

162-419 948

# Record No. 1419

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**RUTH H. EVERETTE AND ESSIE B. HOWELL,**  
**Appellants,**

v.

**THOMAS L. WOODWARD, TRUSTEE, ETC.,**  
**Appellees.**

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FROM THE CIRCUIT COURT OF THE COUNTY OF NANSEMOND

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“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.

M. B. WATTS, Clerk.

162 Va 419

IN THE  
**Supreme Court of Appeals of Virginia**  
AT RICHMOND.

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**Record No. 1419**

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RUTH H. EVERETTE AND ESSIE B. HOWELL, Appel-  
lants,

vs.

THOMAS L. WOODWARD, TRUSTEE, SUFFOLK  
FLORAL GARDENS, INCORPORATED, AND  
E. F. O'BERRY, Appellees.

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PETITION FOR APPEAL.

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*To the Honorable Justices of said Court:*

Petitioners, Ruth H. Everette and Essie B. Howell, hereinafter usually called plaintiffs, respectfully represent that they are aggrieved by a final decree of the Circuit Court of Nansemond County, Virginia, entered the first day of June, 1933, dismissing on demurrer plaintiff's bill and amended bill, in their chancery suit against Thomas L. Woodward, trustee, Suffolk Floral Gardens, Incorporated, and E. F. O'Berry, hereinafter usually called defendants (R., 18).

The bill, as amended, and the demurrer, raise the very definite point as to whether or not Woodward, trustee, under a deed of trust made to him by plaintiffs, had in the foreclosure sale complied with the requirements of the deed of trust. This is the whole question, but is divided into two separate violations of the requirements of the deed of trust.

The Facts, averred in the amended bill (which are nearly identical with those averred in the original bill) are (R., 14):

That plaintiffs owned a certain tract of land in Nansemond County, near Suffolk, and executed a deed of trust thereon dated July 31, 1925, to Thomas L. Woodward, trustee; under color of this deed of trust said trustee held a foreclosure sale on April 12, 1933, and sold the property to The Suffolk Floral Gardens, Incorporated, which has agreed to sell it to said E. F. O'Berry.

That the trustee departed in two respects in this sale from the authority given him by the deed of trust, to-wit:

1. He did not advertise for ten days as required by the deed of trust.

2. He did not advertise nor sell for part cash and part on credit, as directed by the deed of trust, but advertised and purported to sell for *all cash*.

And the bill prays that the sale be set aside, etc.

That the language of the deed of trust on this subject (R., 15) is:

"In the event that default shall be made in the payment of the said debt, principal or installments of interest, when due and payable, then the Trustee, upon being required so to do by Suffolk Floral Gardens, Incorporated, its Executives, Administrators or assigns, shall sell the property hereby conveyed, and it is covenanted and agreed between the parties aforesaid, that in case of a sale, the same shall be made after first advertising the time, place and terms thereof for ten days in such manner as the Trustee shall see fit, and upon the following terms to-wit: For cash as to so much of the proceeds as may be necessary to defray expenses of executing this trust, including a Trustee's Commission of 5%, the fees for drawing and recording this deed, if then unpaid, and to discharge the amount of money then payable upon the said debt, and there be any residue of said purchase money, the same shall be payable at such time and secured in such manner as the said Trustee shall think fit."

That the advertisement pursuant to which the trustee sold in violation of the authority of the deed of trust reads (R., 5):

“By authority of a certain deed of trust, dated July 31, 1925, made by Ruth H. Everett (widow) and Essie B. Howell, to me as trustee, default having been made in the payment of the debt therein secured, and in the performance of the terms and conditions of said deed of trust, and at the request of the beneficiary thereunder, I will offer for sale

AT PUBLIC AUCTION  
IN FRONT OF  
THE NATIONAL BANK OF SUFFOLK  
IN THE CITY OF SUFFOLK, VIRGINIA  
ON THE 12TH DAY OF APRIL, 1933  
AT TWELVE O'CLOCK NOON

the following property, to-wit:

“All that certain piece, parcel or tract of land, lying, situate and being in Nansemond County, Virginia, said to contain nineteen and one fifth ( $19 \frac{1}{5}$ ) acres, more or less, and bounded by the County Road leading from Suffolk to Whaleyville, the Southern Railway Company, the lands of W. B. Hudson and the lands of Robert Rawls, together with all buildings, appurtenances and fixtures thereon or thereunto belonging and being the same land conveyed to the said parties of the first part by deed, from Asenath C. Howell (widow), dated the 1st day of June, 1925, and duly recorded in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, in Deed Book 108, page 282.

