

1871-012 Chancery Causes: James M. Saunders vs Thomas M. Saunders + Francis C. Roberts

Isle of Wight County

other surnames Johnson,
Dowston, Gay

Kilby p. 9.

James M. Saunders,

27 } Bill

Thomas Saunders &
Francis C. Roberts

Feb. Rules 1841 - Bill
f. filed - sent. ed. & t
deem nisi.

March Rules - Bill taken
for confessed & set for
hearing.

Apr 1841. Ans. fil.

Oct. 1841, Disinfect
at depts. costs.

J. of A. Co. Ct.

Atty.
Tiff. vs.

Depts. Costs
Atty. fee 15.00
clk. .. 3.45
\$ 18.45

Complainant's title & claim —

(10) Your Complainant prays that the deed from Thomas, Saunders, to said H. C. Roberts, dated the 1st Jan'y 1870 & filed as an exhibit herein, may be set aside and declared null & void, & that the said Thomas, Saunders, may be by decree of this Court, compelled to execute a deed to your Complainant for the said land —

In consideration whereof and as, this Court has jurisdiction to grant all adequate relief — To the End your Complainant prays That the said Thomas, Saunders, and ^{Francis} H. C. Roberts, may be made defendants herein, and be compelled on oath to answer the allegations and statements herein, & that too as specifically as if the same were here again repeated & they, thereto again interrogated — That the prayer of your Complainant may be granted (and that all other & further relief may be granted consistent with Equity &c.

John R. Kelly Jr. v.

the small sum allowed him - Yet ~~that~~
~~reason~~ the said Thomas, Saunders, refused
to abide by said decision.

(7). That your Complainant being unable
to get redress by any other mode, has now
bought this land for that purpose.

(8). That your Complainant says that
the advancement of said Land by his
father, the said Thomas, Saunders, & his
improvement of the same long use and
occupation of the same, have given your
Complainant the right to have a deed
for the same with good title - That to
deprive him of the said Land & improve-
ments would be a fraud on his rights
which no Court of Equity will allow -

(9). Your Complainant, ~~says that the~~
further says That the said J. C. Roberts,
lived near him & knew the Circumstances,
under which your ^{Complainant} held the said Land
& was perfectly aware that the same
had been advanced to your Complain-
ant by said Thomas Saunders, as aforesaid,
and that your Complainant had lived on
the same for thirteen years, & built on
& improved the same (and claimed the
same as his own, and that he purchased
the same with full knowledge of your

Complainant took charge of said Land to wit. in the year 1857, the agreed value of said Land was \$171.50, and that on the 1st Jan'y. 1870 when the same was sold to said Roberts, the same was with \$1050. for the purpose of a sale, and much more to your Complainant as above - That the increase in price was, chiefly because of the improvements placed on said Land by your Complainant

(6). That after the sale thus made, your Complainant and said Thomas, Saunders, agreed to leave the settlement of the controversy which existed because of such sale, to the arbitration of Madison Johnson, E. Drunkman & J. P. Johnson & they decided that of the purchase money of \$1050 as aforesaid your Complainant should have \$830 & the Balance should go to said Thomas, Saunders - To this arbitration & judgment the said Thomas, Saunders, refused to agree.

That again, your Complainant & said Thomas, Saunders, consented to leave the matter in dispute to Jeremiah Gay to settle, when he decided that your Complainant besides \$350 which the said Mr. Saunders had paid as security for your Complainant should have \$413.75 out of the purchase money, to which your Complainant agreed rather than have a further controversy, notwithstanding

on the West, assuring your Complainant that if he would go on the said Land and take it as his share of his, the said Thomas Saunders' estate, he the said Thomas Saunders, would make your Complainant a good warranty deed for the same

(4) That, trusting to the faithfulness, and in the assurance, thus made him, your Complainant got married & went on the said Land, and proceeded to build himself a dwelling and out houses & clear up & fence & improve the Land & to cultivate the same, and lived on and occupied the same for over Thirteen years - till the beginning of the last year (1870) - when without the consent of, and against the protest of, your Complainant, he the said Thomas Saunders, sold the said Land to one, Francis C. Roberts for the sum of \$1050, and executed to said Roberts a deed ^{dated Jan'y. 1st 1870 &} therefor, which was on the 4th day of July, 1870 duly recorded in the Clerk's Office of the County of Warrington - a duly certified copy of said deed is filed herewith marked "A" -

(5) That when your

To the Hon. George R. Atkinson, Judge
of the County Court of Isle of Wight County.

Complaining shew unto the Court
your Complainant, James M. Saunders.

