

John P. Dulany vs Daniel F. Dulany Jr.
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Fairfax County Index No. 1867-020
Original Case Number: Cff23 H

Chancery Suit
p. 32-40

The separate answers of John P. Dulany of Loudon County in the State of Virginia to the Bill of Complaint, exhibits against him, Walker R. William Sheriff of Fairfax County, and others, before the Honorable Henry W. Thomas, Judge of the Circuit court of Fairfax County by Daniel F. Dulany.

The Respondent, reserving to himself the benefit of exceptions, to the manifest errors, imperfections, incongruities, and untruths, in the Complainants Bill, continued, in answer to so much thereof as he is advised is material, answer and saith.

He admits that Daniel P. Dulany Sr, the father of the Complainant and the brother of this Respondent, was during his life time, seized of large real estate in the County of Fairfax, including the tract near Falls Church, called "Oak Mount;" but this Respondent avers and charges that the said "Oak Mount" tract contained seven hundred & seventy acres instead of three hundred acres as charged by the Complainant, in his Bill.

This Respondent, farther answering saith that the said Daniel F. Dulany Sr. was for many years, during the latter part of his life, in embarrassed circumstances, deeply in debt, and without the means of paying his debts; that amongst other debts, due from the said Daniel F. Dulany Sr. was one to the late Robert J. Taylor of the City of Alexandria amounting on the 16th day of September 1843, to the sum of two thousand, five hundred and eighteen dollars, and ten cents; that for the payment of this debt, the executors of the said Robert J. Taylor, had obtained a decree against the said Daniel F. Dulany Sr., In the County Court of Fairfax, and for the sale of the very land, now the subject of controversy; that for reasons, unnecessary, here to be mentioned or particularized, this Respondent paid off this debt (\$2,518.10) to the executors of the said Robert J. Taylor, and took an assignment from thence of the said debt, and of all benefit, of said decree, on the 16th day of September 1843.

This Respondent, farther answering saith, that on the 19th day of June in the year 1842, the said Daniel F. Dulany Sr. was indebted to Thomas R. Love, of Fairfax County, in the sum of twelve hundred dollars (\$1200) and to secure payment of the same, did on that day, execute and deliver a deed of Trust, on the said property, to Alfred Moss, of the County of Fairfax; that on the day of {blank} 1846 the said Thomas R. Love and Alfred Moss in consideration of the payment of the debt due from the said Daniel F. Dulany to the said Thomas R. Love amounting to the sum of about fifteen hundred dollars, by this Respondent, on the {blank} day of {blank} 1846 conveyed, bargained, sold, remised, released and confirmed, unto the respondent, all the right, title, estate, claim & demand, both at law, and in equity, which they had, or held in the aforesaid tract of land. In this Deed, it is recited, that since the executing of the said Deed of Trust, to Alfred Moss, this Respondent had purchased the said tract of land, and had fully paid the said Thomas R. Love, the debt thereby secured; a copy of the said Deed, from Thomas R. Love, and Alfred Moss, is herewith exhibited, and prayed, to be taken as part of this Answer, marked A.

This Respondent, farther answering saith, that the said Daniel F. Dulany Sr., being indebted to sundry other parties, who had obtained judgements against him, was taken in execution, by the Sheriff of Fairfax, under certain writs of {cannot read} issued upon such judgments, and to release himself from custody, availed himself of the benefit of the Act for the relief of insolvent debtors, then in force, in the State of Virginia, and in compliance with that statute, turned a

Schedule of all his property, real and personal, and conveyed and vested the same, including the said tract of land to and in the then Sheriff of Fairfax County.

This Respondent, farther answering, saith that the said Sheriff of Fairfax County afterwards, offered the said Schedule, for sale, at public auction, in strict conformity with law, and that at that sale, a certain John Powell became the purchaser of the said Schedule, including the tract of land aforesaid, containing 770 acres, subject however, to the liens aforesaid, upon the same, held, by this Respondent, as assignee of Robert J. Taylors executors, and as grantee of Thomas R. Love and Alfred Moss; that this Respondent, believing that the said John Powell, had the legal title to the whole of the said land vested in him, and that he the Respondent, had only a lien on the same, which he probably could not assert or realize, without litigation, with the said Powell, and believing that a compromise with said Powell was advisable, entered into an agreement with said Powell to release from the liens aforesaid held by this Respondent, four hundred and seventy acres of the said land in consideration that the said Powell would convey to him the balance, of said land viz. three hundred acres; this agreement between the Respondent and the said John Powell was fully carried into effect, by a Deed bearing date on the 1st day of April 1846, a copy of which is herewith exhibited marked B.