THOMAS L. WOODWARD, Trustee.

TERMS: CASH

Suffolk, Virginia  
April 1, 1933.”

THE ERROR ASSIGNED IS: That the Circuit Court erred in sustaining the demurrer and dismissing the suit and dissolving the injunction (R., 18).

THE ARGUMENT will concentrate on the two departures from and violations of the authority of the deed of trust by the trustee in the foreclosure sale, to-wit:

1. Not advertising for ten days.

2. Not advertising nor selling for part cash and part credit, but advertising and selling for all cash.

The departures will be briefly discussed separately:

1. Not advertising for ten days.

The bill expressly avers that the advertisement was not for ten days (R., 16), and of course the demurrer admits the truth of this averment. That advertisement for the length of time stated in a deed of trust is essential to a valid sale is well settled.

As said in *Dickerson vs. McNulty*, 142 Va. 559, 563:

"It is the duty of a trustee in a deed to secure debts, in executing the trust, to conform substantially in all material particulars to the stipulations of the deed under which he acts, and the time of advertising is one of the most essential of these stipulations. This subject has been so fully considered and discussed in recent cases that it would be a work of supererogation to repeat the discussion. *Tabet vs. Goodman*, 136 Va. 526, 118 S. E. 230; *Preston vs. Johnson*, 105 Va. 238, 53 S. E. 1."

2. That the advertisement and sale were for *all cash* when the deed of trust required part cash and part credit.

This point seems clearly covered by the Virginia cases of *Tabet vs. Goodman*, 136 Va. 526, and *Preston vs. Johnson*, 105 Va. 238. The Tabet case (p. 533) approves and quotes from the Preston case, and the Preston case is precisely in point, saying in part:

"We shall confine our observations in this case to the single question of the sufficiency of the notice under the provisions of the deed of trust to warrant the sale made by the trustee of the land in controversy.

"The deed stipulated that in the event of a sale it should be made at such place, in the county where the land is situated, as the trustee might determine, after advertisement of the time, place and terms thereof for such time and in such manner as he should deem advantageous, for cash sufficient to defray the expense of executing the trust and to discharge the debt; and the residue, if any, of the purchase price to be on such credit and secured in such manner as the grantor might direct, or in fault of such direction as the trustee might determine.

“Notice of the time and place of sale was given by publication in a weekly newspaper published in the town of Hampton, but it affirmatively appears that there was no notice or advertisement of any kind of the terms of sale, and that fact is not recited in the deed from the trustee to the purchaser; so that the case is not affected by section 3333a, Va. Code, 1904.”

\* \* \* \* \*

“It is the well-settled doctrine in this jurisdiction that a trustee for sale is the agent of both debtor and creditor, and as such it is incumbent upon him to act toward each with perfect fairness and impartiality; and, moreover, in executing the trust he must in all material particulars substantially conform to the stipulations of the deed.”

\* \* \* \* \*

“In a note to *Tyler vs. Herring*, 19 Am. St. Rep. 263, at pp. 287, 288, Mr. Freeman observes: ‘Where the instrument creating the trust has given directions concerning the mode of sale, they must be substantially pursued. Any direction regarding the notice of sale is material, and the trustee is not at liberty to disobey it. His sale made without complying with it will, in most jurisdictions, be regarded as either absolutely void, or as liable to be vacated upon complaint of any person interested in the execution of the trust.’ Citing *Sears vs. Livermore*, 17 Iowa 297, 85 Am. Dec. 564.

“The learned annoator then proceeds: ‘Manifestly the objects to be accomplished by a notice of sale are to advise the public of what is to be sold, and the time when, the place where, and the terms upon which it may be bought; and the essentials of a notice under a trust deed are, therefore, a statement of the time, place and terms of sale and such a description of the property to be sold as if read by persons familiar with the neighborhood, will advise them of what is to be sold, and upon what terms it can be bought, and induce them to attend the sale as prospective bidders, should they feel an inclination to invest in the property to be sold.’

