decided to reject the offer. Plaintiff then recalling the promises of the Kinseys (that if he would accept the renewal note they would positively pay the same when due, that they expected to sell their Madison Farm, which would pay off all of their indebtedness, and that he had at their request, and on these statements as to their financial condition, not sued them, but granted further indulgence, called on the Kinseys at their home, and requested them to give him a confession of judgment. This they refused to do, but offered to let plaintiff into the plan adopted by the other joint creditors, which defendants informed plaintiff would hold up all of their property so that their creditors could not reach it in their possession, for three to five years, during which time they were to receive an income, a part of which plaintiff was expected to pay. Record, Evidence J. C. Cropp, pages 1, 2, 3, Plaintiff was seventy-five years old and a member of the Board of Supervisors of Rappahannock County. Record, Evidence,

plaintiff's interview with the Kinseys, and information otherwise received convinced him that they were insolvent, that they had gotten a renewal of the note, on false representations of their financial standing, that it was their intention to hinder, delay and defraud him. He was told by them in the presence of Sheriff H. F. Keyser that they were going into bankruptcy, and that if plaintiff refused to enter into their plan they would see that he did not get a cent, or words to that effect. Record, H. F. Keyser, page 4. Evidence, J. C. Cropp, pages 1, 2, 3. After this interview beginning on March 4, 1929, and inclusive of March 5, 1929, the defendants gave deeds of trust and acknowledged judgments in the Clerk's Office of Rappahannock County, amounting to about \$45,000,000, in favor of these joint creditors, excluding the Alexandria National Bank, J. C. Cropp and all other creditors of the two Kinseys.

II.

THE PLEADINGS.

J. C. Cropp, the plaintiff, filed his petition for an attachment and prayed for a judgment against G. W. Kinsey, and John F. Kinsey, for \$1,641.28, with interest from April 5, 1928, the first day of March, 1929. A writ of attachment was issued the same day, placed in the hands of the Sheriff, and a levy made by him, and return made thereon the second day of March, 1929. This return included all of the real estate and personalty of the debtors in Rappahannock County. Record, pages 1, 2, 3, 4, 5, 6, 7, 8.

On the 16th day of March, 1929, the Bank of Warren by E. H. Jackson, President, intervened by petition, claiming liens on said property, asked for a receivership, and denied the validity of the attachment issued and levied in favor of J. C. Cropp, on the ground that same was sued out on false suggestion. Record, pages 11 and 12.

March 16, 1929, E. H. Jackson in his own right, intervened in like manner, by his petition. Record, pages 13 and 14.

March 16, 1929, Second National Bank of Culpeper, intervened in like manner by its petition. Record, pages 15 and 16.

March 16, 1929, Rappahannock National Bank intervened in like manner by its petition. Record, pages 17, 18, 19.

March 16, 1929, C. R. Wood, Treasurer, intervened in like manner, by his petition. Record, pages 20 and 21.

On the pleadings as they then were, March 16, 1929, the

Court entered an order on motion of all parties, appointing W. F. Moffett, Receiver, and directed him to take the property into his custody and to convert the personal property into cash to be held subject to further order. Record, pages 9 and 10.

On the same day the Court entered up judgment against John F. and George W. Kinsey, in favor of J. C. Cropp, for \$1,641.48 with interest from April 5, 1928. Record, page 23.

May 20, 1929, the case came on to be heard upon the answer of John F. Kinsey and George W. Kinsey, sworn to, and upon the motion to quash, in which all of the intervening creditors by their counsel joined; and the Court having heard argument for and against said motion, took further time to consider; and thereafter, to-wit, on the 9th day of July, 1929, upon motion of Robert W. Miller, another creditor of defendants, was granted leave and filed his petition of like import to all other intervening creditors, Record, pages 25, 26, 27, 28.

Whereupon the Court sustained the motion to quash the attachment so issued in favor of the plaintiff, J. C. Cropp, and entered judgment accordingly. Record, pages 30, 31. From this order, plaintiff, J. C. Cropp, prays a writ of error.

III.

EVIDENCE: It is agreed that the outline of evidence taken at the hearing is all of the evidence in this cause, and as the essential facts are admitted, no further review of the evidence is offered beyond what is included in the STATEMENT, Paragraph I, page —.

GROUND OF ERROR.

Plaintiff in error contends that the Court in sustaining the motion of defendants in error, and in granting the attachment sued out in his favor against the defendants, erred.

This case presents a narrow issue and novel questions of law in this Commonwealth.

First. The issue is, Did the admitted state of facts contained in the testimony of the plaintiff, Cropp, and of E. H. Gibson, the witness for the defendants, and their counsel, violate the word and spirit of the Fifth Clause of Section 6379. Code of Virginia, 1919?

It is candidly admitted by the Kinseys that their purpose

in adopting the plan accepted by some of their larger joint creditors was (1) to secure an advantage to John F. Kinsey, because he was only endorser on George W. Kinsey's obligations, (2) to tie up their property so that none of it could be reached by their creditors for 3 to 5 years, (3) to control the management and sale of the real estate through a trustee of their selection, (4) to hold the corporal possession of the property and particularly the use and enjoyment of it; (5) to have the guarantee of a salary from the creditors; (6) to reserve the benefit of such remainder as might be left over beyond the payment of this favored class of creditors.

(1) Authorities agree that the intent back of this design is fraudulent because it secures benefits to the debtors themselves:

Hobbs vs. Greenfield, 103 Ga. 1.

Whitbel vs. Stewart, 40 Md. 414.

Campbell vs. Hopkins, 87 Ala. 179.

6 Corpus Juris., page 62.

(No Virginia case can be found.)

This scheme was in the minds of the Kinseys at the time plaintiff, Cropp, sued out his attachment, and it was to defeat this scheme that he proceeded by attachment—"the light-arm artillery of the law";

(2) The Kinseys resorted to threats, to-wit, that they would go into bankruptcy, that plaintiff, Cropp, would get nothing if he refused to yield to their demands.

Authorities are equally uniform in holding that the fraudulent intent of a debtor may be inferred from his acts, declarations and conduct such as threats "not to pay if sued", or "to dispose of his property".

6 Corpus Juris., p. 64, Sec. 79, and notes.

(3) The silence of these defendants and their failure to testify at the hearing, or to submit themselves to cross examination is another powerful circumstance going to prove their fraudulent intentions; they sat dumb through the trial, heard their honor impeached, their motives assailed, and by their silence confessed their guilt.

Buchanan, J., delivering the opinion in *Carson vs. Mott*

Iron Works, 117 Va. 21, and particularly page 28, says: "When evidence has been introduced by one litigant tending strongly, as in this case, to prove the truth of a matter in dispute, and the other party can by his own evidence throw light upon such matter in dispute, necessary to his defense, and peculiarly within his knowledge, if the facts exist as he claims it, and he fails to go upon the witness stand, such failure may be considered by the court or jury trying the case along with other facts proved, since his failure to testify raises a strong suspicion if given, would operate to his prejudice.

Kirby vs. Tallmadge, 160 U. S., p. 383;

Aragon Coffee Co. v. Rogers, 105 Va. 59-61; 52 S. E. 843, 8 Ann. Cas. 623;

Copperwhite vs. Loudoun County, etc., Bank, 111 Va. 70, 75, 68 S. E. 392;

1 Wigmore on Ev., sections 289, 290, sub-section 5.

(4) While it is held on the high authority of *Corpus Juris*. that "There is sufficient fraudulent intent where the debtor intends to delay his creditors".

6 *Corpus Juris*., Iden Note 44.

(5) The Virginia Statute is expressed in the alternative "to hinder (or) to delay, or defraud—" No direct ruling of our Supreme Court has been found on this point, but there are many decisions in other states directly on the point that the act thus expressed has a double application. It is possible that the plan of the defendants might merely "Hinder", or "Delay" a creditor without any intention to "defraud" him. Indeed the purpose of the defendants might under this Virginia Statute 6378, Clause Five, have had the purest motives, nevertheless, if their plan of liquidation, which was disclosed to J. C. Cropp would have the effect of hindering or delaying him in the collection of his debt by the usual procedure, then he had a right to sue for his attachment. These principles are laid down clearly and unequivocally in the following cases:

Crow vs. Beardsley, 68 Mo. 435, 439;

Edgell vs. Smith, 50 W. Va. 349;

(Supply), 65 W. Va. 296.

Words & Phrases, p. 1275 (Second Series), "Hinder and Delay".

(6) The mental attitude of these defendants towards the plaintiff was most convincingly disclosed when, shortly after the interview at their home, they gave trusts and confessed judgments amounting to about \$45,000.00, to certain other joint creditors, excluding the plaintiff whom they had enticed into renewing their note for \$1,641.48, on false pretenses that if he did not then sue they would certainly pay him, that they would sell the Madison Farm which would bring enough to pay all their debts. They knew at that very time that they were insolvent and bankrupt.

The learned Trial Judge filed a written opinion, Record, page 32, giving his reasons for the judgment entered July 9, 1929. It is respectfully submitted that he failed to observe the questions of law to be decided on the undisputed facts in this record.

Breeden vs. Peale, 106 Va. 39, it is held that fraud is not proven by a general assignment for all creditors, with preferences. The Court merely held that this one circumstance was not sufficient proof to establish fraudulent intent; but added (page 43), "By what proof this (fraudulent intent) may be shown this Court will not undertake to determine until a case arises for decision." That is the very question now presented. Are not the undisputed facts in this record sufficient to establish fraudulent intent, as a matter of law?

The older case of *Wingo, Ellett and Crump vs. Purdy & Company*, 87 Va. 472, cited by the trial Judge, came within the Court's finding in the latter case of *Breeden vs. Beale*, 106 Va. 39. The finding in the *Wingo* case was merely that "A *bona fide* request for an extension of time cannot be held to constitute a badge of fraud"—and a declaration of a purpose to make a general assignment for all creditors for the purpose of paying the last dollar of indebtedness is not evidence of fraudulent intent. In the case at bar, there was no general assignment, but preference given to joint creditors with the undisputed purpose of benefitting one of the joint debtors at the expense of the excluded general creditors, as well as to save and reserve to both debtors personal benefits and protection against recovery of debts by the usual legal process. None of the cases cited by the trial Judge in his written opinion touch the questions of law presented by this case.

