

14-284 No 17 1426 m... 11/21/34

Record No. 2131

In the
Supreme Court of Appeals of Virginia
at Richmond

**THE SOUTH HILL PRODUCTION CREDIT
ASSOCIATION, ETC.**

v.

GRACIE V. HUDSON

FROM THE CIRCUIT COURT OF LUNENBURG 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.

M. B. WATTS, Clerk.

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VA 284

CLERK
SUPREME COURT OF APPEALS



RICHMOND, VIRGINIA

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record 2131

THE SOUTH HILL PRODUCTION CREDIT ASSOCIATION AND W. E. NEBLETT, TRUSTEE,
Appellants,

versus

GRACIE V. HUDSON, Appellee.

PETITION FOR APPEAL.

To the Chief Justice and the Associate Justices of the Supreme Court of Appeals of Virginia:

Your Petitioners, the South Hill Production Credit Association and W. E. Neblett, Trustee, respectfully represent that they are aggrieved by a certain final decree entered by the Circuit Court of Lunenburg County on the 14th day of October, 1938, whereby it was decreed that certain property, which was included in a deed of trust from the Appellee to your Petitioner, W. E. Neblett, Trustee for your Petitioner, the South Hill Production Credit Association, was exempt under Section 6553 of the Code of Virginia and W. E. Neblett, Trustee, was perpetually enjoined from making sale of said property. Transcript of the record in the case is submitted herewith to be read in connection with this petition.

STATEMENT OF FACTS.

Your Petitioner, the South Hill Production Credit Association, hereinafter referred to as "Association", loaned to

the Appellee a certain sum of money and to secure said
 2* loan the Appellee *executed a note in favor of the Association secured by a deed of trust dated the 12th day of April, 1937, by which the Appellee conveyed to W. E. Neblett, the Trustee, hereafter referred to as "Trustee", to secure the Association, certain personal property. Included in the deed of trust were 3 mules, 2 cows, 1 wagon, 3 plows, 2 drags and one Deering hay rake (MS. R., p. 1).

Upon default in the payment of the note by the Appellee, the Trustee, upon being required so to do by the Association, proceeded to advertise the property in accordance with the terms of the deed of trust (MS. R., p. 4). The Appellee filed a suit for injunction in the Circuit Court of Lunenburg County against the Association and the Trustee, praying that the sale, which had been advertized, be enjoined and restrained (MS. R., p. 1). On the 24th day of September, 1938, a temporary injunction was entered by the Court restraining the Trustee from further proceeding with the sale of the property (MS. R., p. 5). By decree entered by said Court on the 14th day of October, 1938, the injunction was made permanent, and it was held that the articles mentioned in Section 6553 of the Code were exempt from sale under the said deed of trust (MS. R., p. 8). The Court further found, as a fact, that the articles exempt under Section 6553 of the Code were of a value of \$500.00 (MS. R., p. 9).

ARGUMENT.

Section 6552 of the Code of Virginia provides in part as follows:

"In addition to the estate, not exceeding in value two thousand dollars, which every householder residing in *this
 3* State shall be entitled to hold exempt, as provided in the preceding sections of this chapter, he shall also be entitled to hold exempt from levy or distress the following articles, or so much or so many thereof as he may have, to be selected by him or his agents, except that the livestock so exempted under this and the following sections of this chapter shall not be exempt from any levy or distress made under the provisions of chapter one hundred and thirty-seven of this Code."

Then follows certain specified articles which include "one cow and her calf, until one year old; one horse" * * * .

Section 6553 of the Code of Virginia provides that if the householder is, at the time, actually engaged in the business of agriculture there shall also be exempt certain additional

property. This Section, in providing for the articles exempted, provides as follows:

“One yoke of oxen, or a pair of horses or mules in lieu thereof (unless he selects or has selected a horse or mule under the preceding section, in which case he shall be entitled to select under this section only one), with the necessary gearing, one wagon or cart, two plows, one drag, one harvest cradle, one pitchfork, one rake, two iron wedges and fertilizer and fertilizer material not exceeding in value two hundred dollars.”