“The power of sale generally stipulates that it shall be exercised only after giving notice by advertisement for a certain time in some newspaper, or after giving some other prescribed notice. In several States the notice to be given is prescribed by statute, and in such case the statute must be followed, whatever may be the provisions of the power in

this respect. In either case a sale made without the proper prescribed notice is invalid \* \* \* The purchaser is bound to know what the requirements of the deed or statute are in this respect, and to see that they have been complied with; and the mortgagor and others interested in the equity may redeem all the same if the power is illegally exercised.

\* \* \* \* \*

“Applying these familiar principles to the case in judgment, it was the duty of the trustee to have given appellant an opportunity to define the terms of sale with regard to the excess of the purchase price beyond what was required to discharge the debt and expenses of sale, and he ought also to have advertised the terms of sale as prescribed by the deed.

“Without intending, in any manner, to impute bad faith to the trustee in this instance, nevertheless his failure to observe these essential provisions of the deed renders the transaction invalid; and the decree appealed from, which sustained the sale, must, therefore, be reversed.”

In the case at bar the deed of trust as already quoted expressly required the terms of sale to be advertised at least ten days, to be (*ante* 3): “Upon the following terms, to-wit: For cash as to so much of the proceeds as may be necessary to defray expenses of executing this trust, including a Trustee’s Commission of 5%, the fees for drawing and recording this deed, if then unpaid, and to discharge the amount of money then payable upon the said debt, and there be any residue of said purchase money, the same shall be payable at such time and secured in such manner as the said Trustee shall think fit.”

In any times the violation of the terms of the deed of trust would invalidate the sale, but the violation is emphasized in these depressed times, when cash is so scarce, and there is no telling how many bidders were kept away from the sale because it was for *all cash*, without any time allowed for any of the purchase price.

It may be added that no question of *bona fide* purchaser arises in this case, as Suffolk Floral Gardens, Incorporated, was itself the creditor secured by the deed of trust and itself bid in the property at the foreclosure sale.

This petition is adopted as the opening brief, a copy hereof was mailed to counsel for defendant on the 3d day of July, 1933, and oral argument on this petition is requested.

Petitioners pray that an appeal may be granted, said decision reviewed and reversed, said error corrected, the demurrer overruled, final decree entered for petitioners. or the case remanded for further proceedings, and that such other relief may be granted as may be adapted to the nature of the case.

RUTH H. EVERETTE and  
ESSIE B. HOWELL,  
By WATKINS & POWELL,  
JAS. G. MARTIN, Counsel.

June 29, 1933.

We, the undersigned, counsel practicing in the Supreme Court of Appeals of Virginia, certify that in our opinion sufficient matter of error appears in the proceedings and decree shown by the record accompanying the foregoing petition to make it proper for the same to be reviewed by this Court.

WATKINS & POWELL,  
JAS. G. MARTIN.

Rec'd July 4, 1933.

M. B. W.

July 17, 1933—Appeal allowed. Bond \$500.

LOUIS S. EPES.

Rec'd July 18, 1933.

M. B. W.

## RECORD

### VIRGINIA:

Pleas before the Circuit Court of Nansemond County, at the Courthouse of said County on the 1st day of June, 1933.

Be It Remembered, that heretofore, to-wit: In the Clerk's Office of said Court on the 23rd day of May, 1933, came Ruth H. Everette and Essie B. Howell, Complainants, by their Attorney, and filed their Bill of Complaint against Suffolk Floral Gardens, Incorporated, Thomas L. Woodward, Trustee, and E. F. O'Berry, in the words and figures following:

To the Honorable James L. McLemore, Judge of the Circuit Court of Nansemond County:



Your Complainants, Ruth H. Everette and Essie B. Howell, respectfully *represent* unto the Court that they are citizens of Nansemond County; that on the 25th day of June 1925, they were seized jointly of a certain tract or parcel of land, lying, situate and being in Nansemond County, Virginia, bound and described as follows:

All of that certain piece, parcel or tract of land, lying, situate and being in Nansemond County, Virginia, said to contain nineteen and one-fifth ( $19 \frac{1}{5}$ ) acres, more or page 2 } less, bounded by the County road leading from Suffolk to Whaleyville, the Southern Railway Company, the lands of W. B. Hudson and the lands of Robert Rawls, together with all buildings, appurtenances and fixtures thereon or thereunto belonging, and being the same land conveyed to the said Ruth H. Everette and Essie B. Howell, by deed from Asenith C. Howell, widow, dated the 1st day of June 1925 and duly recorded in the Clerk's Office of the Circuit Court of Nansemond County in d. b. 108 page 282; that on the 31st day of July, in the year 1925, your Complainants executed a deed of trust conveying the said land to Thomas L. Woodward, Trustee, to secure a debt therein mentioned and described; that your Complainants defaulted in the payment of said debt, and the said property was advertised and sold.

