

1856 - 01

Southampton County Chancery.

Joyner, Edward et al vs Hundley, Levi et als

To overturn Will, have it  
declared void because the  
said writer of will Eley Joyner  
was of unsound mind at the  
time of signing.

Joyner, Nancy

Hundley, Margavet  
Joyner, Jane  
Rowe, Wm. Francis }  
" Jason E. } Miss  
Edwards, S. P.  
(G. A. L.)

The petition of  
Edward Joyner and  
Stacey his wife to  
Henry S. Howard  
Comm. Specier.

To Henry S. Howard, a Commissioner in chancery  
in the County Court of Southampton County -

Your petitioners Edward Joyner and Nancy  
his wife represent that Eley Joyner of the County  
of Southampton departed this life sometime <sup>since</sup> leaving  
a last will and testament, which has not been  
offered for probat, and which your petitioners  
allege is invalid, because the said Eley Joyner  
was of sound mind at the time of its execution,  
and they are desirous of perpetuating the testimony  
of Irvin Griffie, Josephus Turner and Jeremiah  
Joyner, the subscribing witnesses to said will, as  
to the matter aforesaid; that the said will was  
executed on or about the 24<sup>th</sup> day of July 1855.

They pray that you may issue the proper  
process against the parties interested, and that  
the testimony of the said witnesses may be perpetuated.

The parties that may be affected by the said testimony  
are Levi Humoley & Margaret, his wife, Jane  
Joyner, and Jason E. and Wm Francis Nowe,  
the last two of whom are infants under the age  
of twenty one years -

& They will ever remain,  
Edward Joyner & Nancy  
his wife, by W. C. Cobb  
their attorney

Commissioner's report of  
the evidence of witnesses  
adduced upon the petition  
of Edward Joann & wife to  
perpetuate testimony

1856 September 22: Returned

Commissioner's Office

Jerusalem, Va. September 20<sup>th</sup> 1836.

Upon the petition of Edward Joyner and Nancy his wife filed with your Commissioner representing that Eley Joyner of the County of Southampton departed this life sometime since leaving a last will and testament, which has not been yet offered for probat, and which your petitioners allege is invalid, because the said Eley Joyner was of unsound mind at the time of its execution and they are desirous of perpetuating the testimony of David Griffin, Josephus Turner and Jeremiah Joyner, the subscribing witnesses to said will as to the matter aforesaid, that the said will was executed on or about the 24<sup>th</sup> day of July 1833, in respect to which there is no suit, and that Levi Stindley, & Margaret his wife, Jane Joyner and Mr<sup>rs</sup> Francis Rowe and Jason E. Rowe, the last two of whom are infants under the age of twenty one years, <sup>persons who may be affected by such testimony</sup> are the undersigned Commissioner reports, that on the 21<sup>st</sup> day of August last, he issued notices against the said Levi Stindley & Margaret his wife, Jane Joyner and L. R. Edwards whom he on that day appointed guardian ad litem to attend on behalf of the said infants Mr<sup>rs</sup> Francis Rowe and Jason E. Rowe, notifying them, that on the 9<sup>th</sup> day of September 1836, at his said office, at the place aforesaid, he should proceed to take in writing the evidence of David Griffin, Josephus Turner and Jeremiah Joyner and any other witnesses (adduced in respect to the said matter by the said petitioners, Edward Joyner & wife or themselves, at which time and place they were required to attend, that the said notices not being duly executed by the Sheriff