In conclusion, as to this opinion, the learned Judge either erroneously construed Sec. 6378, Clause 5 of our attachment law, to require proof of fraudulent intent, and that the three words, "Hinder", "delay" or "defraud", must be read conjunctively; or he failed to observe the plain intent of the

Legislature that the words in this Act should be taken disjunctively, as they have been in the authorities heretofore submitted, to-wit, *Crow vs. Beardsley*, 68 Mo. 435, 439, 50 W. Va. 349, 65 W. Va. 296, *supra*.

For these and other reasons manifest on the face of the record, it is respectfully prayed that the judgment of the Court, complained of be reviewed and annulled, and that this Court, pursuant to Section 6365, Code of Virginia, 1919, enter such judgment as the lower Court should have entered, overruling the motion of defendants and the intervening creditors to quash the attachment issued in this action on the oath of J. C. Cropp vs. George W. and John F. Kinsey.

And counsel for this petitioner prays for leave to state orally his reasons for reviewing the foregoing decision; and he here alleges that prior to the filing of this petition with the Clerk of this Court, he did on the 6th day of January, 1930, forward to the counsel of record for the several defendants and intervening creditors, by registered mail, copies of this petition as required by the Rule of Court No. 2, as amended November 6, 1929.

J. C. CROPP,
By R. A. McINTYRE,
His Atty.

CERTIFICATE OF COUNSEL.

I, R. A. McIntyre, an attorney at law practicing in the Supreme Court of Appeals of Virginia, do certify that in my judgment there is error in the record of the Circuit Court for Rappahannock County in the matter of J. C. Cropp vs. George W. and John F. Kinsey, hereto appended, for which the same should be reviewed and the judgment of the Court therein reversed and annulled.

Given under my hand this 6th day of January, 1930.

R. A. McINTYRE,
Attorney at Law.

Received Jan. 7, 1930.

H. S. J.

Writ of error allowed; *supersedeas* awarded. Bond, \$750.

ROBERT R. PRENTIS.

Received Jan. 29, 1930.

H. S. J.

And the plaintiff filed his Bill of Exceptions in this case, in the following words:

Virginia:

In the Circuit Court of Rappahannock County.

In Re: Attachment sued out by J. C. Cropp against G. W. and John F. Kinsey, and on motion to quash.

BILL OF EXCEPTIONS.

Be it remembered that upon proceedings thereon had in the Clerk's Office of said County and before the Judge of the Circuit Court thereof, upon issue found and upon motion to quash, all of which will appear from the transcript of record appended to and made a part of this Bill of Exceptions, both plaintiff and defendants having waived a jury, the plaintiff to sustain the issue upon his part, offered the testimony of various witnesses, to-wit: the plaintiff, J. C. Cropp, H. F. Keyser and J. M. Settle, who being duly sworn, testified upon direct and cross examination as shown by an agreed statement of all of the evidence introduced in said trial, reduced to typewriting, corrected so far as same was necessary by the Court and hereto appended as a part of this Bill of Exceptions, consisting of 9 pages and an index, and identified by the Judge of said Court, on the first page of said index, as well as the first page of the report itself, and on the last page thereof, the testimony of said witnesses appearing on pages 1 to 4, inclusive, and the plaintiff thereupon rested his case. And the defendants and petitioners, to maintain the issue upon their part, introduced as witnesses, E. H. Gibson and W. G. Wood, who being first duly sworn, severally testified on direct and cross examination respectively, as shown by the aforesaid report of the evidence at said trial, at pages 5 to 9, inclusive, and thereupon rested their case; and the Court certifies that said evidence so submitted by and for the defendants and petitioners, beginning with page 1 and ending with page 9, is all of the evidence submitted by both parties, upon the hearing of said action; which evidence is made a part of this bill of exceptions. And the Court thereupon, having heard all of the evidence and argument of counsel, not being advised of its judgment, took time to consider, and continued said case by order entered the 20th day of May, 1929, for further hearing of said case. And thereafter, to-wit, on the 9th day of July, 1929, having considered of its opinion, for reasons stated in writing, and filed in the record of this case, entered up judgment in favor of the defendants and petitioners, sustaining the motion to quash

the attachment sued out by the plaintiff, J. C. Cropp, against the defendants, John F. and George W. Kinsey, with their costs, notwithstanding objections by the plaintiff by his counsel. And thereupon, the plaintiff in said issue excepted to said judgment and verdict as contrary to the law and the evidence; and upon his motion the operation of said order was suspended for sixty days, upon condition that plaintiff give bond within ten days with surety satisfactory to the Clerk of this Court in the sum of one thousand dollars (\$1,000.00), in order that the plaintiff might apply to the Supreme Court of Appeals of Virginia, for a writ of error, which bond was accordingly given within the time required. And the plaintiff having so excepted to the judgment of the Court, now tenders this his bill of exception, which is signed, sealed and enrolled and made a part of the record this 7th day of September, 1929.

J. R. H. ALEXANDER,
Judge of the Circuit Court of Rappahannock
County, Virginia.

Virginia:

In the Circuit Court of Rappahannock County.

I, James M. Settle, Clerk of the Circuit Court of Rappahannock County, Virginia, do certify that the foregoing is a true transcript of the record in the matter of a certain action in attachment, pending in said Court under the style of J. C. Cropp v. George W. and John F. Kinsey, and petitioning creditors, to-wit, Bank of Warren, E. H. Jackson, C. R. Wood, County Treasurer, Second National Bank of Culpeper, Rappahannock National Bank, and R. W. Miller, and the trial of the issue there joined, in which the said J. C. Cropp was plaintiff and the said George W. and John F. Kinsey, together with the said petitioning creditors appeared as defendants, now among the records of my said Court; and lately pending therein; and I do further certify that the notice required by Section 6339 of the Code of Virginia, has been given.

Fee for this record, \$25.00.

Teste:

JAS. M. SETTLE,
Clerk, Circuit Court, Rappahannock County.

VIRGINIA:

In the Circuit Court of Rappahannock County.

J. C. Cropp

v.

George W. Kinsey and John F. Kinsey.

It is agreed between counsel for plaintiff and defendants that the following named witnesses, respectively, testified to the following facts upon the trial of the above styled cause, in the Circuit Court of Rappahannock County, Virginia, at the hearing thereof, held on the 20th day of May, 1929.

J. C. CROPP,
plaintiff, testified as follows:

That the defendants, George W. Kinsey and John F. Kinsey were indebted to him in the sum of \$1,641.34, evidenced by their note; that this note had been renewed at the request of the defendants; that they had promised the plaintiff that they would be sure to pay the note when it became due; that upon such promise he allowed them a renewal of eight months; that a month or more after the note had become due, and before plaintiff had made any special demand for payment, upon a day in the latter part of February, 1929, he had gone to Warrenton, Virginia, on business, and upon his return to his home in Rappahannock County, he was informed by his wife that one, W. F. Moffett, an Attorney at Law of Washington, Rappahannock County, Virginia, accompanied by a Mr. William G. Wood, a Director of the Rappahannock National Bank of Washington, Virginia, had called at his home to see him; accordingly on the day following he came to Washington, Virginia, and there had a conversation with Mr. W. G. Wood, in which Mr. Wood informed him of the Kinseys' indebtedness and of the plan outlined to Mr. Wood and other creditors of the Kinswys, which E. H. Gibson, attorney for the Kinseys had contemplated, a security for the debts of certain of the creditors, incouding plaintiff; as plaintiff understood it from Mr. Wood there was to be a conveyance by the Kinseys to a trustees, whereby the Kinseys were to be allowed to remain in possession of their land for a period of from three to five years, and the lands were to be cultivated and grazed, and the live stock and crops were to be sold and applied to the discharge of debts secured, with the further understanding that the trustees were to have the

power and authority to make sale of such of said lands as they might be able to sell to advantage and at an adequate price, and the proceeds of such sales to be applied to the

page 2 } discharge of the debts secured, and it was further included in the plan that the lands were to be farmed and grazed under the supervision of the Kinseys, one of whom was to be paid, to-wit, John F. Kinsey, and that said John F. Kinsey was to receive a salary for his services; Mr. Wood thereupon asked plaintiff to go into the plan and have his debt secured along with the other debts mentioned under the terms of said trust, but plaintiff replied to Mr. Wood that he was unwilling to do so until he had consulted his attorney. On the same day plaintiff visited Mr. W. C. Armstrong, an attorney in Front Royal, Virginia, and after telling him what he had been told with respect to the contemplated plan of security, asked his advice; Mr. Armstrong told him he thought the best he could do would be to go ahead and go into the plan, and plaintiff not being fully satisfied, thereupon visited R. A. McIntyre, an attorney at Warrenton, Virginia, and after a discussion of the case with him was advised by R. A. McIntyre to ask the defendants, John F. Kinsey and George W. Kinsey, to confess judgment in his favor. In the course of his visit with Major R. A. McIntyre, plaintiff stated from the best information he could obtain he thought that said defendants were insolvent. Plaintiff's attorney then prepared papers for a confession of judgment on plaintiff's debt, gave same to plaintiff with directions to go to see defendants and ask them to sign this confession. Plaintiff then came to Washington, Virginia, the County Seat of Rappahannock County, saw H. F. Keyser, Sheriff, and requested him to accompany plaintiff to the home of the Kinseys, some four miles distant, which the Sheriff accordingly did; that upon arriving at the home of defendants, plaintiff explained the purpose of his visit and asked defendants to sign the confession of judgment in his favor, stating at the time that they had made plaintiff a positive promise that they would pay the debt without fail. In response to plaintiff's request for confession of judgment, the defendants told him that it was their purpose to make sale of the Madison County Farm, belonging to the defendant, George W. Kinsey, and from the proceeds of the sale of this property they expected to pay all of their indebtedness, and they asked plaintiff not to bring suit; plaintiff testified that this occurred at the time of the last renewal. The Kinseys then repeated to plaintiff about the same proposition that Mr. W. G. Wood

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had told plaintiff, and plaintiff replied that he would not go into any such arrangement; they then replied, the defendant, G. W. Kinsey, saying that he wanted plaintiff to have his money; that John F. Kinsey replied that plaintiff would have to go into this arrangement or get nothing; and that if their creditors did not go into it that they (meaning defendants) were going into bankruptcy; plaintiff thought the manner of John F. Kinsey was rough and threatening; at this point in the conversation the Sheriff suggested to plaintiff that they leave; plaintiff testified that he particularly remembered John F. Kinsey saying, "If you do not go into this arrangement we will see that you get nothing", and he further said, that one of the Kinseys said, "If it had not been for you and the Alexandria National Bank the plan would have gone through".