This Respondent farther answering saith that in paying off the debts due from his brother the said Daniel F. Dulany, to the executors of the said Robert J. Taylor, and to the said Thomas R. Love, he did so for the purpose of relieving his brother from his embarrassments, to prevent his house from being sold over his head and his wife and daughters and his other children who were of tender years, from being turned out of doors, without a roof to shelter them he did this, not from any pecuniary consideration, moving between himself and his brother, but purely from natural love and affection, and sympathy for his brother and his family in the misfortune, but in so doing he begs leave respectfully to say, that he had not in view, the Complainant, Daniel F. Dulany Jr. he was not then, a member of his fathers family he was a married man, living to himself; an officer, in the United States Navy; and if he was not, ought to have been perfectly able to take care of himself and his family; certainly this Respondent never contemplated taking care of him, had this Respondents brother, Daniel F. Dulany Sr. or his widow or any of his single daughters, or any other of his children of tender years, continued to occupy the property he would most probably never have interfered with, or disturbed them, in their {cannot read} but he certainly never paid off these debts for the benefit of the Complainant, Daniel F. Dulany Jr. or with the view of holding the property as an asylum for him.

This Respondent, farther answering saith that the debt paid by him to Robert J. Taylors executors would now amount with legal interest thereon, to upwards of six thousand dollars and that paid by him Thomas R. Love to about twenty five hundred dollars, in the aggregate, to about \$8,500 which is far beyond the value of the land, when he purchased it from John Powell, or perhaps its present value, that from the time he purchased the said land, from said Powell, the said Danniell F. Dulany, during his lifetime and after his death, his widow, and family occupied and held the said land as the mere tenants at sufferance of this Respondent, up to the month of May 1861, without account, when they were compelled to leave it in consequence of the War, which their {cannot read} and the occupation of all that portion of Fairfax County by the Federal troops; that the said Daniel F. Dulany Jr. the Complainant adhered to the Federal cause, was an officer in the Federal service, and thus had the opportunity which he embraced, of taking possession of the said land and has continued to hold and occupy the same without accounting for the rents and profits thereof up to the present time; and this Respondent knows nothing of the charges for improvements and repairs upon the said property during his occupancy by the said Daniel F. Dulany Jr. he does know however, and therefore avers and charges that the said Daniel F. Dulany has cut down, carried away, and sold, from the said premises several hundred cords of wood and timber, far exceeding in value any improvements made by him to say nothing of the rents and profits.

This Respondent, farther answering saith that considering the Complainant,

A mere trespasser, upon his property and being unable to obtain possession thereof in any other way, he instituted a Writ of Unlawful detainer against him, in the County court of Fairfax County; in which suit the Complainant contended that he held the property as tenant of this Respondent, and as such, was entitled to the usual notice to quit and such notice, not having been given, this Respondent was defeated in that suit. The Respondent then proceeded to give the regular notice to quit, to the Complainant; upon the expiration of which, and the Complainant still refusing to surrender the property, this Respondent, instituted another suit of unlawful detainer against the said Complainant and at May term 1867, recorded a judgment against him, in the said county Court for the said property and obtained a Writ of Possession of the same, but has been restrained from executing the said Writ by an Injunction awarded to your Honor, at the suit of the Complainant.

This Respondent denied that the Deed from John Powell and wife, to him, dated April 1st 1846, was made with any understanding, either express, avowed, or implied, that the land thereby conveyed, was to be held by this Respondent, as a security, for the amounts paid by him, as aforesaid and to that extent only, and that the said land, or the proceeds of the sale thereof, after discharging said indebtedness, should go and descend to the heirs at law of Daniel F. Dulany Sr; any such pretension is fully {cannot read} and rebutted by the admissions of the Complainant contained in a letter from his, to this Respondent, being date August 27th 1865, and herewith the exhibited as a part of this Answer, marked C. and which will also serve to show, an explicit renunciation on the part of the Complainant, of any title or claim to hold the said land.

This Respondent, having now as he is advised, fully answered the Complainants Bill, prays to be hence dismissed.

John P. Dulany
Lawrence B. Taylor
Sol. for Respondent