The deed of trust herein questioned covered the following property: 3 mules, two cows (each 8 years old) one wagon, 4 plows, 2 drags and one Deering hay rake (MS. R., p. 1).

It will be observed that under the provisions of Section 6552 of the Code, of the property covered under the deed of trust, only one horse and one cow are exempt. Under the provisions of Section 6553 of the Code, one additional horse or mule, one wagon, *one drag, 2 plows and one rake, 4* of the property covered under the deed of trust, are exempted.

The Court, by its decree of October 14, 1938, perpetually enjoined the Trustee from selling the property covered under the deed of trust which is exempted under Section 6553 of the Code. In other words, by the decree of the Court, the Trustee was prohibited from selling 2 mules, one cow, one wagon, 2 plows, one drag, one Deering rake.

We submit that the Court erred in prohibiting the Trustee from selling the property covered under the deed of trust which was exempted under Section 6553 of the Code of Virginia. It will be observed that under Section 6552 of the Code a householder is entitled to hold exempt “*from levy or distress*” the articles named in that Section. Likewise, in Section 6553 of the Code, the householder actually engaged in agriculture may hold exempt from *such levy or distress*, the articles therein named. If there were no further provision in the Code, a householder could dispose of or give a valid lien on the property mentioned in the above Sections although it was exempt under the provisions of the Code from levy or distress.

Section 6564 of the Code, as amended, is as follows:

“Every deed of trust, mortgage, or other writing, or pledge made by a householder to give a lien on property exempt from distress or levy under section sixty-five hundred and fifty-two shall be void as to such property; provided that this section shall have no application where such deed of trust,

mortgage, pledge, or other writing is given to secure a loan made to allow the householder to purchase such property and is only on the property purchased with the proceeds of such loan.”

5* *Under this Section every deed of trust or lien made by a householder covering property exempt from distress or levy under Section 6552 is expressly declared to be void and of no effect. Therefore, although a householder may attempt to give a lien on property declared to be exempt under Section 6552, by the express provisions of Section 6564 such lien is void. It is to be particularly noted that Section 6564 makes no reference to articles exempt under Section 6553. We submit that the necessary conclusion is that a householder may give a valid, enforceable lien on property declared to be exempt from distress or levy under Section 6553. This would likewise be true as to property exempt under Section 6552 except for the provisions of Section 6564 of the Code.

We have been unable to find any Virginia case directly deciding the point here involved. The West Virginia Supreme Court, in construing a similar statute, reached this conclusion (*Taylor v. Belville*, 70 W. Va. 484; 74 S. E. 517).

Judge Burks, in his work on pleading and practice, covers this specific point. At page 815, Burks' Pleading and Practice (Third Edition), this is said:

“The householder during his lifetime has the absolute power of disposition of articles exempted under Code, §§6552 and 6553, *but he cannot encumber the articles exempt under §6552.* It is expressly provided that any deed of trust, mortgage or other writing or pledge made by a householder to give a lien thereon shall be void as to such property. *It will be observed that this restriction applies only to articles exempt under §6552.*” (Italics supplied.)

It will thus be seen that Judge Burks reached the *con-
6* clusion that the householder has the absolute power to dispose of articles exempted under Sections 6552 and 6553, but that he cannot encumber such articles as are exempt under Section 6552 by reason of the provisions of Section 6564 of the Code. It will be further noted that Judge Burks concluded that the restriction against encumbrance applies only to articles exempt under Section 6552.

It was undoubtedly the intention of the Legislature to absolutely exempt from levy or distress and likewise to prohibit the householder from giving a lien against the articles of absolute necessity specified in Section 6552 of the Code. While it was the intention to exempt the property mentioned

in Section 6553 from distress or levy, it was not intended to prohibit the householder from giving a valid lien as to such property. It clearly was the intent that a householder could borrow for the production of crops or necessary living expenses and give as security a valid lien against property described in Section 6553 of the Code.

For the foregoing reasons we respectfully submit that the Court erred in enjoining the Trustee from selling the property covered under the deed of trust which was exempted from levy or distress under Section 6553 of the Code.

CONCLUSION.

