

1876-009 Chancery Causes: Niven Barber vs Samuel Seed
Isl of Wight County

other surnames: Bunkley,
Hope, Early, Jett, Sinclair,
Fish, Tynes, Barbour,
Barbore

Barber

v. Bill

Seed

Jan'y. Rls. 1845. Petition
Sums. exp'd & Ac. min.

Feb'y. Rls. 1845.

Bill taken for confd.
and set for hearing.

Mar. ch. 1845. &c.

directing com. to report
whether or not contract
is complied with or

Apr. 16. Final Decree

Sent to this ^{bill} Court, and be required to answer
the same as fully and as effectually as if he
were here and personally interrogated, that
he may be required and compelled to perform
specifically his contract that he may be
compelled to resume work in the aforesaid
boat at once and be compelled to complete
the same according to his agreement and con-
tract ^{that the award itself may be declared null and void if not effectu-}
ally performed within a reasonable time, and
that he may have all such other relief
for the relief as the nature of his case
may require and to Equity shall seem
meet; and he will ever pray &c.
Thomas P. G.

obtain that relief to which he is entitled.
And your court your master is forced to supply
because the said S. Seed is a skilled work-
man and can if he chooses do the work
as he has contracted to do. He has the only
ship yard there there is in the town of
Smithfield and ^{the} vessel in its partial
ly ruined state is upon his ways, and
there is no other regular ship carpenter
there, and certainly none of the skill
and experience of the said S. Seed. The
said S. Seed is an insolvent and a judg-
ment at law against him would not
avail your master any thing at all. If
the said S. Seed were to hire competent
labor at reasonable rates, and he can
get competent labor at ~~lower~~ lower pri-
ces than he has been paying, he could
complete your master's vessel at his contract-
price. And your master would after he obtained
nothing by ^{and execution on} a judgment for damages still be
compelled to bring another action at law for
the boat and it would be impracticable to
deliver her ^{slavely} in her present condition.

In tender consideration whereof and for as
much as your master is without remedy
save in a court of Chancery where matters of
this sort are alone cognizable to the end that
justice may be done your master prays that
the said S. Seed may be made ^a party before

And the 10th J. Sew and further say that there is a large amount due to him for extra work on the 1st day of Nov. and all that he claimed over \$22.

made out his bill and all that he claimed was \$42.25

which you water repulse and now regards as neither free, nor reasonable.

[illegible]

discussed. I returned & found my affairs in the condition I left them, and like the Pan's Saw Company, I am now well as I was in former N. Valley part.

1500 am at return.

of the arbitrators, ^{and} they without making any
inquiries into this branch of the subject and
without reading the Specifications and
agreement as attentively as they should
have done, ^{and without examining your notes of the said S. Sec. & any witnesses} made an erroneous award. But
as it was honestly done your water felt
called upon to abide by it; and hoped that
the said S. Sec. would fairly, frankly and
honestly either go to work upon the case
as he should do, or else deliver him up
to your water as he had agreed to do.

But instead of doing either he examined
work on him on Tuesday the 2nd of No-
vember and on Saturday, ^{the 28th Nov.} about noon pre-
sented ^{your order} him a bill for \$700, ^{and} as will be seen
by a copy thereof herewith filed as exhibit H
and prayed to be taken as a part of this Bill
and afterwards presented him ^{by your order} with another
account for \$200, ^{and} as will be seen by a copy
herewith filed as Exhibit I and prayed
to be taken as a part of this Bill. Both
of these accounts were rejected because
they were clearly violative of the award made and
the amount charged was out of all pro-
portion to the work done. +

and now you state hopes that the facts
alleged abundantly show that you state
has treated the said S. Seeds with perfect
fairness and that he ^{being always ready, willing and able to comply with his contract} results to a want of
Equity for the purpose of compelling the said
S. Seed to comply ^{specifically} with his contract and
agreements because he cannot elsewhere

with plan as Exhibit ^{and} ^{made up by the arbitrators and umpire with out ever having examined either my report or plan in any way unless it was by an umpire not selected by them and as a part of his bill.} This award was founded upon mistakes. The specifications and contract under which the Boat-in question is being subject requires her to be 11 ft feet long and 17 feet & four inches or more long wide. The arbitrators measured her upon her decks and not upon her keel as your water ~~and the said~~ understood she was to be measured, and as the said J. S. Seed understood she was to be measured, and did measure her, and upon her measurement on deck she was found to be 125 feet long and in measuring her width she was found to be 17 feet and ten inches wide. The arbitrators did not notice that she was to be 17 feet & 4 inches or more ^{wide} and in consequence of these ^{and other} mis take of the arbitrators they made the award they did. The Boat was by Custom House measurement a paper 90 feet-long, but-when Jm Seeds after his Contract-came to measure her she was found to be by his measurement over 90 feet long. And when he drew his plan on the timbers on the said boat-he said she was six inches longer than he meant to make her and said that will be no harm to which your water replied, "No. Not a bit". This is the way except length that you or Captain Charles Early the agent of the water for the purpose of ^{that the said vessel was built} ^{according to contract} never heard of before the meeting of the

or Captain Charles Early the agent of your nation for the purpose of ^{resolving to construct} that the said vessel was built
or has ever heard of before the meeting of the