in time upon all the parties interested, your Commis-  
sioner in the said 9<sup>th</sup> day of September 1856, issued  
new notices against the said Levi Standley &  
Margaret his wife, Jane Boyner and F. R. Edwards  
guardian ad litem of the infants W<sup>m</sup> Francis Rowe &  
Jason C. Rowe appointed to attend on their behalf  
as aforesaid, notifying them, that on the 18<sup>th</sup> day  
of September 1856, at his said office at the place  
aforesaid, he should proceed to take in writing  
the evidence of any witnesses (adduced in respect  
to the said matter by the said Edward Boyner  
& wife; the said Iron Griffin, Josephus Turner &  
Jeremiah Boyner especially and any witnesses adduced  
by themselves, at which time and place they  
were required to attend. That the last notices  
aforesaid were returned duly executed by the  
Sheriff of the said County upon the parties who  
may be affected by such testimony, and  
that in obedience thereto, the petitioners (and  
Levi Standley and F. R. Edwards the guardian  
ad litem aforesaid, of the infants W<sup>m</sup> Francis Rowe &  
Jason C. Rowe appeared before the Commissioner  
at his said office. That the Commissioner  
thereupon proceeded to take in writing the  
evidence of Iron Griffin, Jeremiah Boyner, Josephus  
Turner and Robert Drewry, the witnesses adduced  
in respect to the said matter by the said  
petitioners and Levi Standley, which with the  
petition and notices aforesaid, are herewith  
returned to the Clerk's office of Southampton  
County Court.

Given under my hand, as Commissioner  
of the said Court, at my said office,

This 22<sup>d</sup> day of September 1836.

Henry S. Howard Com<sup>r</sup>

Commissaries fee \$10.00 }  
Charges to Edward Jagers & Lewis }  
Blundley, Sheriff's fee \$4.40 }  
Commissaries

To Iron Griffin 2 Days attendance as witness for petitioners	\$1.00
" Jeremiah Jagers 2 " " " " "	\$1.00
" Josephus Sumner 2 " " " " "	\$1.00
" Robert Drury 1 " " " " "	30
	\$3.30

Henry S. Howard Com<sup>r</sup>

The Depositions of Irwin Griffin, Jeremiah Joyner Josephus Turner  
& R. Dwyer, witnesses of lawful age, taken on the 18<sup>th</sup> day  
of September 1856, before Henry S. Howard, one  
of the Commissioners in Chancery of Southampton  
County Court, at his office at the Courthouse of said  
County (pursuant to the annexed notice to Levy Ham-  
ley & Margant his wife, Jane Joyner and Jason  
E. and W<sup>th</sup> Francis Rowe by L. R. Edwards their  
guardian (ad litem) upon the petition of Edward  
Joyner and Nancy his wife filed with the said  
Commissioner, representing that Eley Joyner of the  
County of Southampton departed this life some-  
time since leaving a last will and testament, which  
has not been yet offered for probate and which  
your petitioners allege is invalid, because the said  
Eley Joyner was of unsound mind at the time of  
its execution, and they are desirous of perpetuating  
the testimony of Irwin Griffin, Josephus Turner &  
Jeremiah Joyner the subscribing witnesses to said  
will, as to the matter aforesaid; that the said  
will was executed on or about the 24<sup>th</sup> day of  
July 1855, in respect to which there is no suit,  
and that the said Levy Hamley & Margant his  
wife, Jane Joyner, and Jason E. and W<sup>th</sup> Francis  
Rowe, the last two of whom are infants under the age  
of twenty one years are the persons who may be af-  
fected by such testimony.

The Deponent Irwin Griffin being first duly sworn de-  
poses (and says:

1<sup>st</sup> Question by Counsel for the petitioners: State whether  
you witnessed a will for Eley Joyner sometime or  
on about the 24<sup>th</sup> of July 1855, and whether  
you thought he was of sound and disposing



mind & Memory and capable of making a will at that time?

Answer. I did witness a will for Mr. Ely Joyner I think about the 24<sup>th</sup> of July 1853, and I doubt whether he was of sound & disposing mind & memory at that time - I do not know whether he was of sound mind. I have some doubts about his being of sound & disposing mind & memory!

Question by same. State whether you wrote the will for Mr. Joyner (and whether in the condition of mind he was at that time you could not have induced him to have made any kind of will you might have suggested.)

Answer. I wrote the will for Mr. Joyner, well as to my influence just to make my will. ~~well so far as that is concerned~~ I did not do it, but if I had done so I believe that the would have yielded to my suggestion.