For the errors herein assigned, Petitioners pray that an appeal from the decree of the Circuit Court of Lunenburg County be granted and that said decree be reviewed and reversed.

Your Petitioners ask that this petition may be considered as its opening brief, with the right to file an additional or supplemental brief if desired.

7* *Petitioners request an oral hearing on this petition.

Petitioners aver that a copy of this petition was mailed to opposing counsel in the trial court on the 7th day of February, 1939.

Respectfully submitted,
SOUTH HILL PRODUCTION CREDIT
ASSOCIATION,
W. E. NEBLETT, TRUSTEE,
By Counsel.

W. E. NEBLETT,
PEYTON G. JEFFERSON.

We, W. E. Neblett and Peyton G. Jefferson, attorneys at law, practicing in the Supreme Court of Appeals in Virginia, do hereby certify that in our opinion the final decree in this case should be reviewed.

Given under our hands this 2nd day of February, 1939.

W. E. NEBLETT,
Attorney at Law.
PEYTON G. JEFFERSON,
Attorney at Law.

Filed Feb. 7, 1939.

E. W. H.

February 15, 1939. Appeal awarded by the court. Bond, \$500.

M. B. W.

RECORD

VIRGINIA:

Pleas before the Circuit Court of Lunenburg County at the Courthouse thereof, on the 24th day of September, 1938.

Be it remembered that heretofore, to-wit: In the Clerk's Office of the Circuit Court of Lunenburg County, Virginia, on the 24th day of September, 1938, Gracie V. Hudson by counsel, filed her bill in chancery against The South Hill Production Credit Association and W. E. Neblett, Trustee, which is in the following words and figures, to-wit:

To the Honorable N. S. Turnbull, Jr., Judge of said Court:

Your complainant respectfully represents—

That on the 12th day of April, 1937, your complainant executed a deed of trust to the said W. E. Neblett, Trustee, to secure to the South Hill *Productive* Credit Association a debt due to it, on the following personal property, to-wit:

1 mule 12 years old, brown mare, named Mary,
 1 mule 10 years old, black mare, named Dolly,
 1 mule 7 years old, brown horse, named Jack,
 1 cow 8 years old, red Guernsey,
 1 cow 8 years old, spotted Guernsey,
 1 Wagon (Nisson),
 3 1H plows (2 Avery, 1 Chattanooga),
 1 Deering binder,
 2 Drags (1 iron, 1 wooden),
 1 Sweep,
 L Avery corn planter,
 page 2 } 1 Oliver No. 19 2H plow,
 3 Willis cultivators,
 1 Deering hay rake,
 1 Springtooth harrow,
 1 fertilizer drill.

The said deed of trust being duly recorded in the Clerk's Office of Lunenburg County, Virginia, in Federal Farm Credit Lien Book No. 1, page 25.

Your complainant further alleges that under Section 6552, 6553 and 6548, of the Code of Virginia, she is entitled to have

exempted from sale under execution or by deed of trust the articles mentioned above, she being a householder and head of a family and as such is entitled to the exemptions provided in the said sections, but that notwithstanding her rights in the premises, the said W. E. Neblett, Trustee, under the deed of trust above mentioned, had advertized the above property for sale on Saturday, September 24, 1938, at 3 o'clock P. M., and that unless an injunction is granted by your Honor enjoining and restraining the said W. E. Neblett, Trustee, that this sale will be held and the property mentioned in the said deed of trust, and exempt under the laws of Virginia, will be sold and your complainant will be deprived of her rights. A copy of the handbill of sale is hereto attached and prayed to be read as a part of this bill.

Your complainant further alleges that she is advised that the deed of trust above mentioned on the articles exempt under Section 6552 and 6553 is void and of no effect, and that she is without power to waive any of her said exemptions.

page 3 } Your complainant further prays that the South Hill *Productive* Credit Association and W. E. Neblett, Trustee, may be made parties defendant to this bill, and be required to answer the same, but not on oath, oath being hereby expressly waived; that proper process issue; that the sale advertised to take place on the 24th day of September, 1938, as aforesaid, be enjoined and restrained; that any sale under any other notice by the Trustee may be inhibited, as well as any attempt at such sale until the further order of this Court; and that you will grant unto your complainant any such other and further and general relief as to equity may seem meet, and as in duty bound she will ever pray, etc.