Your Complainants come and say that according to the provisions of the trust deed to the said Thomas L. Woodward, Trustee, the following is set out as the terms of the sale, as follows:

"In the event that default shall be made in the payment of the said debt, principal or installment of interest, when due and payable, then the Trustee, on being required so to do, by Suffolk Floral Gardens, Incorporated, its executors, administrators or assigns, shall sell the property hereby conveyed, and it is covenanted and agreed between the parties aforesaid, that in case of a sale, the same shall be made after first advertising the time, place and terms thereof page 3 } for ten days, in such manner as the Trustee shall see fit, and upon the following terms to-wit: For Cash as to so much of the proceeds as may be necessary to defray expenses of executing this trust, including a Trustee's commission of 5%, the fees for drawing and recording this deed, if then unpaid, and to discharge the amount of money then payable upon the said debt, and if there be any residue of said purchase money, the same shall be payable at such time and secured in such manner as the said Trustee shall think fit."

Your Complainants represent unto the Court that the said property was not advertised as required by the said Trustee, in that the advertisement was not made for a period of ten days, and second: That the terms as advertised were not according to the requirements of the trust deed, and that by failure of the Trustee to follow substantially and strictly the terms of the trust deed, the sale held by the Trustee on the 12th day of April 1933, is a nullity, and the said sale so had by the Trustee on the 12th day of April, 1933, ought to be set aside and declared void. A copy of the advertisement is hereto annexed and prayed to be taken as a part of this bill.

In tender consideration whereof, your Complainants pray that Thomas L. Woodward, Trustee, Suffolk Floral Gardens, Inc., E. F. *Oberry*, be made parties defendant to this bill, and required to answer the same, though answer on oath page 4 } is hereby waived; that all deeds, papers and writings made by Thomas L. Woodward, Trustee, Suffolk Floral Gardens, Incorporated, and E. F. *Oberry*, be set aside and declared null, void and of no effect; that all such other, general, and special relief will be afforded your Complainants as the nature of their case may require, or to equity shall seem meet, and your Complainants will ever pray, etc.

RUTH H. EVERETTE,  
ESSIE B. HOWELL,

By Counsel.

WATKINS & POWELL, p. q.  
WATKINS & POWELL, P. Q.

page 5 } By authority of a certain deed of trust, dated July 31, 1925, made by Ruth H. Everett (widow) and Essie B. Howell, to me as Trustee, default having been made in the payment of the debt therein secured, and in the performance of the terms and conditions of said deed of trust, and at the request of the beneficiary thereunder, I will offer for sale

AT PUBLIC AUCTION

IN FRONT OF

THE NATIONAL BANK OF SUFFOLK

IN THE CITY OF SUFFOLK, VIRGINIA

ON THE 12TH DAY OF APRIL, 1933

AT TWELVE O'CLOCK NOON

the following property, to-wit:

All that certain piece, parcel or tract of land, lying, situate and being in Nansemond County, Virginia, said to contain nineteen and one fifth ( $19 \frac{1}{5}$ ) acres, more or less, and bounded by the County Road leading from Suffolk to Whaleyville, the Southern Railway Company, the lands of W. B. Hudson and the lands of Robert Rawls, together with all buildings, appurtenances and fixtures thereon or thereunto belonging and being the same land conveyed to the said parties of the first part by deed, from Asenath C. Howell (widow), dated the 1st day of June, 1925, and duly recorded in the Clerk's Office of the Circuit Court of Nansemond County, Virginia, in Deed Book 108, page 282.

THOMAS L. WOODWARD, Trustee.

TERMS: CASH

Suffolk, Virginia  
April 1, 1933.

page 6 } Virginia:

At a Circuit Court of Nansemond County held on the 25th day of May, 1933.

Present: Honorable James L. McLemore, Judge.