Question by same. Had not Mr. Joyner for several years previous to the execution of this will been in the habit occasionally of having fits, and had not fits together, <sup>with the</sup> excessive use of Ardent Spirits greatly impaired his mind & memory and rendered him incapable of attending to business generally?

Answer. I think he has been having fits for the last two or three years at intervals of a month or so. Fits & the use of ardent spirits or something else had greatly impaired his mind & memory. I have seen him frequently when he was not in a situation to attend to any kind of business. I have <sup>had</sup> business

with him frequently for the last two or three years  
and have seen him frequently when he was not  
capable of attending to business of any kind. He  
gave me money once and offered it twice more  
for the same purpose. I have frequently  
been at his house when he had forgotten  
the day of the week & had told me on  
one or two occasions that he could not  
recollect from one day to another what  
his people had been doing.

And further this deponent saith not.

John Griffin

Sworn and subscribed to before me this 18<sup>th</sup> day  
of September 1856 as Commissioner in Chancery  
of the County Court of Southampton County.

Henry S. Howard, Com.

The Deponent Jeremiah Joyner being first duly  
sworn deposes and says:

Question by Counsel for the petitioners. State  
whether you witnessed a will for Oley Joyner on  
or about the 24<sup>th</sup> of July 1855, and whether  
you thought he was of sound (and disposing)  
mind & memory & capable of making a will at  
that time?

Answer. Yes I witnessed a will for Mr. Joyner  
about that time & I do not think he was cap-  
able of making a will at that time.

Question by same. Had not Mr. Joyner for several  
years previous to the execution of this will been in  
the habit occasionally of having fits and had not  
these fits together with the excessive use of ardent  
spirits greatly impaired his mind & memory (and

~~man~~ rendered him incapable of attending to business generally?

Answer. He had been in the habit of having fits occasionally for the last several years (and these fits & the use of ardent spirits had greatly impaired his mind & memory & rendered him incapable of attending to business.

Question by same. Have you not frequently seen Mr. Joyner when he did not seem to know you & would inquire who you were.

Answer. I have. He is or was my brother & I lived very near & saw him frequently.

Question by same. State whether Mr. Ely Joyner was in the habit of attending to the business on his farm during the year this will, <sup>was</sup> made & about the time that it was made & whether you thought he was capable of attending to that business.

Answer. He was not. I have frequently been at his house in the morning when he would give directions to his hands that were <sup>entirely</sup> wrong.

Question by same. State whether you <sup>thought</sup> that Mr. Joyner was capable of making any kind of business contract about the time that this will was made.

Answer. I do not think that he was. I wished just about that time to purchase a cow & calf from him which he could have spare & but I would not because I thought him incapable of making a contract.

And further this deponent saith not.

Jeremiah <sup>his</sup> Joyner  
mark  
Sworn to & subscribed before me this 18<sup>th</sup> day of

September 1856 as Commissioner in Chancery of the  
County Court of Southampton County.

Henry S. Howard Comr.

The Deponent Josephus Turner being first duly sworn  
deposes and says:

Question by Counsel for the petitioners. State whether  
you witnessed at will for Eley Joyner either about the  
24<sup>th</sup> of July, 1855, (and whether you thought he  
was of sound and disposing mind and memory  
& capable of making a will at that time?

Answer. I did witness a will for him about  
that time & I do not think he was capable  
of making a will at that time.

Question by same. Had not Mr. Joyner for several  
years previous to the execution of this will been  
in the habit occasionally of having fits, and had  
not those fits together with the excessive use of  
Ardent Spirits greatly impaired his mind & memory  
and rendered him incapable of attending to business  
generally?

Answer. He had had fits occasionally for the  
last two or three years, & they & the use of ar-  
dent Spirits had impaired his mind & memory & rendered  
him I thought incapable of attending to business  
generally.

Question by same. Have <sup>you</sup> not frequently seen Mr. Joyner  
when he did not seem to know you, & inquire who  
you were?

Answer. I have. I lived very near to him & was  
frequently at his house & very often he did not  
seem to know me.