GRACIE V. HUDSON,
By Counsel.

W. HENRY COOK,
C. F. BLACKWELL,
Counsel.

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

I, Annie J. Northington, a notary public of and for the County above mentioned, State of Virginia, do hereby certify that C. F. Blackwell, of counsel for complainant, has this day personally appeared before me, in my said County, and

made oath before me that the several matters and things set forth in the said bill are true to the best of his knowledge, information and belief.

Given under my hand this the 24th day of September, 1938.

ANNIE J. NORTINGTON,
Notary Public.

page 4 } My commission expires on the 23rd day of April,
1941.

TRUSTEE'S SALE OF VALUABLE PERSONAL PROPERTY:

In execution of a certain chattel Deed of Trust from Gracie V. Hudson and D. W. Hudson, to me as Trustee, dated 12th day of April, 1937, duly recorded in the Clerk's Office of the County of Lunenburg in Federal Farm Credit Lien Book No. 1, at page 25, default having been made in the payment of the note secured in said deed of trust and having been required so to do by the legal holder of said note, I shall offer for sale at PUBLIC AUCTION to the highest bidder on the premises in front of the home of the said Gracie V. Hudson and D. W. Hudson in Lochleven District, Lunenburg County, Virginia on

SATURDAY, SEPT. 24, '38 AT 3 o'clock P. M.

The following described property conveyed in the said deed of trust:

LIVESTOCK:

- 1 mule 12 years old, brown mare, named Mary.
- 1 mule 10 years old, black mare, named Dolly.
- 1 mule 7 years old, brown horse, named Jack.
- 1 cow 8 years old, red Guernsey.
- 1 cow 8 years old, spotted Guernsey.

page 5 }

EQUIPMENT:

- 1 waggon (Nisson)
- 3 IH plows (2 Avery, 1 Chattanooga).
- 1 Deering binder.

- 2 Drags (1 iron, 1 wooden).
- 1 Sweep
- 1 Avery corn planter.
- 1 Oliver No. 19 2H plow.
- 3 Willis cultivators.
- 1 Deering hay rake.
- 1 Springtooth harrow.
- 1 Fertilizer drill.

TERMS OF SALE: CASH W. E. NEBLETT, Trustee.

A. B. SHACKLETON, Auctioneer.

August 27, 1938.

PLEASE POST

On the 24th day of September, 1938, the following injunction order was entered:

An injunction granted in accordance with the prayer of this bill restraining W. E. Neblett, Trustee, from further proceedings in connection with the sale of the hereinafter named property as Trustee under that deed of trust from Gracie V. Hudson and D. W. Hudson, her husband, dated on the 12th day of April, 1937, and duly recorded in the Clerk's Office of Lunenburg County, Virginia, in Federal Farm Credit Lien Book No. 1, page 25, or in any manner attempting to sell the following property conveyed by said deed of trust page 6 } until the further order of this Court, to-wit: One mule named May 12 yrs. old, One mule named Jack 7 yrs., old, One spotted Guernsey Cow 8 yrs., old, One Wagon, 2 Avery Plows, one Iron drag, One Deering Hay rake. This injunction shall be effective from this date until the 10th day of October, 1938. at which time it shall stand dissolved unless prior thereto it be enlarged or a further injunction *granted*, but before this order shall be effective the said Gracie V. Hudson, or someone for her, shall enter into an acknowledged bond, with good security, before the Clerk of this Court in the penalty of \$100.00 conditioned according to law.

The Clerk of this Court will enter the foregoing as a vacation order, as of the 24 day of September, 1938.

N. S. TURNBULL, JR.,
Judge of the Circuit Court of Lunenburg
County, Virginia.

Virginia:

In the Clerk's Office of the Circuit Court of Lunenburg County, the 24th day of September, 1938.

The foregoing Vacation Order was this day received in said office, in vacation and admitted to record as of the 24th day of September, 1938.

Teste:

J. T. WADDILL, JR., Clerk.

page 7 } I hereby accept due and legal service of the within
injunction order the 24th day of Sept., 1938.