Plaintiff further testified that upon the failure of his negotiations with the Kinseys he returned to the Court House and instituted his attachment proceedings.

Upon cross examination Mr. Cropp was unable to state the details of the plan above referred to or what conveyance he was referring to as the basis of the allegation of his petition for attachment, in which he alleged that the plaintiffs were conveying or about to convey their property for the purpose of hindering, delaying and defrauding their creditors; he stated he could not remember the details and terms of the proposed deed of trust, either as enumerated to him by Mr. Wood or by the Kinseys. Plaintiff further testified that he was seventy-five years old and was a member of the Board of Supervisors of Rappahannock County.

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H. F. KEYSER,

a witness for plaintiff, testified that he was the Sheriff of Rappahannock County, and that he accompanied Mr. Cropp to the house of the Kinseys on the day testified to by Mr. Cropp; that he heard the conversation between Cropp and the Kinseys; that he heard the Kinseys tell Mr. Cropp that if he did not go into the arrangement which some of the creditors had agreed upon that he (Cropp) would get nothing. The witness further stated that he did hear the Kinseys say something about going into bankruptcy.

JAMES M. SETTLE,

another witness, testified that he is the Clerk of the Circuit Court of Rappahannock County, Virginia; upon request he

produced the Judgment Lien Docket of his office, and the last current deed book in his office, and from which he read the following judgments and deeds of trust:

page 4-a } Deed of trust dated March 4, 1929, from George W. Kinsey and John F. Kinsey, to E. T. Gibson and others, trustees, to secure ratably and without priority one note of G. W. Kinsey, payable to and endorsed by John F. Kinsey, dated December 2, 1928, for \$3,800.00;

(2) Another note given by John F. Kinsey, payable to and endorsed by G. W. Kinsey, for \$5,191.49, dated January 17, 1929, alleged to be held by the Rappahannock National Bank;

(3) Note dated December 4, 1928, given by John F. Kinsey to and endorsed by G. W. Kinsey, for \$600.00, held by the Rappahannock National Bank;

(4) Note dated February 10, 1929, \$500.00, given by John F. Kinsey, payable to and endorsed by G. W. Kinsey, held by the Rappahannock National Bank;

Said deed of trust being of record in the Clerk's Office of Rappahannock County, Virginia, and admitted to record March 5, 1929, at 4:45 o'clock P. M.

The second deed of trust in Deed Book 35, at page 48, recorded March 5, 1929, at five o'clock P. M., was given by John Kinsey the 4th day of March, 1929, to E. H. Gibson, Robert Button and William E. Moffett, Trustees, covers his tract of land in Hampton and Jackson Magisterial Districts, containing 1,980 acres more or less, covering his interest in said land; also his interest in tract of land in Hampton Magisterial District, containing 466 acres, known as Jessamine Hill Farm; also his interest in the tract of thirty acres of land in the same district, and his interest in a tract of land in Hampton District, in fee simple, containing five acres more or less; this trust secures nine small debts and obligations;

Judgment in favor of Robert W. Miller against G. W. Kinsey, dated March 5, 1929, confessed in the Clerk's Office of Rappahannock County, Virginia, for the sum of \$16,577.50, with interest from November 1, 1922, until paid. This judgment docketed Judgment Lien Docket D, page 101, on March 5, 1929, at 4:50 P. M.

Judgment confessed in the Clerk's Office of Rappahannock County, by John F. Kinsey and G. W. Kinsey, in favor of W. J. Almond, for the sum of \$884.60, with interest from March 4, 1929; said Judgment docketed in Judgment Lien D, on March 5, 1929, at 4:54 P. M.

Judgment confessed in the Clerk's Office of Rappahannock County, Virginia, March 5, 1929, by John F. Kinsey in favor of W. M. Stuart, for the sum of \$300.00, with interest from December 29, 1928. Said judgment docketed in Judgment Lien Docket D, page 102, at 4:54 P. M.

Judgment confessed in the Clerk's Office of Rappahannock County, Virginia, on March 5, 1929, by G. W. Kinsey and John F. Kinsey, in favor of W. M. Stuart, Banker, for the sum of \$3,000.00, with interest from September 27, 1928; said judgment docketed in Judgment Lien Docket D, at page 102, March 5, at 4:54 P. M.

page 4-b } Judgment confessed in the Clerk's Office of Rappahannock County, Virginia, March 5, 1929, by G. W. Kinsey and John F. Kinsey, in favor of Bessie Jordan Eastham, for the sum of \$1,500.00 with interest from November 25, 1928, until paid; said judgment docketed in Judgment Lien Docket D, page 102, at 4:55 P. M.

Judgment confessed in the Clerk's Office of Rappahannock County, Virginia, March 5, 1929, by John F. Kinsey and G. W. Kinsey in favor of the Second National Bank of Culpeper, for the sum of \$5,000.00, with interest from March 9, 1929, until paid; said judgment docketed in Judgment Lien Docket D, page 102, at 5:10 P. M.

Judgment confessed in the Clerk's Office of Rappahannock County, Virginia, March 5, 1929, by G. W. Kinsey and John F. Kinsey, in favor of E. H. Jackson, for the sum of \$1,500.00, with interest from March 4, 1929, until paid, said judgment docketed in Judgment Lien Docket D, page 103, at 5:10 P. M.

Judgment confessed in the Clerk's Office of Rappahannock County, Va., March 5, 1929, by John F. Kinsey and G. W. Kinsey, in favor of the Bank of Warren, for the sum of \$2,500.00, with interest from March 14, 1929, until paid; said judgment docketed in Judgment Lien Docket D, page 103, at 5:15.

Judgment confessed in the Clerk's Office of the Rappahannock County, Virginia, March 5, 1929, by John F. Kinsey, in favor of the First National Bank of Flint Hill, for the sum of \$425.00, with interest from April 28, 1929, until paid, said judgment docketed in Judgment Lien Docket, March 5, 1929, at 5:20 P. M.

Judgment confessed in the Clerk's Office of Rappahannock County, Va., by G. W. Kinsey in favor of E. H. Jackson, for the sum of \$625.00, with interest from March 2, 1929, until paid, judgment recorded in Judgment Lien Docket D, page 103, on March 5, 1929, at 5:25 P. M.

page 5 } WITNESSES FOR DEFENDANTS.

MAJOR E. H. GIBSON,

the first witness for defendants, being first duly sworn, testified that he is an attorney at law; that before the litigation, which is the subject matter of this controversy was begun, he had been employed by G. W. Kinsey and John F. Kinsey as their attorney for the purpose of entering into some negotiations with their creditors, they being largely indebted and some of their creditors having actually instituted suit, and others threatening to do so.

Upon an investigation of the liabilities and assets of the Kinseys, he had ascertained that the *bulk* of the liabilities was the indebtedness of George W. Kinsey, a very small part of the indebtedness being that of John F. Kinsey; that of the assets, George W. Kinsey owned a farm of six hundred odd acres in Madison county and three hundred odd acres in Rappahannock County; that he had a life estate in a tract of nineteen hundred and eighty acres and another tract of three hundred odd acres in Rappahannock county, with the remainder in both of those tracts one-half to John F. Kinsey and one-half to John F. Kinsey's sister. John F. Kinsey had endorsed for the larger part of George W. Kinsey's indebtedness. He thought it equitable and proper for the estate of the two Kinseys to take care and pay off first the joint indebtedness of George W. and John F. Kinsey.

To effect this purpose, he suggested, and it was agreed, that George W. Kinsey should convey to John F. Kinsey all of his property interest and that John F. Kinsey should then secure the joint indebtedness. All of the larger joint creditors were consulted and at a meeting in the town of

Rappahannock in the directors' room of the Rappahannock National Bank, all of the larger joint creditors were present with the exception of James C. Cropp.

The proposition which was put before the creditors was that of having George Kinsey convey all of his property, subject to some considerable mortgage indebtedness, to John F. Kinsey and to have John F. Kinsey convey the property to trustees to secure the joint indebtedness. Practically all of the creditors took part in the discussion. I suggested that, after a conveyance had been made, it would be necessary for some one to manage the large properties and I said to the gentlemen present that John Kinsey could be employed. This seemed to meet with the approval of all present and I think it was Mr. Wheeler Almond who suggested that his compensation be placed at \$500.00 a year. I had thought that it would take some time to judicially dispose of the large quantity of property, and I suggested that the period of three years be fixed upon as the period of time in which it could be determined whether or not the property was being made to pay all interest and taxes, although the plan was to sell any of the property at any time an advantageous offer was received. If interest and taxes were being paid and a fair price could be gotten, two years in addition were to be allowed before a forced sale.

The Kinseys had no money with which to finance operations and it was suggested and agreed upon that money could be borrowed for the purpose of financing farming operations and the purchase of live stock, which money was to be a lien upon the proceeds of the farm and the stock, and, if a deficiency occurred, upon the *corpus* of the estate. Mr. Almond was to assist in the purchase of live stock and the management of the farming operations.

This plan was agreed to by all of the creditors represented, but, just before I left Washington for my home at Culpeper, Mr. Dudley, who represented the Alexandria National Bank, came to me and told me that he could not agree until he had seen Judge Howard W. Smith, the president of his bank, at his home in Alexandria.

While still in the course of negotiations along the lines indicated, Mr. Frank Moffett and Mr. William Wood went to the home of Mr. James C. Cropp to explain the situation to him. As he was not at home, he could not be consulted. Later, and before anything was done, an attachment was sued out by Mr. Cropp and levied upon the personal property of the Kinseys.

page 7 } Upon cross examination of Major Gibson, upon a hearing of the attachment proceedings, on motion to quash, he was cross examined at length by Major McIntyre, counsel for Mr. Cropp, as to the deeds of trusts and judgments executed and confessed by the Kinseys, and was asked as to the moral quality of the Kinseys, having omitted to provide by deed of trust or judgment for Mr. Cropp and the Alexandria National Bank.