And further this deponent saith not Josephus Turner  
Sworn to & subscribed before me this 18<sup>th</sup> day of September 1856, as

Commissioner in Chancery of the County Court of Southampton County.  
Henry S. Howard, Comr.

The Deponent Robert Drawing being first duly sworn deposes  
and says:

Question by Counsel for the petitioner. State whether  
you lived with Ely Joyner during the year 1855 &  
whether you thought him capable of attending to the  
business on his farm during that year.

Answer. I lived with Ely Joyner during the year  
1855, yet thought him incapable of attending to the  
business of the farm - He had very little to do with  
it & gave no directions about the farm. He  
did not seem to know what was going on on  
the farm & asked no questions about it. He  
was in the habit of having fits about once a  
month & they last him generally about a day  
& half a night & he had a good many during  
that time. He was in the habit of drinking  
too much generally.

And further this Deponent saith not  
Robert <sup>his</sup> Drawing  
mark

Sworn to & subscribed before me this 18<sup>th</sup> day of September  
1855 as Commissioner in Chancery of the County Court  
of Southampton County.

Henry S. Howard Comr.

Goyner J<sup>r</sup>  
vs Zsutje  
Hurdley J<sup>r</sup>

To 18<sup>th</sup> Sept 1856.

Executed  
M D Sumner  
Wit for J. Hillisoff

The Commonwealth of Virginia

To the Sheriff of Southampton County, Greeting:

You are hereby commanded to summon Iron Giffin Joseph  
Shaw Burns, Jeremiah Joyner & A. S. H. Burges per-  
sonally to appear before the undersigned, one of the  
Commissioners in chancery of the County Court of South-  
ampton County, at his office at the Courthouse of  
said County, on the 18<sup>th</sup> day of September, 1856, to  
testify and the truth to say on behalf of Edward  
Joyner in a certain matter as regards the validity  
of Eddy Joyner's will upon the petition of the said  
Edward Joyner & Nancy his wife against Levi  
Hendley & Margaret his wife Jane Joyner and  
Jason C. & M<sup>rs</sup> Francis Rowe the last two infants  
under the age of twenty one years by L. R. Edwards  
their guardian ad litem. And this they shall  
do in no wise omit, under the penalty of £100.  
And have then thus writ. Witnesses  
Henry S. Howard, Commissioner of the said Court,  
at the Courthouse of said County, the 9<sup>th</sup> day of  
September 1856, in the 81<sup>st</sup> year of the  
Commonwealth.

Henry S. Howard, Comm<sup>r</sup>.

Subscribed in service of this notice. Aug 26 1856  
L.R. Edwards Jun. 42

Jones & wife

vs } Court Notice

Attorney of others

Executed by me  
Sumner Dep for  
& Kellogg  
September 9 / 1856



Commissioner's Office  
Jerusalem N<sup>o</sup> August 21<sup>st</sup> 1856

To Levi Humbley & Margaret his wife, Jane Joyner and  
Jason & W<sup>m</sup> Francis Row by L R Edwards their guardians  
ad litem to attend on their behalf.

You are hereby notified that I shall on the 9<sup>th</sup>  
day of September 1856, at my said office, in Jerusalem,  
proceed, upon the petition of Edward Joyner and  
Nancy his wife representing that Eley Joyner of the  
County of Southampton departed this life sometime  
since leaving a last will and testament which has  
not been yet offered for probat, and which your  
petitioners alleges is invalid, because the said Eley  
Joyner was of unsound mind at the time of its execution  
and they are desirous of perpetuating the testimony of  
Ervin Griffin, Josephus Turner and Jerimiah Joyner  
the subscribing witnesses to said will as to the  
matter aforesaid; that the said will was executed on  
or about the 24<sup>th</sup> day of July 1855, and that  
you are the persons that may be affected by such  
testimony, to take in writing the evidences of Ervin  
Griffin, Josephus Turner and Jerimiah Joyner and  
any other witnesses adduced in respect to the said  
matter by the said petitioners or by yourselves; at which  
time and place you are required to attend.