Ruth H. Everette and Essie B. Howell, Complainants,

vs.

Thomas L. Woodward, Trustee, Suffolk Floral Gardens, Inc.,  
and E. F. O'Berry, Defendants.

On motion of defendants leave is hereby granted them to file their demurrer, and the same is accordingly this day filed.

page 7 } And afterwards, to-wit: Demurrer filed in the  
Clerk's Office of the Circuit Court of Nansemond  
County on the 25th day of May, 1933.

Virginia:

In the Circuit Court of Nansemond County:

Ruth H. Everette and Essie B. Howell, Complainants,

vs.

Thomas L. Woodward, Trustee, Suffolk Floral Gardens, Inc.,  
and E. F. O'Berry, Defendants.

Defendants say that complainants' bill is not sufficient in law and state the grounds of demurrer to be relied on as follows:

A. That the bill of complaint does not state a cause for equitable jurisdiction.

B. That the bill of complaint does not allege any matter upon which the court could grant relief.

C. That the bill of complaint does not allege a sale by the trustee, nor the purchase by anybody, nor that a deed has been passed.

D. That the advertisement attached to the bill of complaint shows on its face that Thomas L. Woodward, Trustee, has complied with the requirements of the deed of trust, dated July 31, 1925, which complainants allege they executed in the second paragraph of their bill of complaint.

page 8 } E. That the bill of complaint discloses on its face that the complainants are guilty of laches.

F. That the bill of complaint does not allege readiness, willingness, nor ability to pay the said deed of trust, nor make any offer or tender of the amount due thereon, nor on the bond secured thereby, which allegation is a prerequisite to the maintenance of this suit.

G. That the complainants allege no damage nor injury, nor any matter entitling this court to the consideration of the bill of complaint.

And other grounds to be set forth at the argument hereof.

THOMAS L. WOODWARD, Trustee,  
SUFFOLK FLORAL GARDENS, INC.  
E. F. O'BERRY,

By Counsel.

FRANK E. BUTLER, JR.,  
Counsel for Defendants.

page 9 } And afterwards, to-wit: Petition for Injunction  
filed in the Clerk's Office of the Circuit Court of  
Nansemond County on the 26th day of May, 1933.

To the Honorable James L. McLemore, Judge of the Circuit  
Court of Nansemond County, Virginia: -

Your Petitioners, Ruth H. Everette and Essie B. Howell, respectfully represent unto the Court that they have instituted a suit in chancery against Suffolk Floral Gardens, Incorporated, T. L. Woodward, Trustee and E. F. *Oberry*, for the purpose of having a certain deed made by T. L. Woodward, Trustee, to Suffolk Floral Gardens, Incorporated, declare void and of no effect, as to a certain dwelling and tract of land containing nineteen and one-fifth ( $19 \frac{1}{5}$ ) acres, situated in Nansemond County, and of which your petitioners are seized, and which T. L. Woodward, Trustee improperly sold and conveyed, and that the suit is instituted for the purpose of setting aside and declaring as null and void the deed so made by Thomas L. Woodward, Trustee; that Suffolk Floral Gardens, Incorporated, acting under and by authority of the deed from Thomas L. Woodward, Trustee, have brought an action of unlawful detainer against your petitioners before N. T. Gray, Trial Justice of Nansemond County, for the purpose of dispossessing your Petitioners of their home and land aforesaid, and the said N. T. Gray, as Justice aforesaid, has placed in the hands of J. J. S. Branch, a Constable of Nansemond County, an order directing the said Constable to dispossess your Petitioners of their property, which order, if carried into effect will cause great damage and loss to your Petitioners as well as great inconvenience to them.

Your Petitioners represent that all questions relative to their property and their rights therein will be settled in the Chancery suit now pending in the Nansemond County Circuit Court.

Your Petitioners pray therefore that J. J. S. Branch, Constable, Suffolk Floral Gardens, Incorporated, be enjoined and restrained from *interfering* with the premises described in the bill as: "All of that certain piece, parcel or tract of land lying, situate and being in Nansemond County, Virginia, said to contain  $19 \frac{1}{5}$  acres more or less, bounded by the County Road leading from Suffolk to Whaleyville, the Southern Railway Company, the lands of W. B. *Hundson*, and the lands of Robert Rawls, together with all buildings, appurtenances and fixtures thereon or thereunto belonging, and being the same land conveyed to the said Ruth H. Everette and Essie B. Howell, by deed from Asenith C. Howell, widow, dated the 1st day of June, 1925, and duly recorded in the Clerk's Office of the Circuit Court of Nansemond County, Virginia in d. b. 108 page 282", until the further order of this Court.