Major Gibson testified that, after the Alexandria National Bank had refused to co-operate and Mr. Cropp had secured attachment, on the ground that the proposition which had been made to the creditors by the Kinseys was an attempt to hinder, delay and defraud the creditors, he saw no reason why the Kinseys should secure the bank and Cropp either by deeds of trusts or confessions of judgment.

page 8 } WILLIAM G. WOOD,

another witness for defendants, testified that he is a Director of the Rappahannock National Bank of Washington, Virginia; that he was present at the meeting of some of the creditors of the Kinseys at the time Major E. H. Gibson as attorney for the Kinseys, appeared and outlined to such creditors the plan for security for their debts as testified to by Major Gibson; that the plaintiff, Mr. Cropp, was not present at this meeting; that following this meeting, the witness accompanied by Mr. W. F. Moffett, an attorney for a number of the creditors, went to the home of Mr. Cropp, some ten miles distant, for the purpose of communicating to him the details of the plan, and for the purpose of suggesting to him that he accept the same and the security offered; that Mr. Cropp was not at home and that the witness and Mr. Moffett had to leave without seeing him, but that a message was left with Mrs. Cropp, Mr. Cropp's wife, as to the purpose of their visit; that the following day he saw Mr. Cropp in the town of Washington, Virginia, at which time he stated to him in detail the plan above referred to; that Mr. Cropp did not agree to accept, stating that he would have to see his counsel first.

On cross examination witness stated that his Bank was interested in these proceedings; that it was a heavy creditor of the defendants, George W. Kinsey and John F. Kinsey; that it held a lien against cattle included in the Kinsey personal estate, and that the cattle covered by said lien were not owned by the Bank at any time, but that they were owned by the Kinseys, who borrowed the money from the

Bank, and that a written evidence of security covering said cattle was on record in the County Clerk's Office.

It is agreed by and between counsel for plaintiff page 9 } and the various counsel for all defendants in the above styled proceeding, that the foregoing is the testimony of the witnesses, who appeared and testified at the hearing thereof on the day set forth; and that this was all the testimony and evidence offered and heard by the Court at said hearing.

R. A. McINTYRE,

for Plaintiff.

WEAVER & ARMSTRONG,

Attys. for C. R. Wood, The Bank of Warren and E. H. Jackson.

WILLIAM F. MOFFETT,

Atty, for W. M. Stuart, W. M. Stuart, Banker, W. J. Almond and M. B. Eastham.

HIDEN, BICKERS & BUTTON,

Attorneys for Second Natl. Bk. of Culpeper.

page 1 } Virginia:

In the Circuit Court of Rappahannock County.

J. S. Cropp

vs.

G. W. Kinsey et al.

PETITION FOR ATTACHMENT.

Pleas at the Court House of the County of Rappahannock, Virginia, before the Circuit Court of said County, the 9th day of July, 1929.

BE IT REMEMBERED that, heretofore, to-wit:

In the Circuit Court of Rappahannock County, Virginia, plaintiff, J. C. Cropp filed his petition, as follows:

Your petitioner, J. C. Cropp, respectfully shows unto Your Honor that the defendants, G. W. Kinsey and John F. Kinsey are justly and truly indebted to the plaintiff in the sum of sixteen hundred and forty-one dollars and twenty-eight cents (\$1,641.28), which amount was due and payable December 5, 1928, with interest from the 5th day of April, 1928, until

paid; the full particulars of which indebtedness are as follows:

That the said G. W. Kinsey made, executed and delivered to the plaintiff his certain promissory note in the following words and figures:

\$1,641.28 Due December 5th, 1928, Warrenton, Va., April 5, 1928.

Eight months after date we promise to pay to the order of J. C. Cropp or his heirs without offset Sixteen Hundred and Forty one 28/100 Dollars.

Negotiable and payable at The Fauquier National Bank, Warrenton, Va. with interest thereon from date. Homestead and all other exemptions waived by the maker and endorser. And we the makers and endorsers each hereby waive notice of maturity and presentment, and we also waive protest of this obligation, and notice of dishonor and protest of same. Value received.

G. W. KINSEY,
Post Office Washington, Va.

No. ———.

(Endorsed on back of note) John F. Kinsey.

page 2 } That prior to the delivery of said note as afore-said, the co-defendant, John F. Kinsey, bound himself for the payment of said debt by his blank endorsement thereon, and that the plaintiff is entitled to or ought to recover of the said defendants and each of them at least the sum of \$1,641.28, with interest thereon from the 5th day of April, 1928, until paid.

Your petitioner further alleges that the said defendants, and each of them are converting or are about to convert, or have converted their property of whatever kind, or some part thereof, into money, securities, or evidences of debt, with intent to hinder, delay or defraud their creditors; and,

That the said defendants and each of them are about to assign and dispose of their estate, or some part thereof, with intent to hinder, delay or defraud their creditors, and the creditors of each of them;

Therefore, your petitioner asks for an attachment against the real estate and personal property of said defendants, the said G. W. Kinsey and the said John F. Kinsey, in the State of Virginia, and more particularly against the real and personal property of the said principal defendants,

located and situated in the County of Rappahannock, in the State of Virginia; that the real and personal property or so much thereof as may be necessary to satisfy the claim of your petitioner, be sold by order of this Court, and applied in satisfaction thereof, and that a receiver may be appointed to take charge of the attached property.

And that your petitioner may have such other, further and general relief as the nature of his case may require.

And your petitioner will ever pray, etc.

JAS. C. CROPP.

State of Virginia,

County of Rappahannock, to-wit:

I, R. A. McIntyre, a Notary Public at Large, in and for the State of Virginia, certify that J. C. Cropp has personally appeared before me in Rappahannock County, in my State aforesaid, and made oath that he is cognizant of the facts stated in the foregoing petition, and that they are true.

Given under my hand this first day of March, 1929.

R. A. McINTYRE,
Notary Public at Large.

My term of office expires the 24th day of September, 1930.

page 3 } Clerk's Office of Rapp. Ct. Ct.

March 1st, 1929.

Filed.

Teste:

JAS. M. SETTLE, Clerk.

ORIGINAL NOTE.

\$1,641.28 Due December 5th 1928 Warrenton, Va., April 5 1928

Eight months after date we promise to pay to the order of J. C. Cropp or his heirs without offset Sixteen Hundred and Forty one 28/100 Dollars. Negotiable and payable at The Fauquier National Bank, Warrenton, Va. with interest thereon from date. Homestead and all other exemptions waived by the maker and endorser. And we the makers and

endorsers each hereby waive notice of maturity and presentment, and we also waive protest of this obligation, and notice of dishonor and protest of same. Value received.

G. W. KINSEY,
Post Office, Washington, Va.

No. ———.

(Endorsed on back of note) John F. Kinsey.

page 4 } And in said Clerk's Office, the first day of March,
1929.

To the Sheriff of Rappahannock County, Greetings: J. C. Cropp having filed in the Clerk's Office of our Circuit Court of the County of Rappahannock, a petition for an attachment against G. W. Kinsey and John F. Kinsey, to recover of the principal defendant, G. W. Kinsey and John F. Kinsey, the sum of \$1,641.28, and the said petition alleging that the claim of the petitioner is believed to be just, and that the petitioner is entitled to or ought to recover, at the least, the sum of \$1,641.28, with interest thereon from the 5th day of April, 1928, until paid, and that the said principal defendants, G. W. Kinsey and John F. Kinsey are converting or are about to convert or have converted their property of whatever kind, or some part thereof, into money, securities, or evidences of debt, with intent to hinder, delay or defraud their creditors; and have assigned or disposed of, or are about to assign or dispose of their estate, or some part thereof, with intent to hinder, delay or defraud their creditors: Therefore, we command that you attach the property mentioned and sought to be attached in the said petition, to-wit: the real estate and personal property of the said defendants, G. W. Kinsey and the said John F. Kinsey, in the State of Virginia, and more particularly against the real and personal property of said defendants, located and situate in the County of Rappahannock, in said State, not exempt from execution as will be sufficient to satisfy the plaintiff's demand. And upon the plaintiff's executing the bond required by law, that you take possession of the tangible personal property and safely keep the same in your possession to satisfy any judgment that may be recovered, by the plaintiff in this attachment, and summon the said principal defendants, G. W. Kinsey and John F. Kinsey, if they or any of them be found within your bailiwick or any county or city wherein you may have seized property under and by virtue of this writ to appear

before our Circuit Court of the County of Rappahannock
 at the Court House thereof, on the 11th day of
 page 5 } March, 1929, and answer said petition, or state the
 grounds of their defense thereto. We further com-
 mand you to summon the said, co-defend-
 ant to appear before our said Court of the
 of, at the Court House on the said
 day of, 192., in person and submit to an exami-
 nation on oath, touching indebtedness to
 the said principal defendant, and the per-
 sonal property of the said defendant in
 possession, or with the consent of the
 Court first obtain, file an answer in writing, under oath, stat-
 ing whether or not so indebted, and, if so, the
 amount thereof from the time of maturity, or whether
 ha in possession any
 personal property, belonging to the said principal defendant,
 and if so the nature and value thereof. And that you make
 return thereof on the said 11th day of March, 1929.

Witness:

JAMES M. SETTLE,
 Clerk of our said Court, at the Court House,
 the 1st day of March, 1929, and in the
 152nd Year of the Commonwealth.

JAMES M. SETTLE,
 Clerk Ct. Ct. Rappahannock County, Va.

And in said Clerk's Office, on the 2nd day of March, 1929,
 H. F. Keyser, Sheriff, made his return as follows:

Levied on the following real estate, fully described in this
 paper hereto attached and returned with this writ, which
 real estate is the property of the defendants, G. W. Kinsey
 and John F. Kinsey, to-wit:

(1) All of that certain tract or parcel of land, containing
 466 acres more or less, located in Hampton Magisterial Dis-
 trict, Rappahannock County, State of Virginia, about three
 miles southeast of the town of Washington, adjoining F. R.
 Slaughter, M. O. Kinsey and others, and known as the
 Fletcher Property; it being the same tract of land which the
 said G. W. Kinsey took under the Will of his
 page 6 } mother, Virginia Fletcher Kinsey, which Will is
 duly recorded in the Clerk's Office of the Circuit
 Court of Rappahannock County, Virginia; it being the same

tract of land also on which the said G. W. Kinsey resides; by the terms of which said testatrix's devise to said G. W. Kinsey a life estate in said tract with remainder in fee in one-half thereof to the said John F. Kinsey; said levy was duly made upon both the interest of the said G. W. Kinsey and the said John F. Kinsey; and by delivering a true copy in writing to the said G. W. Kinsey, he being found upon the premises and in possession thereof, in person; which levy was made at 3:00 P. M., this 1st day of March, 1929.