Your Complainant respectfully
represents to the Court and says:

(1.) - That he is the son of Thomas
Saunders of said County, and is
now thirty eight years old, and a
married man with wife and several
children -

(2) That after he became twenty
one years of age he continued to live
with his said father & worked for him
on his farm till he was twenty five
years, only receiving for his labor
enough to get his board & clothes.

(3) That at that time his said father
(Thomas Saunders) proposed to advance
to your Complainant, as part of the
estate intended for him, a tract of
unimproved wood land, in the County
of Isle of Wight, containing 140 acres
more or less (and adjoining the Land
of Elizabeth Hall on the North; Ire-
miah Bay on the East, Miller W. Roberts
on the South & the County road leading
from Knicker to Isle of Wight Court house

State of Virginia.

State of Wight County, to wit.

J. B. G. Roberts

a justice of the peace for the county aforesaid
Certify that Thomas M. Saunders whose
name is signed to the Answer hereto
annexed, personally appeared before
me in my said county, made oath
to the truth of the statements contained
in said Answer -

Given under my hand this 2nd day
of April 1871

B. G. Roberts, J. P.

John M. Saunders

3 In Ans.

J. M. Saunders

Answer of
J. M. Saunders

apl. 3. 1871 - filed

in court of com.

To the Honorable George R. Winson Judge of
the County Court of Isles Wright County in
Chancery sitting;

The Answer of Thomas^m Saunders
to the Bill of Complaint in said Court
exhibited by James M. Saunders against
him and others:

This Defendant, saving and reserving
all right of exception, to the many
errors and imperfections in said
Bill contained, for answer thereto, or to
so much thereof as he is advised it
is material or necessary for him
to answer, answering says;

1st
This Defendant admits to be true the
allegation of said Bill that the aforesaid
Complainant is the son of this Defendant.
2^{ndly}
This Defendant admits to be true so much of
the second allegation in said Bill as
charges that the Complainant lived with
this Defendant during the period named
therein; but this Defendant entirely denies
that he only paid the Complainant
for his labor during that period the
compensation named in said allegation, on
the contrary this Defendant alleges that in
addition to the compensation therein named,
he paid the said Complainant 25¢ per day for
every day the said Complainant worked for

this Defendant during said period, the said Complainant keeping his own account of said work, and this Defendant settling thereby this Defendant further denies that for the last year mentioned in said allegation the Complainant worked for said Defendant: but for that year said Complainant worked for himself and this Defendant boarded the said Complainant, and the other hands who worked for him during that year without charge.

3rd)

This Defendant wholly denies so much of the 3rd allegation in said Bill as charges that this Defendant proposed to advance said Complainant the land in said third allegation described and make him a good warranty deed for the same and that said Complainant under such promise of advancement took possession of and improved & cultivated said land.

This Defendant admits to be true that after said Complainant had taken possession of said land and commenced improving the same without any promise of advancement or title to said land from this Defendant, in consequence of a quarrel of said Complainant with the

other children of this Defendant, this Defendant proposed to the said Complainant that the said Complainant should take said land as said Complainant's share of this Defendant's Estate, and offered to enter into writings to that effect but the said Complainant entirely & wholly refused and rejected said proposition.

4th ^{thly}

This Defendant denies the allegation in the fourth clause of said Bill contained that said Complainant took possession of said land under the alleged promise of an advancement or that said Complainant held and improved the same under any promise or agreement of a title being made to him for said land. This Defendant further denies that said Complainant held exclusive possession of said land during the period mentioned in said fourth clause, on the contrary this Defendant alleges that during the Complainant's occupancy of a portion of said land, this Defendant leased out other portions of said land for his own benefit. This Defendant entirely and wholly denies all and every allegation of said Bill charging that this Defendant ever made any contract or agreement

to or with the said Complainant, or with any one for his benefit, that he, the said Defendant, would make the said Complainant a title to said land, or that the said Complainant ever held the said land under any such agreement; but this Defendant swears that the said Complainant held the said land under this Defendant as his tenant at will, and so holding the same this Defendant as he had the legal right to do made sale of said land to one Francis C. Roberts as in said Bill mentioned, for the purpose of meeting liabilities incurred by this Defendant as Security for the said Complainant either individually or under his official Bond as Constable.

5th clause

This Defendant avers that although under no legal obligation so to do, he nevertheless intended to compensate said Complainant for the improvement made by him on said land, but this Defendant denies that the improvements made by said Complainant were the chief cause of the increased price of said land as in the 5th clause of said Bill is alleged.