Given under my hand as Commissioner in Chancery of  
Southampton County Court, at my said office, this  
21<sup>st</sup> day of August 1856

Nancy S. Howard, Comr.

To the Sheriff of Southampton  
County, to execute

I acknowledge the service of this notice Aug 26 1856  
L.R. Edwards for 90

Wm. J. wife

vs J. Tamm's Notice

Alimony & costs

Executed by M.D.  
Turner Dep. for  
at Toledo  
September 9 / 1856

Summons for Henry Huntley &  
to show cause why Eley Ingers  
shall should be admitted to probate

In November Term 1856

At the instance of Jane Ingers  
J. R. Edwards Esq.

Executed on each  
by delivering a copy.

M. D. Sumner  
Clerk for S. Hill & Co.

The Commonwealth of Virginia: To the Sheriff of Southampton County,  
Greeting. We command you to summon Levy Stanley & Margaret his wife, Edward  
Joyner & Nancy his wife, & Jason C. & W. A. Porter, who are alleged to be interested in  
the probate of the will of Eley Joyner dec<sup>d</sup> to appear before the Judge of our District  
Court of Southampton County at the Courthouse on the first day of the next term to  
show cause why the will of Eley Joyner dec<sup>d</sup> should not be admitted to probate.  
And have them show this writ. Witness my hand & the Seal of our said  
Court at the Courthouse this 16<sup>th</sup> day of September 1856 in the 81<sup>st</sup> year of the  
Commonwealth.

J. R. Edwards Clk

State what was the mental condition of Eley Joyner on or about the 24<sup>th</sup> day of July 1855, and for some years prior to that period?

State whether you were the family physician of Eley Joyner <sup>at any time</sup> and at what time, and what were his habits and what disease was he subject to in the latter part of his life; If he was subject to any disease, <sup>what was it and</sup> what would likely be the effect of it upon his mind, whether it would not be more rapid and violent upon one of his eyes and habits than one of younger years and more temperate habits?

Questions proposed by Lane Joyner plaintiff -

1. Did the testator Eley Joyner, manage his own affairs during the period referred to in the above questions? 2. Had the testator sufficient capacity to know that he owned property? 3. Do you think he had the capacity to know that he had the right to dispose of his property, by will, or otherwise? 4. Did he have the capacity to understand, that he could direct in what way his property should go on his death?
5. Was there ~~an~~ any thing so peculiar in his mental <sup>man</sup> conduct, as to make it feeble, or to render him incapable of doing business of any kind, at one time, more than another. 6. State, particularly any reasons, from any cause, why his mental capacity should be feeble on or about the 24<sup>th</sup> July 1855, than it was a few days <sup>or weeks</sup> before or after that time - if such was the fact. 7. Was he not very fond of Lane Joyner - and was she not very attentive to him - if so state what you know about such fondness on his part, and devotion on hers.

1st State what was the mental condition of Eley Jones on or about the 24th day of July 1853 and for some years prior to that period.

I think his mind had been impaired from habits of intemperance.

2nd State whether you were the family physician of Eley Jones at any time and at what time, and what were his habits, and what disease was he subject to, in the latter part of his life, if he was subject to any disease what was it, and what would likely be the effect of it upon his mind, whether it would not be more rapid and violent upon one of his age and habits than one of younger years and more temperate habits.

I think I was ~~for~~ his physician for some ten years previous to his death occasionally others were called in. He was subject to an affection of his bowels, Diarrhoea, I do not think it ought to have impaired his mental powers. I do not think the disease would have been rendered more rapid and violent from the effects of age, but it probably would have been from his habits.

Chas. W. H. Beatty

Questions proposed by Jane Joiner Plaintiff.

1. Did the testator Ely Joiner manage his own affairs during the period referred to in the above questions?

I cannot answer this question positively.

2. Had the testator sufficient capacity to know that he owned property?

I should suppose that he had.

3. Do you think he had the capacity to know that he had the right to dispose of his property, by will or otherwise?

I should think that he had.

4. Did he have the capacity to understand that he could direct in what way his property should go on his death?

I do not think that Mr. Joiner could fully appreciate the bearing of his bequest.