(2) All of that certain other tract or parcel of land containing 303 acres, adjoining the foregoing described tract, the lands of F. R. Slaughter, the Warden Place, and Henry Cannon, located in Hampton Magisterial District, and known as North Bend Farm; it being the same tract of land, which was devised to the said G. W. Kinsey, defendant, in fee simple under the Will of his Grandfather, Thomas Fletcher; which Will is duly recorded in Book Book F, at page 29, *et seq.*, of the records of said County of Rappahannock, kept in the Clerk's Office of the Circuit Court thereof; no person being found upon said land, nor in possession thereof, upon whom a copy in writing of said writ could be served; which levy was made at 2:40 P. M., this 1st day of March, 1929;

(3) All of the right, title and interest of the said G. W. Kinsey and of the said John F. Kinsey of every kind and character whatsoever, in and to that certain other tract or parcel of land, located in Hampton Magisterial District, Rappahannock County, State of Virginia, and adjoining the above and foregoing tract of 456 acres more or less, which tract of land is known as the Fletcher Tract, containing 1,769.25 acres, more or less; it being the same land that was devised to the said G. W. Kinsey for life, by the terms of his wife's Will, Mrs. Mary P. Kinsey, with remainder in fee simple to one-half thereof to the said defendant, John F. Kinsey, which said Will is duly recorded in the Clerk's Office of Rappahannock County, State of Virginia; this levy having been made then and there, both upon the life interest of the said

G. W. Kinsey in the said last named tract and on page 7 } the remainder interest in fee simple of the said

John F. Kinsey in one-half of said tract; and by delivering to the said John F. Kinsey in person, a copy in writing of this writ, he being found upon the said tract of land and in possession thereof; which levy was made at 5:00 P. M., this 1st day of March, 1929;

(4) All the right, title and interest of the said G. W. Kin-

sey, and of the said John F. Kinsey of every kind and character whatsoever, in and to all of that certain other tract or parcel of land, situate in Jackson Magisterial District, Rappahannock County, Virginia, containing 133-1/2 acres, about five miles southeast of the town of Washington in said County, adjoining the above described tract of 1,769.25 acres, generally known as the Peyton Tract, which last named tract of land was devised to the said G. W. Kinsey, one of the defendants in this writ by the wife of the said Kinsey, the said Mary F. Kinsey, for the term of his natural life, with remainder in fee simple in one-half thereof to the said John F. Kinsey, the other principal defendant named in said writ; which said Will is duly recorded in the Clerk's Office of Rappahannock County, Virginia; which said levy was made then and there, both upon the interest of the said G. W. Kinsey, and the said interest of the said John F. Kinsey, in said last mentioned tract; and no person was found upon the said last named tract, upon whom a copy in writing of this writ could be served in person; which said levy was made this the 1st day of March, 1929, on the last named tract, at 4:45 P. M.

H. F. KEYSER,
Sheriff, Rappahannock County, Virginia.

Executed the foregoing and hereto attached attachment, on the first day of March, 1929, at 3:00 o'clock P. M., on the following personal property, found in the possession of and belonging to the said defendants, G. W. Kinsey and John F. Kinsey, on the 466 acre tract of land in Rappahannock County, State of Virginia, occupied by the said defendant, G. W. Kinsey; and upon the 1,769.25 acre tract of land, known as the Fletcher land, occupied by and in the possession of the said John F. Kinsey, to-wit:

page 8 } On the tract occupied by the said G. W. Kinsey:

7 colts, coming 2 years old; 9 yearling bulls and 8 yearling heifers; 80 sheep; 50 lambs; 2 2 year old steers; 5 cows; 1 bull; 3 heavy wagons; 5 horses and harness for 4 horses;

On the tract occupied by the said John F. Kinsey:

2 cows; 1 bull, 4 horses, 1 wagon; two yearling cattle; 9 horses; 5 colts, coming two years old; 60 sheep and 40 lambs; 6 two year old steers; 13 cows; 3 yearling cattle; 6 brood sows; 20 shoats about 60 lbs., 2 wagons and harness for 6

harness; 1 Ontario Drill; 1 mower; 2 other cows; Chevrolet Truck, License No. T24-478; by delivering a true copy of the within attachment in writing to the said defendants, G. W. Kinsey in person, and by delivering a true copy in writing of the same in person to the defendant, John F. Kinsey; and no attachment bond being given by the plaintiff nor anyone for him, I did not take any of the aforesaid property into my possession.

H. F. KEYSER,
Sheriff, Rappahannock County, Virginia.

page 9 } Virginia:

In the Circuit Court of Rappahannock County, the 16th day of March, 1929.

J. C. Cropp, Plaintiff,

v.

G. W. Kinzey and John F. Kinzey, Defendants.

ATTACHMENT PROCEEDINGS.

Upon the motion of the Bank of Warren, E. H. Jackson, C. R. Wood, County Treasurer, and the Second National Bank of Culpeper, Virginia, a corporation, and the Rappahannock National Bank of Washington, Virginia, creditors of John F. Kinzey and George W. Kinzey, who claim liens upon or interests in the personal property levied on under the plaintiff's attachment writ, they are permitted to file their petitions in this cause, and thereupon they filed the same.

Whereupon the Court without passing upon any of the questions raised by the allegations in the petition of plaintiff, or in the petitions of the other named petitioners, upon consent of all parties given in open court, and it appearing to the Court that it is necessary that the personal property mentioned in said petitions and in said writ of attachment should be sold for its preservation instead of waiting for the various questions raised by the pleadings to be decided; doth adjudge and order that W. F. Moffett be and he is hereby appointed a receiver to take charge of and sell said personal property, but nothing herein stated shall be construed as authorizing said receiver to take charge of or sell any of the household and kitchen furniture in the possession of the said George W. Kinzey or John F. Kinzey at Jessamine Hill Residence, and in the house occupied by said John F. Kinzy on what is known as the Miller Place.

Said sale shall be held by said receiver after fifteen days notice thereof by printed handbills or newspaper publications or both in his discretion, upon terms of cash as to all sums of \$20.00 or under, and as to all sums in excess of \$20.00, upon a credit of six months, the purchaser to give note with approved security and waiver of the homestead exemption, bearing interest from date.

But before said receiver shall advertise said page 10 } property he shall first enter into bond before the Clerk of this Court in the penalty of \$10,000, with surety approved by said Clerk, conditioned and payable as the law directs.

And this cause is continued to the first day of the next term and set for hearing on said day as to the questions raised by the pleadings and remaining undecided.

recorded

page 11 } And in the Circuit Court of said County, on the 16th day of March, 1929.

To the Honorable George Latham Fletcher, Judge of the Circuit Court of Rappahannock County, Va.

1. Your Petitioner, the Bank of Warren, of Front Royal, Virginia, a corporation, respectfully represents, that on the 5th day of March, 1929, it did recover in your Honor's Court a judgment against George W. Kinsey and John F. Kinsey, for the sum of TWENTY-FIVE HUNDRED DOLLARS (\$2,500.00) with interest thereon from the 14 day of March, 1929; said judgment was rendered by confession thereof, for the aforesaid amount by the said George W. Kinsey and John F. Kinsey, before the Clerk of said Court, in his office. The said judgment was duly docketed in said Clerk's Office on the 6 day of Mch., 1929, in judgment Lien Docket D, page 103 an office copy thereof, is herewith filed, marked Exhibit No. 1, and prayed to be read as a part of this petition;

2. An execution on said judgment was sued out of said Clerk's Office on the 6 day of Mch., 1929 and placed in the hands of H. F. Keyser, Sheriff of Rappahannock County, Virginia, to be levied; said Sheriff levied said executions on the personal property of the said George W. Kinsey and John F. Kinsey, the same being for the most part that levied on by said Sheriff under a certain attachment sued

out by James C. Cropp, prior to the issuing of the aforesaid executions of petitioner;

3. That your Petitioner is advised that one, James C. Cropp on the day of Mch., 1929, sued out an attachment and had the same levied upon the aforementioned personal property, upon certain grounds alleged and set forth in his petition for said attachment; that as yet no order has been entered, with respect to said attachment, or as to the property sought to be attached;

4. That Petitioner is not now a party to the said attachment proceedings but has a right to defend the attachment and to assert and hereby asserts a lien upon the executions so sought to be attached by virtue of the levy of his aforesaid executions;

5. Petitioner denies the validity of the attachment writ so sued out and levied by the said James C. Cropp and denies the grounds of the attachment alleged in the petition of the said James C. Cropp; and as to such page 12 } grounds, Petitioner alleges that said writ of attachment was issued on false suggestion and without sufficient cause;

6. Petitioner prays that he may be allowed to file this his Petition in the said attachment proceedings, so instituted by the said James C. Cropp and now pending in your Honor's Court, and that he may be made a party thereto; and that his claim of lien to said property so attached, may be inquired into; that the said attachment so sued out by said James C. Cropp may be quashed, or abated because sued out on false suggestions and insufficient grounds;

7. That petitioner's lien as herein set forth may be established and declared by the Court; that the property subject to petitioner's lien, by reason of the levy of his aforesaid executions, may be sold and the proceeds thereof applied to the discharge of his said debts.

BANK OF WARREN, Front Royal, Va.
By E. H. JACKSON, President,
Petitioner.

State of Virginia,
County of Warren, to-wit:

I, Marye H. Bell, a Notary Public in and for the state and county aforesaid, do certify that E. H. Jackson, whose name is signed as President of the Bank of Warren, Front Royal, Va., to the foregoing petition, this day personally appeared before me in my said County and state and made oath before me that the matters and things alleged in the foregoing petition as of his own knowledge, are true; and so far as the same are stated to be upon information received by him for others, he believes to be true. My commission expires Nov. 11th, 1929.

Given under my hand this March 15th, 1929.

MARYE H. BELL, Notary Public.