6th

For the purpose of carrying out this Defendant's aforesaid intention of compensating said Complainant for his said improvements, (though under no legal obligation so to do) it was agreed between this Defendant and said Complainant that the settlement of the controversy should be left to the arbitration of Madison Colinson & others as in the 6th clause said Bill alleged, and a time and place appointed, at which this Defendant and said Complainant were to meet said Arbitrators, who after hearing the statements of the respective parties and examining their Vouchers and Papers were to arbitrate the matter, this Defendant accordingly attended at the time of place agreed upon for the purpose aforesaid, but he found the said Arbitrators absent on a "deer hunt," on their return from which he met them and learned from them that they had already decided the matter in his absence without hearing his statement or examining his papers. Such partial and pretended arbitration was of course repudiated by this Defendant, and does not seem to have been regarded as valid by the

Complainant as is shown by his Agree-
ment with this Defendant to recommit
the matter for arbitration to Jeremiah
Gay as in said 6th Clause is admitted.

by W. H. H.
This Defendant denies that the said
Jeremiah Gay made the decision set
forth in the 6th Clause of said Bill, or that this
Defendant refused or has ever refused to
abide by the decision made by the said
Jeremiah Gay. This Defendant alleges that
the decision of the said Jeremiah Gay
Arbitrator as aforesaid, was that the said
Complainant: was entitled to
receive for his interest in said
premises the sum of \$413.⁵⁰/₁₀₀
such portion of which amount as
was necessary to discharge the same, to
be applied to the payment of debts for
which this Defendant was
Security for the said Complainant
and the balance if any to be paid said
Complainant, and that the said Com-
plainant should vacate the premises
before the Monday following the
Sixth day of January 1870, the date
of said arbitration. The said Com-
plainant and this Defendant
bound themselves by an Agreement

under seal to abide by the
arbitration aforesaid, and this
Defendant paid over to the said
Complainant such an amount
as with the security debt aforesaid
made up the aforesaid sum of
\$413⁵⁸/₁₀₀, for which amount this
Defendant holds the receipt of said
Complainant and his release in
consideration thereof of his claim
to said land in accordance with said
arbitration of Jeremiah Gay.

8thly

This Defendant is informed, and so
charges that even if the said
Complainant ever had the equi-
table title to said land as in said Bill
pretended, which this Defendant
wholly denies, that the
Agreement under seal and the
payment and release aforesaid
would present a complete bar to the
enforcement of said equitable title.

This Defendant having answered prays
hence to be dismissed with his costs in
this behalf most unreasonably
expended and he will ever pray &c.

(Signed)

his
Daunders
mark

James M. Saunders

vs.

Thomas M. Saunders

Answer of
J. C. Roberts

Apr. 3^d 1841.

Filed by leave
of court.

State of Virginia
Isle of Wight County to wit;

I B. C. Roberts a Justice of
the Peace for the County aforesaid
do certify that H. Roberts whose
name is signed to the writing
herunto annexed, and made
oath to the truth of the statements
therein contained.

Given under my Hand this
4th day of April 1871.

B. C. Roberts J. P.

To the Honorable G. R. Atkinson Judge of the
County Court of Isle of Wight County
in Chancery sitting: ss

The Answer of H. C. Roberts to the
Bill of Complaint in said Court
exhibited by James M. Saunders against
him and others.

This Defendant saving and reserving
all right of exception to the many
errors and imperfections in said
Bill contained, for Answer thereto or to
so much thereof as he is advised it
is material or necessary for him
to answer, answering says:

This Defendant admits to be true,
as is in said Bill alleged, that his
Codefendant Thomas M. Saunders sold
to this Defendant the land in said
Bill described, and conveyed the same
to him by a Deed of Bargain and
Sale duly recorded in the Clerk's
Office of the County Court of said
County:

This Defendant has no reason to
believe that the allegations in said
Bill contained of an equitable title to
said land in the complainant, and
of his right to enforce the same, are
true, and this Defendant denies the

pet
"

gondly

truth of said allegation, and demands
proof of the same;

3rd

This Defendant wholly and entirely
denies each and every allegation
in said Bill contained charging
this Defendant with knowledge of
any equitable title of the said
Complainant in or to the said Land,
and this Defendant alleges such allegations
to be false in every particular.

This Defendant denies the exis-
tence of such equitable title in
said Complainant, and is informed,
and swears, that even if said
Complainant had such equitable
title that his own title to said land
under the aforesaid conveyance is
not affected thereby, as he bought the
said land without any knowledge of
such equitable title in said Com-
plainant. & This Defendant having
answered prayer hence to be dismissed
with his costs in this behalf most
unreasonably expended and he will
ever pray &c.

(Signed) Francis C. Roberts

James M. Saunders

\$ 3 Sum. to adv.
 3 Bill

J. M. Saunders and
F. C. Roberts

To Henry. Rules 1897.
Co. Ct.
Killer Reg.