5. Was there anything so peculiar in his mental condition, as to make it feebler, or to render him more incapable of doing business of any kind, at one time, more than another?

Yes.

6. State particularly, any reasons from any cause, why his mental capacity should be feebler, on or about the 24th July 1855, than it was a few days or weeks before or after that time - if such was the fact?

I think about that time he had an attack of convulsions which probably affected his mind more than usual.

7. Was he not very fond of Jane Joiner, and was she not very attentive to him - if so state what you know about such fondness on his part and devotion on hers?

Yes. She expressed great fondness for ~~her~~ <sup>her</sup>, and <sup>she</sup> was very attentive to him.

A. V. H. Purdy

The Counsel engaged in the Eli J. J. Miller case, now  
pending in the Circuit Court of St. Hampton, agree, that the deposition  
of witness, Thos. L. Loomis, taken upon due notice, may be read  
as evidence, provided it be proved at the trial of the cause of that  
the witness are absent from Seaboard, or beyond the State -  
but it is to be understood, that this is not to extend to  
any of the subscribing witnesses to the said Note -  
Witness as above the 5 day 1857 -

Robt. Whipple for the call  
E. W. Maffett  
att. for Def.



1857

May 6 filed.

on the motion of <sup>Edward</sup> ~~Thomas~~ <sup>set on by his wife</sup> ~~Isyner,~~ <sup>party defendants,</sup> ~~Margaret~~ <sup>Hardy</sup> ~~Hardy~~. it is ordered, that  
an issue of ascertainment be made up and tried at the bar of this  
Court to ascertain whether or no, the said Ely Isyner did <sup>by law or interest</sup>  
and whether the paper writing <sup>executed on the 24<sup>th</sup> July 1855</sup> purporting to be the last Will & Testament  
of said Isyner, be in fact, the last Will & Testament of the said  
Ely Isyner

I acknowledge service of the within notice Sept.  
9<sup>th</sup> 1856.  
L R Edwards Secy

Joyner &

vs J. C. C. notice

Sturtevant &

Executed on Levy Sturtevant and Margaret  
his wife James Joyner, Sept 11<sup>th</sup> 1856

M D Sumner Depty  
and Will Self

Commissaries Office

Jerusalem 2<sup>d</sup> September 9<sup>th</sup> 1856.

To Levi Handley, & Margaret his wife Jane Joyner and Jason E. & W<sup>m</sup> Francis Rowe by S. R. Edwards their guardian ad litem to attend on their behalf.

You are hereby notified that I shall on the 18<sup>th</sup> day of September 1856, at my said office in Jerusalem, proceed, upon the petition of Edward Joyner & Nancy, his wife, representing that Ely Joyner of the County of Southampton departed this life sometime since leaving a last will and testament which has not been yet offered for probat and which your petitioners allege is invalid, because the said Ely Joyner was of unsound mind at the time of its execution and they are desirous of perpetuating the testimony of Irwin Griffin, Josephus Turner & Jeremiah Joyner, the subscribing witnesses to said will as to the matter aforesaid; that the said will was executed on or about the 24<sup>th</sup> day of July 1855, in respect to which there is no suit; and that you are the persons that may be affected by such testimony; to take in writing the evidence of Irwin Griffin, Josephus Turner & Jeremiah Joyner and any other witnesses adduced in respect to the said matter by the said petitioners or by yourselves; at which time and place you are required to attend.

Given under my hand as Commissaries in Chancery of Southampton County Court, at my said Office this 9<sup>th</sup> day of September 1856.

Henry A. Howard Com<sup>r</sup>.

To the Sheriff of Southampton  
County to execute. }  
3

I acknowledge service of the within notice Sept  
9<sup>th</sup> 1856.

J R Edwards Genl

Dequoy

vs J. C. Edwards

Sept 9<sup>th</sup>

Received on Sept 9<sup>th</sup> and spent  
for my share of my m. Sept 11<sup>th</sup> 1856  
W. R. Edwards  
Genl