As we sail on, as the tide of 4330.94 presented by the sun for the first time, we do not see any more about any of the north of our sail, or for the first time.

permitted by me inside of the contract and
what compensation I shall receive therefor.

X Each party agree to pay ^{any} damages ~~apart~~ against
him, and you to pay for Extra material the
same time that you ^{only} have to pay any other same
ago that may be awarded against you for the
boat. and I for the agree that if the award is
against me I will immediately from and com-
plete the boat according to my contract or deliver
her instead to you and give you the free use of
my yard to you and then complete the work
upon her and if against you you to pay
the amount of the award within such time
as the said Arbitrators shall decide upon. as
will be seen by the letter of the said S. Sed here
with filed as Exhibit "F" and prayed to be
taken as a part of this bill. As this proposition
was understood to be substantially that which
had been submitted by you in letter on the 14th day
of November (Exhibit "D") it was accepted and
W. M. Hope was named as his arbitrator and
S. Jay was named as the arbitrator of the said
S. Sed. ^{as will be seen from Exhibit "E"} The result of this arbitration was
an award of A. Buckley called in as an
umpire that there should be added \$800 to
the contract-price for the building of the vessel
contemplated by the contract between the
said S. Sed and N. Barker & the price as by
the contract contemplated that is in pro-
portion as the work progresses" as will
be seen by the award of the said A. Buckley here

agreed - a demand that precluded the possi-
bility of arbitration, and it was rejected. Your
order thereupon and immediately directed
his ^{for said} ~~prosecution~~ in Chancery to compel the said S.
Sears to complete the work as he had contract-
ed, or to do otherwise as the said Court might
order and direct.

Afterwards, to wit - on the 17th day of Novem-
ber 1874 the said S. Sears addressed a
communication to your order wherein he
submitted a final "proposition" to settle the
questions pending between your order and the
said S. Sears, which was: That the arbitra-
tors who ~~shall~~ ^{shall} be skilled workmen in the
business of ship building shall determine
whether the contract existing between us for
the rebuilding of the vessel has been violated
by you or by myself and by whom. If it has
been violated by either what damages shall
the other be entitled to. If they shall deter-
mine that it has been violated by you, the
loss of any time and detention in performing
the work shall be estimated in performing
the work shall be estimated in fixing my
damages. And if they shall determine that
the contract has been violated by me then
X then you are to be paid for such violation
as the arbitrators may agree on. The arbitra-
tors shall also determine whether any
extra work has been done, or extra material

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with the provisions hereinafter named. Agree
to leave to arbitrators on whole matter in dis-
pute - they to examine every thing in connection
with the contract and to allow me for all extra
labor and extra material ~~and~~ outside of the con-
tract which is to be separate. Also for my detention
and loss of labor they are to make a just allow-
ance according to their best judgment since the
failure of yourself to furnish me with the ne-
cessary means to carry on the work upon the
boat. You to select one and I one, and they
to call in a third party should they not agree
the said and ways run in my possession to
be mine after the boat is completed and I
am to be allowed to remove all tools and uten-
sils run in the yard belonging to me as I
may think best. If this is not accepted
then your proposition is declined as embodied
in your last letter, as will be seen by the letter
of the said S. Sees herewith filed as Exhibit
E and prayer to be taken as a part of this Bill.

Your orator could not for a moment think
of accepting the terms proposed for while the
~~only~~ question at issue was "has your orator com-
plied with his contract; had he paid as the ^{work} ~~work~~
proposed the said S. Sees desired him to print an
arbitration which ^{signed} ~~shall~~ concede that he had viola-
ted his contract - that extra work and extra
labor outside of the contract had been done
and furnished and that he had failed to pro-
vide the means to carry on the work as his contract