Executed Jan 13th / 1
by delivering a copy to the parties. E. J. Chapman Sheriff

The Commonwealth of Virginia,

TO THE SHERIFF OF ISLE OF WIGHT COUNTY, Greeting:

We Command you to Summon *Thomas M. Saunders and Francis
C. Roberts*

to appear at the Clerk's Office of the *County* Court of Isle of Wight County,
at Rules to be holden for the said Court, on the first Monday in *February*
next to answer *the bill in chancery of James M. Saunders*

a plea of *—* for \$ *—* Damages, \$ *—* And have
then there this writ.

Witness, NATHAN'L P. YOUNG, Clerk of our said *County* Court,
at the Courthouse, the *4th* day of *January* 1871, in the *9th*
year of the Commonwealth.

N. P. Young Clk.

James M. Saunders

✓
Thomas M. Saunders

+

Francis C. Roberts

Rough Deed

Act to Term
1871

To be entered

Geo. R. Roberts

James M. Saunders

^{vs}
Thomas M. Saunders & Francis C. Roberts

This cause this day
came on to be heard on the complain-
ant's Bill, the Answers of Thomas
M. Saunders, & Francis C. Roberts,
general replications thereto, & exhibits
filed, & was argued by counsel, on
consideration whereof the Court
doth adjudge order & decree that
the Complainant's Bill be dismissed,
& that the Complainant pay the
costs of this suit.

Saunders.

27

Saunders &
Roberts

1 Exhibit filed
with the Bice

"A"
Saunders & wife

to { Deed

F. C. Roberts

Copy

fully paid off with lawful interest. then the
said Francis C. Roberts to have not un-
til then a full & complete title, witness
the following signatures & seals -

Signed in presence of
Dixon W. Kitchen.
W. Jose Darden.)
Thos. ^{his} M. Saunders (Seal)
Nancy ^{mark} ^{her} Saunders (Seal)

Virginia
Isle of Wight County, to wit:

We Dixon W. Kitchen & W. J. Darden Justices
of the peace in & for the said County State
of Virginia, do certify that Thomas M.
Saunders a party to the foregoing deed bearing
date January 1st, 1870. has personally appear-
ed before us in our said County & acknowledged
the same to be his act & deed, and we
further certify that Mrs. Nancy Saunders
the wife of the aforesaid Thos. M. Saunders
also a party to the said writing has person-
ally appeared before us in our said
County & being examined by us privily
& apart from her husband, & having the
said writing fully explained to her, she
the said Nancy Saunders acknowledged
the same to be her act & deed & declared
that she had willingly signed the same
& that she does not wish to retract it
Given under our hands this 8th

day of January 1870.

Dixon W. Kitchen. J.P.
W. Jose Darden. J.P.

In the Clerk's office of the County Court
of Isle of Wight County, the 4th day of
July 1870. This Deed from Saunders
& wife to F. C. Roberts was received
& admitted to record upon the annexed
Certificate of D. W. Kitchen & W. J. Darden
the requisite United States revenue Stamp
of \$1. ⁰⁰/₁₀₀ being affixed hereto & cancelled.

Teste

N. F. Young Clk
at Copy
Teste

C. H. Hunt, D. C.

This Deed made this first-day of January 1870
between Thomas M. Saunders & Nancy his wife
of the first part. & Francis C. Roberts of the second
part both parties residing & being in the County
of Giles & Wight & State of Virginia, Witnesseth:
That for ^{& fifty} consideration of the sum of one
thousand ^{& fifty} Dollars the said Thomas M. Saunders
& Nancy his wife doth grant bargain & sell unto
the said Francis C. Roberts his heirs & assigns
forever a certain tract piece or parcel of land
in the County of Giles & Wight adjoining the
lands of Elizabeth Hall on the North, Jeremiah
Gay on the East, Mills W. Roberts on the South
& the County Road leading from Windsor to Giles &
Wight Courthouse ~~on~~ the West, & contains
by estimation one hundred & forty acres, & is
known as the Dempsey Underwood & Robert
Johnson, & whereas the said Francis C. Ro-
berts has executed to Thomas M. Saunders
three several Bonds as follows, the first for
\$200.00 bearing date first of January 1870.
& payable twelve months after date, The
second for \$200. bearing date 1st January
1870, & payable two years after date, The
third & last for \$223. ⁷⁵/₁₀₀ dated 1st of January
1870, & payable three years after date, The
said Thomas M. Saunders & Nancy his wife
retains alien on the aforesaid land
until the above mentioned Bonds are