1929 March 16".

Filed in Open Court.

Teste:

JAS. M. SETTLE, Clerk.

page 13 } And in the Circuit Court of said County, on the
16th day of March, 1929.

To the Honorable George Latham Fletcher, Judge of the
Circuit Court of Rappahannock County.

1. Your Petitioner, E. H. Jackson, respectfully represents that on the 5" day of March, 1929, he recovered in your Honor's Court a judgment against George W. Kinsey and John F. Kinsey for the sum of \$1,500.00, with interest thereon from the 4" day of March, 1929, until paid; said judgment was rendered by confession thereof, for the aforesaid amount by the said George W. Kinsey and John F. Kinsey, before the Clerk of the said Court in his office. The said judgment was duly docketed in said Clerk's Office on the 6" day of March, 1929, in Judgment Lien Docket No. D, page 103; an office copy thereof, is herewith filed, marked Exhibit No. 1, and prayed to be read as a part of this petition;

2. That on the 5 day of March, 1929, your Petitioner like-

wise recovered in said Court a judgment against the said George W. Kinsey, for the sum of \$625.00, with interest thereon from the 2 day of March, 1929, until paid; said judgment was likewise rendered upon a confession thereof by the said George W. Kinsey, before said Clerk, in his said office; the said judgment was duly docketed in the said Clerk's Office on the 6th day of March, 1929, in Judgment Lien Docket D, page 103, an office copy thereof is herewith filed and prayed to be read as a part of this petition;

3. Executions were sued out of said Clerk's Office on the 6th day of March, 1929, and placed in the hands of H. F. Keyser, Sheriff of Rappahannock County, Virginia, to be levied; said Sheriff levied said executions simultaneously on the personal property of the said George W. Kinsey and John F. Kinsey; said personal property being for the most part the same as that levied on by said Sheriff under a certain attachment sued out by James C. Cropp, prior to the issuing of the aforesaid executions of petitioner;

4. That your Petitioner is advised that one James C. Cropp on the 2 day of Mch., 1929, sued out an attachment and had the same levied upon the aforementioned personal property, upon certain grounds alleged and set forth in his petition for said attachment; that as yet no order has been page 14 } entered;

5. That Petitioner is not now a party to the said attachment proceedings but has a right to defend the attachment and to assert and hereby asserts a lien upon the personal property so sought to be attached by virtue of the levy of his aforesaid execution;

6. Petitioner denies the validity, of the attachment writ so sued out and levied by the said James C. Cropp and denies the grounds of the attachment alleged in the petition of the said James C. Cropp; and as to such grounds, Petitioner alleges that said writ of attachment was issued on false suggestion and without sufficient cause;

7. Petitioner prays that he may be allowed to file this his Petition in the said attachment proceedings, so instituted by the same James C. Cropp and now pending in your Honor's Court, and that he may be made a party thereto; and that his claim of lien to said property so attached, may be inquired into; that the said attachment so sued out by said

James C. Cropp may be quashed, or abated because sued out on false suggestions and insufficient grounds;

8. That petitioner's lien as herein set forth may be established and declared by the Court; that the property subject to petitioner's lien, by reason of the levy of his aforesaid executions, may be sold and the proceeds thereof applied to the discharge of his said debts.

E. H. JACKSON,
Petitioner.

State of Virginia,
County of Warren, to-wit:

I, Marye H. Bell, a Notary Public in and for the state and county aforesaid, do certify that E. H. Jackson, whose name is signed to the foregoing petition, this day personally appeared before me in my said county and state and made oath before me that the matters and things alleged in the foregoing petition as of his own knowledge, are true; and so far as the same are stated to be upon information received by him from others, he believes to be true. My commission expires Nov. 11th, 1929.

Given under my hand this March 15th, 1929.

MARYE H. BELL, Notary Public.

1929 March 16" Filed in Open Court.

Teste:

JAS. M. SETTLE, Clerk.

page 15 } And in the Circuit Court of said County, on the
16th day of March, 1929.

In the Circuit Court of Rappahannock County.

J. C. Cropp
vs.

G. W. Kinsey and John F. Kinsey.

PETITION.

To the Honorable George Latham Fletcher, Judge of the Circuit Court of Rappahannock County, Virginia:

Your undersigned petitioner respectfully begs leave to file this its petition in the above entitled cause now pending in your Honor's Court, and would show unto your Honor that by reason of a judgment in favor of your petitioner against G. W. Kinsey and John F. Kinsey secured on the 5th day of March, 1929, upon which there was a writ of *fieri facias* issued by the Clerk of your Honor's Court, which was levied upon the personal property as set out in schedule hereto attached, and by reason of said judgment your petitioner also has a lien upon certain real estate from the time of docketing of said judgment.

Your petitioner is now advised that the real estate and personal property upon which it has a lien by reason of the aforesaid judgment and writ of *fieri facias* issued thereon has been attached in this cause by J. C. Cropp, which attachment purports and attempts to establish a lien in favor of the said J. C. Cropp prior to the lien of your petitioner; and your petitioner would show unto your Honor that the said attachment so sued out by the said J. C. Cropp in this cause is invalid on its face, was issued on false suggestion and without sufficient cause, absolutely void and of no effect, and upon a showing of all of the facts preceding and surrounding the said attachment by the said J. C. Cropp it will clearly be shown to your Honor that the grounds of attachment as contained in the attachment proceedings of the said J. C. Cropp, to-wit: "that he is converting, or about to convert, or has converted his property, or some part thereof, with intent to hinder, delay or defraud his creditors; that he has assigned, or disposed of, or is about to assign or dispose

of, his estate or some part thereof, with intent to
page 16 { hinder, delay or defraud his creditors"; are not
based upon facts; and that the attachment so sued
out should fail and be quashed owing to the reason that at
the same time same was issued and levied there was absolutely no grounds upon which an attachment could issue.

Your petitioner would further show that while it has its lien as above stated upon certain real estate and personal property there are numerous other liens binding same; and that in order to avoid a multiplicity of suits and the squandering of the property upon which your petitioner has a lien by numerous and independent actions that your petitioner would join in the prayer of the said J. C. Cropp that a receiver be appointed to take over all of the said properties and dispose of the same under orders of your Honor's Court and pay the proceeds thereof to the parties that might be

entitled thereto as determined upon property proceedings had in this cause.

Your petitioner, therefore, prays that it may be permitted to file its petition in this attachment cause and defend the same; and that the attachment heretofore issued insofar as it creates a lien upon the property it attempted to attach may be quashed and declared of no effect; that your petitioner's liens as established by its judgment and writ of *fiery facias* may be given their proper priorities; that a receiver may be appointed in this cause as above prayed; and that your petitioner may be granted all such other relief, both general and special, as to your Honor may seem meet or the nature and exigencies of its case may require. And it will ever pray, etc.

SECOND NATIONAL BANK OF CULPEPER,
By HIDEN, BICKERS & BUTTON,
Counsel.

1929—March 16".

Filed in Open Court.

Teste:

JAS. M. SETTLE, Clerk.

page 17 } And in the Circuit Court of said County, on the
16th day of March, 1929.

In the Circuit Court of Rappahannock County, Virginia.

J. C. Cropp, Plaintiff,

vs.

G. W. Kinsey and John F. Kinsey, Defendants.

Your *petition*, the Rappahannock National Bank, of Washington, Virginia, respectfully represents:

1. That on the second day of December, 1928, Geo. W. Kinsey and John F. Kinsey executed and delivered unto petitioner a certain contract or Chattel Mortgage which was duly filed and docketed in the office of Clerk of said Court on the 5th day of December, 1928, in Condition Sales Book No. 2 at page 1, and which said contract or chattel mortgage was executed and delivered to Petitioner by said Geo. W. Kinsey and John F. Kinsey, to secure a certain negotiable

promissory note of even date for the sum of Thirty eight Hundred (\$3,800.00) Dollars executed by said Geo. W. Kinsey and payable six months after date to the order of said John F. Kinsey and duly endorsed by said John F. Kinsey and duly discounted and now held and owned by Petitioner, and the said Geo. W. Kinsey and John F. Kinsey by said contract or chattel mortgage gave to your Petitioner a first lien on the following goods and chattels, Namely:

Forty two two year old cattle, eighteen cows. The cattle weigh around eight hundred, Short Horns. The cows to be grazed on home place, cattle to be run on Browning Farm. Also ten yearlings all reds to be grazed and fed on home place.

That no part of said promissory note has been paid and said lien now remains in full force and effect.

2. That on the 17th day of January, 1929, John F. Kinsey and Geo. W. Kinsey, executed and delivered unto Petitioner a certain contract or chattel mortgage, which was duly filed and docketed in the office of the Clerk of this Court on the 17th day of February, 1929, in Condition Sales book No. 2 at page 9, and which said contract or chattel mortgage was executed and delivered to Petitioner by said John F. Kinsey and Geo. W. Kinsey to secure a certain negotiable promissory note of even date for the sum of Fifty One page 18 } Hundred and Ninety One & 49,100 Dollars (\$5,191.49) executed by the said John F. Kinsey and payable on Feb. 14th, 1929, to the order of the said Geo. W. Kinsey and duly discounted and now held and owned by Petitioner, the said John F. Kinsey and Geo. W. Kinsey by said contract or chattel Mortgage gave to your Petitioner a first lien on the following goods and chattels, namely:

Fourteen half bred colts (4 yearlings, 5 two year old, 3 three year olds and 2 five year old), 17 drafts horses from five to seventeen years old. 135 stock ewes, their lambs and wool, sixteen cows, 19 two year old cattle weighing approximately 700 lbs. The same being all the stock of this description now owned by me except 8 two year old cattle. All to be fed and grazed on the "Miller & Browning Farms" except 9 colts to be fed on home place.

That said promissory note has not been paid and said lien now remains in full force and effect.

That Bank of Warren, a corporation, E. H. Jackson, Second National Bank of Culpepper, a corporation, who have obtained and docketed judgments, had actual notice of this petitioner's said liens prior to the time they proceeded to obtain judgments.

3. Your Petitioner is advised that J. C. Cropp has sued out an attachment and had the same levied upon the same identical personal property, upon certain grounds alleged and set forth in his petition for said attachment;

4. That as yet no order has been entered with respect to said attachment or as to the property sought to be attached.

5. That petitioner is not now a party to said attachment proceedings but has a right to defend the same and to assert and does hereby assert a lien upon the property so sought to be attached, by virtue of its contracts and chattel mortgages as aforesaid.