they to call in a third, who shall act as
umpire, whose decision and award, like
the decision and award of the two selected
by us as just stated, shall when made
be ultimate and final, and that they the
arbitrators as aforesaid shall determine
under an contract whether or not I
have not complied with it - and paid as
the work proposed, and if there has
been any extra work outside of the
said contract its extent and value I
will accept it. the first proposition as
amended by me in accordance with
what I conceive to be its spirit and mean-
ing and I shall be pleased to comply and
will comply with the award that they may
make, and you are to do the same. If
these arbitrators shall say I am in default
I will instantly pay you whatever they may
adjudge me to be in arrears, and if you
are in default - you to receive work im-
mediately and so farward and complete
the work on her (the boat) according to our
contract, as will be seen by a copy of
the said letter here with filed as exhibit
"D" and prayed to be taken as a part of this
Bill. But to the surprise of your orator
this proposition so fair and liberal
was rejected by the said S. Seeds by letter
which said "I will accept your terms

terms" as follows "I am willing to leave to
two workmen skilled in this branch of busi-
ness the matter in dispute who shall decide
how much and of what value the work
has been done on the boat including the cost
of material, both is aside their decision. 2^d
If Mr Barber will pay all of the debts of
the boat and outstanding against her in-
cluding material and labor and will pay
me three hundred dollars in addition thereto
I will give up the boat, otherwise I will
not except by one parlay of land". I will
~~give up the boat and land if he accepts~~ as will
be seen by the letter of the said seed here
with filed as exhibit "C" and prayed
to be taken as a part of this Bill. When
you were received this reply he could not
but hope that the seed desired would be gained
by the means indicated, and as he felt dis-
posed to accept the first proposition as "sug-
gestion of the said S. Seed without amend-
ment or addition, but being anxious to
remove all possible doubt from the path of
the arbitrators he replied "I am anxious
ready and willing to comply with all
of the requirements of my contract and
that if your first proposition means
this, viz. that we submit to two work-
men skilled in the business of their com-
puting, one to be selected by you and
one by me, and if these two can not agree

Sudd's mind, that your water would not
pay so all that he could do remove the
monies in payment, but that of course
refuse in this ~~that~~ he was entirely wil-
ling to leave the matter in dispute
to arbitration, but he the said S. Seed
would not consent thereto. After ex-
hausting all efforts to effect a settlement
of the matter at issue he ~~for~~ your wa-
ter, placed his affairs in this connec-
tion in the hands of his counsel who
upon the 13th of this month wrote to
the said S. Seed to know why work on
the said vessel had been suspended,
desiring to know when it would be resumed
and expressing a hope that an adjustment
could be reached without litigation as will
be seen by a copy of the said letter here-
unto filed as exhibit "B" and prayed
to be taken as a part of this bill. On
the next day he, your water received a
reply ~~saying~~ from the said S. Seed saying
he would not resume work "until I am
personally satisfied" ~~but~~ that he had
suspended work because your water
had failed to furnish the necessary
funds as a per diem, that litigation
could easily be spared if I would comply
with my contract and that it would be
avoided "if my" adopting one of two sugges-

be on the ~~low~~ shallow pretension that
your orator had failed to comply with his
contract- whilst he well knew and
knows that your orator has in ^{no} man-
ner failed to comply with ~~any~~ ^{any} require-
ment of that said contract. On the very
day that this contract was made, your
orator paid the said S. Seed in bills one
or other parties and in cash the sum of
two hundred dollars, and on the 18th
of August- he paid him \$60.00; on the
20th of August- he paid him ^{\$200.00} \$250.00; on
the 28th of August- he paid him \$50.00; on
the 1st of September he paid him \$500.00;
on the 24 & 26th he paid him an aggregate
amount of \$1000.00 and on the month of Oc-
tober he paid him \$35.00 (making) in all
\$2295.00 nearly two thirds of the contract-
price of the rease while this was not one
half finished. Your orator as soon as
he came after hearing that the said S.
Seed had suspended work called on him
to know why he had done so, and upon
being informed by the said S. Seed that he
your orator had violated his contract-
by not-making payment as required
of his contract he, your orator, assured
him ~~that~~ the said S. Seed that he your
orator had in every respect kept and ob-
served his contract, and that if there was
any doubt of this matter ~~resting~~ in his

inches wide, sister Kelson to be
engine frame of proper size and of white
oak, panel doors and sashes of suitable
size to all rooms and pilot house, sliding
doors to fore-hatch, one mast and gaff, to
be necessary ship ladders, all the carpenter
and joiner work to be done in a good and
workman like manner, and to the en-
tire satisfaction of the owner, or whoever he
may appoint, and also to all caulking,
plumbing and scraping.