W. E. NEBLETT,
Trustee in D. T. and Atty., for
beneficiary therein.

On the 27th day of September, 1938, the following bond was given:

KNOW ALL MEN BY THESE PRESENTS, That we, D. W. Hudson principal, and T. C. Hudson surety are held and firmly bound unto the Commonwealth of Virginia in the sum of One Hundred 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, and any claim or right to discharge any liability to the Commonwealth arising under this bond, or by virtue of said office, post, or trust, with coupons detached from the bonds of the State. Sealed with our seals, and dated this 27th day of February one thousand nine-hundred and thirty-eight.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas, the above bound, the principal in this bond, was, on the 24th day of September, 1938, By the Judge of the Circuit Court of Lunenburg County, Virginia, granted an injunction restraining W. E. Neblett, Trustee from further
page 8 } proceedings in connection with the sale of certain
property conveyed by a Deed of Trust from Gracie V. Hudson and D. W. Hudson to W. E. Neblett,

Trustee, and recorded in Lunenburg County Clerk's Office in Federal Farm Credit Lien Book No. 1, page 25.

Now, therefore, if the above bound D. W. Hudson as aforesaid shall fully pay all such costs as may be awarded against him and all such damage as may be incurred in case the injunction may be dissolved, then this obligation shall be void; otherwise to remain in full force and effect.

D. W. HUDSON (Seal)
T. P. HUDSON (Seal)

In the Clerk's Office of the Circuit Court for the County of Lunenburg, the 27th day of September, 1938.

This bond was executed and acknowledged by the obligors, and ordered to be recorded. 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 expect to have to pay is worth the sum of Five hundred Dollars, over and above all exemptions allowed by law.

Teste:

J. T. WADDILL, JR., Clerk.

On the 14th day of October, 1938, the following decree was entered at the October Term, 1938:

This cause came on this day to be further heard upon the bill of complaint and the injunction heretofore granted herein, and on the motion of the defendant to dissolve the injunction heretofore awarded in this case, and was argued by counsel.

On consideration whereof, the Court is of the page 9 } opinion that the lien of the deed of trust dated on the 12th day of April, 1937, from Gracie V. Hudson to W. E. Neblett, Trustee, is void as to the articles exempt under Section 6553, as well as Section 6552 of the Code of Virginia, and that the said Gracie V. Hudson is entitled to have exempt from the sale under the said deed of trust all of the articles mentioned in Section 6553, which articles were included under the said deed of trust, which said articles are of the value of a large sum, to-wit: the sum of \$500.00.

The Court doth adjudge, order and decree that the motion of the defendants to dissolve the injunction heretofore awarded in this cause is hereby overruled.

It is, therefore, adjudged, ordered and decreed that the injunction heretofore granted restraining the said W. E. Neblett, Trustee, from selling the articles under the said deed of trust, mentioned under said Section 6553 be, and the same is hereby perpetuated and the said W. E. Neblett, Trustee, is perpetually enjoined and restrained from selling the said articles under the said deed of trust.

It is further adjudged, ordered and decreed that the complainant recover of and from the said defendant the cost of this suit.

And the object for which this suit is brought having been fully accomplished, the same is hereby ordered stricken from the docket of this Court.

page 10 } Statement of costs in suit of:

Gracie V. Hudson

v.

South Hill *Productive* Association

Writ Tax	\$1.50
Clerk's Fees	4.05
	<hr/>
Total	5.55

A transcript of the record.

Teste:

J. T. WADDILL, JR., Clerk.

I, J. T. Waddill, Jr., Clerk of the Circuit Court of Lunenburg County, in the State of Virginia, do hereby certify that the foregoing is a true and correct copy of the record in the case of Gracie V. Hudson *v.* South Hill Production Credit Association and W. E. Neblett, Trustee.

I further certify that due service of notice was acknowledged by the plaintiff's attorney that application would be made for a copy of the record in this case.

Given under my hand this the 10th day of Dec., 1939.

J. T. WADDILL, JR., Clerk.

A Copy--Teste:

M. B. WATTS, C. C.

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