6. Petitioner denies the validity of the attachment writ so sued out and levied by the said J. C. Cropp and denies the grounds of the attachment alleged in the petition of said J. C. Cropp; and as to such grounds, Petitioner alleges that said writ of attachment was issued on false suggestion and without sufficient cause.

page 19 } 7. Petitioner prays that it might be allowed to file this its petition in said attachment proceedings and that it might be made a party thereto and that its lien by virtue of said chattel mortgage contracts on said property so attached be inquired into.

8. That said attachment may be quashed or abated because sued out on false suggestion and insufficient grounds.

9. That Petitioner's lien as herein set forth may be established and declared by the Court and that the property subject to Petitioner's lien may be excluded from any attachment in favor of the said J. C. Cropp.

RAPPAHANNOCK NATIONAL BANK,
By HOLMES HALL, Counsel.

1929, March 16th.

Filed in open Court.

Teste:

JAS. M. SETTLE, Clerk.

page 20 } And in the Circuit Court of said County, on the
16th day of March, 1929.

To the Honorable George Latham Fletcher, Judge of the
Circuit Court of Rappahannock County, Virginia.

Your Petitioner, C. R. Wood, County Treasurer of Rappahannock County, Virginia, respectfully represents that on the 1st day of March, 1929, at 2:30 P. M. he levied on certain personal property belonging to George W. Kinsey and John F. Kinsey, a list of which is hereto attached, marked Exhibit A, and prayed to be read as a part hereof; such levy was made for the purpose of satisfying taxes due and unpaid, both state and county, for the years 1926 and 1927, the amount thereof being \$542.54 for the year 1926, with int. on same from June 15, 1927 and \$804.63 for the year 1927; with int. on same from June 15, 1928.

2. Your Petitioner is advised that James C. Cropp had sued out and attachment and had the same levied upon identical the same personal property, upon certain grounds alleged and set forth in his petition for said attachment;

3. That as yet no order has been entered with respect to said attachment or as to the property sought to be attached;

4. That petitioner is not now a party to said attachment proceedings but has a right to defend the same and to assert and does hereby assert a lien upon the property so sought to be attached by virtue of his levy made for the satisfaction of the aforesaid taxes;

5. Petitioner denies the validity of the attachment writ so sued out and levied by the said James C. Cropp and denies the grounds of the attachment alleged in the petition of said James C. Cropp; and as to such grounds, Petitioner alleges that said writ of attachment was issued on false suggestion and without sufficient cause;

6. Petitioner prays that he may be allowed to file this his petition in said attachment proceedings and that he may be made a party thereto and that his claim of lien on said property so attached may be inquired into;

7. That said attachment may be quashed, or abated because sued out on false suggestion and insufficient grounds.

8. That Petitioner's lien as herein set forth may be established and declared by the Court and that the property subject to Petitioner's lien by reason of his afore-
page 21 } said levy for taxes, may be sold and the proceeds thereof applied to the discharge of said taxes.

C. R. WOOD,
Treasurer of Rappahannock County, Va.,
Petitioner.

State of Virginia,
County of Rappahannock, to-wit:

I, Jas. M. Settle, a County Clerk in and for the state and county aforesaid do certify that C. R. Wood, whose name is signed as Treasurer of Rappahannock County, Va., to the foregoing petition, this day personally appeared before me in my said county and state and made oath before me that the matters and things alleged in the foregoing petition as of his own knowledge are true; and so far as the same are stated to be upon information received by him from *other*, he believes to be true.

Given under my hand this 16th day of March, 1929.

JAS. M. SETTLE, Clerk.

1929. March 16th.

Filed in open Court.

Teste:

JAS. M. SETTLE, Clerk.

page 22 } In the Circuit Court of Rappk. Co., May 20,
1929.

J. C. Cropp
vs.

George W. Kinsey and John F. Kinsey.

The joint and several answers of George W. Kinsey and John F. Kinsey to a petition exhibited against them in the Circuit Court of Rappahannock County, Virginia, praying an attachment against the property of the said Kinseys; for answer to said petition answering say:

(1) They admit the indebtedness described in said petition;

(2) They deny that they or either one of them was converting or about to convert their property or any part thereof of any kind or description to hinder, delay or defraud their creditors, and

That they or either one of them was about to assign or dispose of their estate or a part thereof with intent hinder, delay or defraud their creditors, and

(3) And defendants allege and charge that the attachment against their property was issued on false suggestions and without sufficient cause.

GEORGE W. KINSEY and
JOHN F. KINSEY,
By Counsel.

E. H. GIBSON, p. q.

Sworn to before me May 20th, 1929 by George W. Kinsey for himself and as Agent for John F. Kinsey.

JAS. M. SETTLE, Clerk.

Filed May 20, 1929.

page 23 } In the Circuit Court of Rappahannock County,
Virginia, Saturday, March 16th, 1929.

Jas. C. Cropp, Plaintiff,

vs.

G. W. Kinsey and John F. Kinsey, Defendants.

This day came the plaintiff by R. A. McIntyre, his attorney and the defendants by E. H. Gibson, their attorney, and by their agreement, it is considered by the Court that the said plaintiff J. C. Cropp do recover of said defendants G. W. Kinsey and John F. Kinsey the sum of Sixteen Hundred and forty-one dollars and twenty-eight cents (\$1,641.28), with interest thereon at the rate of six per cent per annum from April 5th, 1928, until paid, and his costs by him in this behalf expended. Upon an instrument waiving the Homestead Exemptions.

A Copy—Teste:

JAS. M. SETTLE, Clerk.

page 24 } In the Circuit Court of Rappahannock County,
Virginia, May 20th, 1929.

J. C. Cropp, Plaintiff,

vs.

Geo. W. Kinsey and John F. Kinsey, Defendants.

ATTACHMENT.

This day came the parties by their attorneys, and it appearing by the return of the sheriff endorsed on the attachment that same has been executed, and both parties waiving a jury, all matters of law and fact were submitted to the court for adjudication, and the court, after hearing evidence and argument of counsel, was not advised as to its judgment, took time to consider thereof, and on motion of counsel for complainant he is allowed until June 1, 1929, in which to file briefs in this cause, and this case is continued for the entry of such orders in vacation as may be entered herein, which said orders when so entered in vacation shall have the same effect as if entered in term.

A Copy—Teste:

JAS. M. SETTLE, Clerk.

page 25 } And in the Circuit Court of said County, on the
9th day of July, 1929.

To the Honorable J. H. R. Alexander, Judge of the Circuit
Court of Rappahannock County, Virginia.

Your petitioner, R. W. Miller, respectfully represents, that on the 5th day of March, 1929, he recovered in your Honor's Court a judgment against George W. Kinsey, for the sum of \$16,577.50, with interest thereon from the 1st day of November, 1922, until paid, and 10% attorneys fee for collection, and the costs incident thereto; said judgment was rendered by confession thereof, for the aforesaid amount by the said George W. Kinsey, before the Clerk of said Court, in his office, and the said Judgment was duly docketed in said Clerk's Office on the 6th day of March, 1929, at Eleven O'clock a. m.,

in Judgment Lien Docket "D", page 101; an office copy thereof is herewith filed, marked "Exhibit 1", and prayed to be read as a part of this petition;

An execution was sued out of said Clerk's Office upon said judgment on the 6th day of March, 1920 (a copy whereof being herewith filed as "Exhibit 2") and placed in the hands of W. H. Hitt Deputy Sheriff for H. F. Keyser Sheriff of Rapp. Co. Va., to be levied; said W. H. Hitt, Deputy Sheriff as aforesaid levied said execution on the household and kitchen furniture and certain other personal property belonging to the said George W. Kinsey on the 6th day of March, 1929, but failed to levy said execution on certain other personal property of the said George W. Kinsey's, which was subject to the levy of said execution, and said property for the most part being that levied on by the Sheriff of Rappahannock County, Virginia, prior to the *issuing* of the petitioners said execution, by one James C. Cropp, under an attachment sued out by the said James C. Cropp on the 1st day of March, 1929; that as yet no order has been entered with respect to said attachment of the said James C. Cropp, or as to the property sought to be attached by the said James C. Cropp; that petitioner is not now a party to the said attachment proceedings, but he is advised that he has the right to defend the attachment and to assert and he hereby asserts a lien in his favor by reason of the execution issued and placed in the hands of the said W. H. Hitt, page 26 } Deputy Sheriff as aforesaid, in manner and form as aforesaid;

Petitioner denies the validity of the attachment writ so sued out and levied by the said James C. Cropp and denies the grounds of the attachment alleged in the petition of the said James C. Cropp, and as to such grounds, petitioner alleges that the said writ of attachment was issued on false suggestion and without sufficient cause;

Petitioner further represents that some time after his execution was placed in the hands of W. H. Hitt Deputy Sheriff as aforesaid, which said execution became a lien upon all of the personal property of the said George W. Kinsey from the time it was placed in the hands of the said W. H. Hitt Deputy Sheriff as aforesaid, that an order was entered in said suit of attachment by this Honorable Court on the 16th of March, 1929, and before the return day of said execution, appointing William F. Moffett a receiver to take charge of said personal property and to advertise and sell the same, and preserve the proceeds arising from said sale, subject to the order of this Court, as to the liens binding the

same and their priorities; that said Receiver sold said personal property of the said George W. Kinsey, and petitioner is advised that the funds derived from the sale of the same are now on deposit in the Rappahannock National Bank of Washington, Virginia, to the credit of said receiver, subject to the order of this Court as aforesaid;

Petitioner prays that he may be allowed to file this his petition in said attachment proceedings, pending in your Honor's Court as aforesaid; that he may be made a party thereto; and that his claim of lien to said property so attached may be enquired into; that said attachment may be quashed, for the reasons heretofore set out; that petitioner's lien as herein set out may be established and declared by the Court; that the proceeds from the sale of the said personal property which are now in the hands of said Receiver may be applied to petitioner's lien, by reason of his said execution issued and placed in the hands of W. H. Hitt, Deputy Sheriff as aforesaid, in manner and form as aforesaid.