And your Petitioners will ever pray etc.

RUTH H. EVERETTE,  
ESSIE B. HOWELL,

By Counsel.

WATKINS & POWELL, p. q.

State of Virginia:

Nansemond County, To-Wit:

This day personally appeared before me, John H. Powell, Clerk of the Circuit Court of Nansemond County, Essie B. Howell, who made oath that the matters and things set forth in the above petition are true—insofar as she states of her own knowledge, and she believes to be true insofar as information from others.

Given under my hand this 26th day of May, 1933.

JOHN H. POWELL,  
Clerk of Circuit Court of Nansemond  
County, Virginia.

page 12 } And afterwards, to-wit: Injunction Order entered in the Circuit Court of Nansemond County on the 26th day of May, 1933.

Ruth H. Everette and Essie B. Howell

vs.

Suffolk Floral Gardens, Incorporated, and J. J. S. Branch,  
Constable.

In accordance with the prayer of the Plaintiffs' bill an injunction is awarded against the defendants, restraining them, their agents or Attorneys from entering upon or *interfering* with the premises of the Plaintiffs, described in the bill as, "All of that certain piece, parcel or tract of land, lying, situate and being in Nansemond County, Virginia, said to contain nineteen and one fifth (19 1/5) acres, more or less, bounded by the County road leading from Suffolk to Whaleyville, the Southern Railway Company, the lands of W. B. *Hundson* and the lands of Robert Rawls, together with all buildings, appurtenances and fixtures thereon or thereunto belonging, and being the same land conveyed to the said Ruth H. Everette and Essie B. Howell by deed from Asenith C. Howell, widow, dated the 1st day of June, 1925, and duly recorded in the Clerk's Office of the Circuit *County* of Nanse-

mond County in d. b. 108, p. 282, until the further order of this Court. But the Plaintiff shall not have the benefit of this order, until they or some one for them shall have entered into a bond in the penalty of \$1,000—with security to be approved by the Clerk of this Court, conditioned to pay all such costs as may be awarded against the complainants and all such damages as may be incurred, in case this injunction shall be dissolved.

page 14 } And afterwards, to-wit: Amended Bill filed in the Clerk's Office of the Circuit Court of Nansemond County on the 1st day of June, 1933.

To the Honorable James L. McLemore, Judge of the Circuit Court of Nansemond County:

Your Complainants, Ruth H. Everette and Essie B. Howell, respectfully represent unto the Court, by leave of Court, file this their amended bill in the suit of Ruth H. Everette, Essie B. Howell vs. Suffolk Floral Gardens, Incorporated, Thomas L. Woodward, Trustee, E. F. O'berry, that on the 25th day of June, 1925, they were seized jointly of a certain tract or parcel of land lying, situate and being in Nansemond County, Virginia, bound and *escribed* as follows: All of that certain piece, parcel or tract of land, lying, situate and being in Nansemond County, Virginia, said to contain 19 1/5 acres, more or less, bounded by the County road leading from Suffolk to Whaleyville, the Southern Railway Company, the lands of W. B. Hudson and the lands of Robert Rawls, together with all buildings, appurtenances and fixtures thereon or thereunto belonging and being the same land conveyed to the said Ruth H. Everette and Essie B. Howell by deed from Asenith C. Howell, widow, dated the 1st day of June 1925 and duly recorded in the Clerk's Office of the Circuit Court of Nansemond County in d. b. 108 at page 282; that on the

page 15 } 31st day of July in the year 1925, your Complainants executed a deed of trust conveying the said land to Thomas L. Woodward, Trustee, to secure a debt therein mentioned and described; that your Complainants defaulted in the payment of said debt, and the said property was advertised and sold, AND AT THE SALE SO HELD, ON THE 12th day of April, 1933, THE SUFFOLK FLORAL GARDENS, INC., BECAME THE PURCHASER BY BIDDING THEREFOR THE SUM OF \$4,100.00 and THAT SINCE THE SAID SALE, THOMAS L. WOODWARD, TRUSTEE, ON THE 12th day of April 1933, EXXCUTED

A DEED TO THE SUFFOLK FLORAL GARDENS, INC.<sup>2</sup> AND SUFFOLK FLORAL GARDENS, INC., HAVE AGREED TO SELL SAID PROPERTY SO CONVEYED TO-WIT, TO THE SAID E. F. OBERRY.