ROBT. W. MILLER,
Petitioner.

page 27 } Virginia:

In the Circuit Court Clerk's Office for the county of Rappahannock March 5, 1929.

Robt. W. Miller, Plaintiff,
versus
G. W. Kinsey, Defendant.

Judgment in favor of the Plaintiff against the Defendant for the sum of Sixteen Thousand Five Hundred Seventy Seven and 50/100 \$16,577.50 With interest thereon at the rate of six per centum per annum, from Nov. 1, 1922 until payment, and 10% attorneys fee for collection Subject to credit, viz: Apr. 27, 1929, \$933.50. And the cost of suit, \$20.60.

A *fieri facias* issued from the Clerk's office of said court on the 6th day of March, 1929, returnable to the First April Rules thereafter, directed to the Sheriff of the Co. of Rappahannock who hath made return thereon in the words and figures following, to-wit:

This Judgment was duly docketed in the Clerk's office of the Circuit Court of the Co. of Rapp. on the 6th day of March, 1929, at 11:00 A. M. Judgment Docket No. D, page 101.

JAMES M. SETTLE, Clerk.

Teste:

JAS. M. SETTLE, Clerk.
E. H. GIBSON, p. q.

Exhibit 1.

Endorsed on back:

Robt. W. Miller
vs.
G. W. Kinsey.

ABSTRACT OF JUDGMENT.

page 28 } The Commonwealth of Virginia,
To the Sheriff of the County of Rappahannock,
Greeting:

WE COMMAND YOU, That out of the goods and chattels of G. W. Kinsey in your bailiwick, you cause to be made the sum of Sixteen Thousand Five Hundred seventy seven Dollars and Fifty Cents (\$16,577.50) with interest thereon at the rate of six per centum per annum, from the 1st day of Nov., 1922, until paid, which said amount Robt. W. Miller did on the 5th day of March, 1929, in our, *in our* Clerk's Office of the Circuit Court for the County of Rappahannock, recover against the said G. W. Kinsey, as well for a debt as interest thereon; also Twenty Dollars and sixty cents, which to the said Robt. W. Miller in the same Court were adjudged for his costs about his suit in that behalf expended, and 10% attys. Fee for collection whereof the said G. W. Kinsey is *convict*, as appears of record. And how you shall have executed this writ make known at the rules to be holden in the Clerk's office of our said Circuit Court on the First Monday in April next. And have then and there this writ.

Witness, Jas. M. Settle, Clerk of our said Court, at the

Courthouse, the 6th day of March, 1929, and in the 152 year of the Commonwealth.

JAS. M. SETTLE, Clerk.

A Copy—Teste:

JAS. M. SETTLE, Clerk.

“Exhibit 2.”

Endorsed on back:

Robt. W. Miller

vs.

G. W. Kinsey.

FI. FA. IN DEBT.

E. H. Gibson, p. 2.

Came to hand March 6th, 1929, at 12.45 o'clock P. M.

W. H. Hitt, Deputy Sheriff for H. F. Keyser, Sheriff.

To 1st Apr. Rules, 1929.

page 29 } State of Virginia,
County of Rappahannock, to-wit:

I, James M. Settle, a Commissioner in Chancery for the Circuit Court of Rappahannock County, Virginia, do certify that R. W. Miller, whose name is signed to the foregoing petition, this day personally appeared before me, in my said County and State aforesaid, and made oath before me that the matters and things alleged in said petition are true to the best of his knowledge and belief.

Given under my hand this 9th day of July, 1929.

JAS. M. SETTLE,
Commissioner in Chancery.

Filed July 9, '29.

page 30 } In said Court, the 9th day of July, 1929.

J. C. Cropp, Plaintiff,

vs.

Geo. W. and John F. Kinsey, Defendants.

ATTACHMENT.

This day came the parties by their attorneys and the Court being now fully advised with respect to its opinion upon the matters of law and fact submitted for adjudication at the hearing on May 20th, 1929, and as to which at that time the Court took time to consider, it is considered by the Court, for reasons stated in writing and filed in the record of this case, that the writ of attachment, sued out by the plaintiff, J. C. Cropp vs. the defendants, John F. and Geo. W. Kinsey was sued out on false suggestion and insufficient grounds and therefore it is adjudged and ordered that the same be and is hereby quashed and dismissed; and that said defendants do recover of said plaintiff their costs by them in this behalf expended.

Upon the motion of plaintiff by counsel the operation of this order is suspended, upon condition that plaintiff do within ten days of this date enter into and acknowledge before the Clerk of this Court, a proper suspending bond as required by law in the penalty of \$1,000.00 conditioned and payable as the law directs; and with surety approved by said Clerk.

And upon motion of plaintiff by counsel he is allowed the period of sixty days within which to present to this Court or the judge thereof, his bills of exceptions, for signing, sealing and enrolling, or such other pleading as he may deem necessary to the end that he may apply to the Supreme Court of Appeals for an appeal, or for a writ of error, and *superse-deas* if he be so advised.

And thereupon R. W. Miller applied to the Court for permission to file his petition herein alleging a lien by execution on the funds arising from the property sold and now in the hands of W. F. Moffett, Receiver, which application was resisted and objected by the Second National Bank of Culpeper, Va. the Bank of Warren of Front Royal, Va., and E. H. Jackson intervening petitioners for reasons given orally to the

page 31 } Court, but the Court permitted the said petition to be filed over the objections of said intervening petitions, to which action of the Court, said intervening petitioners then and there excepted; and said intervening petitioners thereupon demurred to said petition

of said R. W. Miller and filed the grounds of their demurrer in writing and thereupon the same was argued by counsel; but the Court not being advised with respect to its opinion upon the questions raised by said demurrer asks time to consider.

And upon motion of the Bank of Warren and E. H. Jackson intervening petitioners, it is ordered that W. F. Moffett, Receiver, do file his report herein showing his acts, and doings within 10 days from this date.

Enter.

July 9th, 1929.

page 31 } In the Circuit Court of the County of Rappahannock, the 9th day of July, 1929, Judge J. R. H. Alexander filed his opinion, referred to in the order entered the same day, as follows:

Breeden v. Peale, 106 Virginia, Page 39; 55 S. E., Page 2.

The opinion of Judge Keith uses the following language:

“ ‘An intent to defraud cannot be inferred from preference given to certain creditors over others in a general assignment where such preference is not inhibited.’ Waples on Attachments, 72. But we need not cite authority to show that in this state it is lawful for a debtor, though insolvent, to prefer certain of his creditors in a deed of assignment, and that such preference is neither fraudulent *per se* nor a badge of fraud.”

“Every assignment by a debtor of his property must of necessity work some delay as to other creditors in the collection of their claims, but this is not such delay as is meant by the statute which gives the right of attachment when the debtor is about to convey, assign, conceal, or dispose of his property to delay and defraud his creditors. Waples on Attachments, 66.”

It is reasonable to assume that a threat, or even an existing intent, to go into bankruptcy would be viewed in a similar manner by the Appellate Court, inasmuch as such a course, if persisted in, would be no more than the exercise of a legal right.

In the case of *Wingo et al. v. Purdy & Company*, 87 Va. 472, which presents a very similar state of facts to that of the case at bar, it is held that the existence of a fraudulent intent is necessary, and the burden of proving same lies with the attaching petitioner. This doctrine is cited with approval in *Hash v. Lowry et al.*, 88 Va. 716, and in *Burrus & Sons v. Tran & Brother*, same reporter, Page 980.

In the instant case the Court is not satisfied that fraudulent intent existed. On the contrary, it would appear from the evidence *educed* that the defendants Kinsey, being convinced that their assets were insufficient for the payment of their debts if placed on the market in the present period of real estate depression, were seeking and proposed
page 33 } a remedy which they believed would, if accepted and followed by their creditors, pay out their debts in full. The mere fact that one or both of said Kinseys made the statement to the attaching creditor that if he would not accede to the proposed plan he would "get nothing", is insufficient evidence of a fraudulent intent; it would fairly be considered, as no doubt it was, a mere expression of opinion.

The reasons stated the Court is of the opinion that the attachment was issued on insufficient grounds, and the motion to quash same will be sustained.

page 34 } In the Clerk's Office of Rappahannock County,
July 17, 1929.

KNOW ALL MEN BY THESE PRESENTS, That we, Jas. A. Cropp and R. A. McIntyre are held and firmly bound unto the Commonwealth of Virginia, in the sum of One Thousand Dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. And we hereby waive the benefit of our exemption as to this obligation. Sealed with our seals, and dated this 17th day of June, one thousand nine hundred twenty nine.

The condition of the above obligation is such, tht whereas at a circuit court held for the county of Rappahannock, on the 9th day of July, 1929, in a certain attachment proceeding then pending in said court between Jas. C. Cropp plaintiff and Geo. W. Kinsey and John F. Kinsey et als., defendants, a judgment was entered quashing the plaintiff's attachment, and whereas on the 9th day of July, 1929, during said term at which said judgment was entered the said court, in order to allow the said Jas. C. Cropp to apply for an appeal

and writ of error from said judgment, made an order suspending the execution of the said judgment for the period of sixty days from the date thereof, upon the said Jas. C. Cropp, or some one for him, giving bond before the Clerk of said court in the penalty of \$1,000.00, with condition according to law, and whereas it is the intention of the said Jas. C. Cropp to present a petition for an appeal and writ of error from said judgment.

Now therefore if the said Jas. C. Cropp shall pay all such damages as any person may sustain by reason of such suspension in case a writ of error to the said judgment shall not be allowed and be effectual within the said period of 60 days, specified in the aforesaid order of the said court, then this obligation to be void; otherwise to remain in full force and virtue.

R. A. McINTYRE, (Seal)
JAS. C. CROPP, (Seal)

page 35 } In the Clerk's Office of the Circuit Court for
the County of Rappahannock, the 17th day of July,
1929.

This bond was executed and acknowledged by the obligors, and ordered to be recorded, R. A. McIntyre, the surety therein having first justified on oath that his estate, after the payment of all his just debts, and those for which he is bound as security for others and expects to have to pay is worth the sum of \$1,000.00 Dollars over and above all exemptions allowed by law.

Teste:

JAS. M. SETTLE, Clerk.

A Copy—Teste:

JAS. M. SETTLE, Clerk.

A Copy—Teste:

H. STEWART JONES, C. C.

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