Your Complainants come and say that according to the provisions of the trust deed to the said Thomas L. Woodward, Trustee, the following is set out as the terms of the sale as follows: "In the event that default shall be made in the payment of the said debt, principal or installments of interest, when due and payable, then the Trustee, upon being required so to do by Suffolk Floral Gardens, Incorporated, its Executives, Administrators or assigns, shall sell the property hereby conveyed, and it is covenanted and agreed between the parties aforesaid, that in case of a sale, the same shall be made after first advertising the time, place and terms thereof for ten days in such manner as the Trustee shall see fit, and

upon the following terms to-wit: For cash as to so  
page 16 } much of the proceeds as may be necessary to defray expenses of executing this trust, including a Trustee's Commission of 5%, the fees for drawing and recording this deed, if then unpaid, and to discharge the amount of money then payable upon the said debt, and there be any residue of said purchase money, the same shall be payable at such time and secured in such manner as the said Trustee shall think fit.

Your Complainants represent unto the Court that the said property was not advertised as required by the said Trustee, in that the advertisement was not made for a period of ten days, and second, that the terms as advertised were not according to the requirements of the trust deed, and that by failure of the Trustee to follow substantially and strictly the terms of the trust deed, the sale held by the Trustee on the 12th day of April 1933, is a nullity and the sale so held by the Trustee on the 12th day of April 1933, ought to be satisfied and declared void. A copy of the advertisement is hereto annexed and prayed to be taken as a part of this bill.

In tender consideration whereof, your Complainants pray that Thomas L. Woodward, Trustee, Suffolk Floral Gardens, Inc., E. F. Oberry be made parties defendant to this bill and required to answer the same, though answer on oath is hereby  
waived; that all deeds, papers and writings made  
page 17 } by Thomas L. Woodward, Trustee, Suffolk Floral Gardens, Inc., and E. F. Oberry, be set aside and be declared null and void and of no effect; that all such other, general and special relief will be afforded your Complainant



as the nature of *theis* case may require, or to *eqity* shall seem meet. And your Complainants will ever Pray, etc.

RUTH H. EVERETTE,  
ESSIE B. HOWELL,

By Counsel.

WATKINS & POWELL, p. q.

page 18 } And afterwards, to-wit: Order entered in the  
Circuit Court of Nansemond County the 1st day of  
June, 1933.  
Virginia:

In the Circuit Court of Nansemond County:

Ruth H. Everette and Essie B. Howell, Complainants,  
vs.

Thomas L. Woodward, Trustee, Suffolk Floral Gardens, Inc.,  
and E. F. O'Berry, Defendants.

This cause came on this day to be heard on complainants' bill and on the amended bill filed this day by leave of Court, and defendants' demurrer thereto, by consent of the parties set for hearing, and was argued by counsel.

On Consideration Whereof, the Court being of opinion that defendants' demurrer is well taken and should be sustained, it is therefore ordered, adjudged and decreed that said demurrer be sustained and complainants' original and amended bills of complaint be dismissed, and the injunction granted in this cause on the 26th day of May 1933, is hereby dissolved.

page 19 } I, John H. Powell, Clerk of the Circuit Court of  
Nansemond County, Virginia, do certify that the  
foregoing is a true transcript of the record in the case of Ruth  
H. Everette and Essie B. Howell, Complainants, vs. Thomas  
L. Woodward, Trustee, Suffolk Floral Gardens, Incorporated  
and E. F. O'Berry, Defendants, lately pending in said  
Court.

I further certify that the same was not made up and completed and delivered until Thomas L. Woodward, Trustee, Suffolk Floral Gardens, Incorporated and E. F. O'Berry had received due notice thereof and of the intention of Essie B. Howell and Ruth H. Everette to apply to the Supreme Court of Appeals for a writ of error to the judgment in the said case.

JOHN H. POWELL, Clerk.

A Copy—Teste:

M. B. WATTS, Clerk.

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