And in consid-
eration of the foregoing Specification. we
the undersigned parties to wit: ~~that~~
Samuel Leeds of the town of Bridgeton-
in the county of Burlington and State of
New Jersey of the first part, and Allen
Barber of the city of Brooklyn, County
of Kings and State of New York of the
second part: the said party of the sec-
ond part in consideration of the pre-
sentment by the party of the first-part
of the foregoing Specification. agrees
to pay ~~the~~ to the party of the first-part
the sum of three thousand and seven
hundred dollars as follows to wit: Pay-
ments to be made every two or three weeks
as the work progresses - any thing that
may be omitted, or left out of the foregoing
Specification necessary to finish and
complete the job will be done by the
party of the first-part at his own cost.

Kelson 4 in x 10 in of white oak, hatchways
beams 7 in x 7 in of white oak, balance of
Deck beams of best heart pine 7 in x 7 in
and two feet apart, ceiling to be pine oak
clamps to be double of 3 x 1/2 heart pine, one
stinger on each side 4 x 8 of oak or pine,
Deck to be 2 1/2 inches thick of best heart
pine, rail to be 3 x 7 inches of white oak,
outside spikes to be galvanized up to load
line, balance of spikes fastenings to be black
iron, bolt iron to be one half, five eights and
three quarter inches in their proper places &
have suitable hatches, and hatchways as
directed to have a freight house on main
Deck about 72 feet long and the whole
width of the boat and six feet and six inches
high in clear between beam and Deck,
the post of house to be 4 x 4 inches of best
heart pine the corners of house to be 2 x 4
inches, clamps of freight house to be 4 x
7 of heart pine, house cantrip to be 4
x 7 inches of heart pine, house over freight
house to be about 40 feet long and about
14 feet wide, and six feet six inches
high in clear between Deck and ceiling
and to be divided as follows pilot house
staterooms, kitchen, and my room to
be enclosed with one inch heart pine
or cyprus tongued and grooved boards bled
Kelson to be then a few inches thick by min

In the circuit Court of Sale of Wash. County,

N. Barber

v.

S. Saw

Plaintiff

In Chancery

Defendant

To the Hon George B. Saw

Judge of the circuit Court of Sale of
Wash. County, in Chancery sitting.

Humly complaining unto your honor
your orator N. Barber respectfully shews
That on the Ninth day of July last
1874 at the City of Norfolk, Virginia,
your orator entered into a contract with
one Samuel Saw to build for him a
certain vessel called the ~~Ruffles~~ according
to the following terms, conditions, speci-
fications and agreements, viz "Speci-
fication of Carpenter and joiner work
and materials necessary to finish and
complete a steam propeller for N.
Barber to be when finished one hundred
and sixteen ft long, seventeen feet and
four inches or more of beam, or width
Depth of hold seven feet one inch at main
hatch, frame to be four inch flitch of
white oak, stem and stern and stem post
and keel to be of white oak outside planks
to be 2 1/2 inches thick of white oak, ribs

Burden

N. *Domum*

Lucy

—

The demand of B. Leeds the defendant to
the bill of compulsion of H. Barber com-
plainant:

This defendant by protestation
not acknowledging or engaging all or
any of the matters & things in said com-
plainant's bill contained, to be true in
such manner and form as the same are
therein & thereby set forth and alleged
doth desire to said bill and for cause
of demand show that said complain-
ant's bill seeks to enforce specific
performance of a contract for labor
to wit, to build a vessel, that the
plaintiff has a complete remedy at
law and that there is no equity in
his said bill, wherefore & for divers other
good causes of demand appearing in
said bill this defendant desires leave
and prays judgment of this court whether
he shall be compelled to answer any
further or other answer to said bill and
pray to be heard dismissed with his costs in

Atkinson, James & Company

a suit at law to recover the same as
a part of the damages he has sustained by
the failure of Barber to comply with his contract.
And your respondent having thus fully and frankly
answered piags that the bill of Complainant
be dismissed with the costs attending this
suit and he will wait

Samuel Seed

State of Va

County of Isle of Wight

I Wm Vandewater as such a Justice of the Peace
in and for said County State do certify that
said Seed whose name is signed to the
foregoing Answer to a bill in Chancery preferred
against himself by A Barber made oath that
the answer is true to the best of his knowledge
and belief given under my hand this 1st day of
July 1875 — Wm Vandewater JP

Barber

vs Chancery

Seed

Answer of Sam Seed

XXX

Your respondent says further that the said Barber was not prompt and diligent in the performance of the contract undertaken by him, but on the contrary dilatory and careless in the performance of the same and that on many occasions your respondent had to urge him to do the same but without success.

oco

Your respondent further says that it would be a harsh rule of equity to compel him to do an uncertain & vague thing, especially one of such a character as ~~is~~ labor alone for he has ~~no~~ means to buy material, when the Bill of the Complainant utterly fails even to allege his pecuniary ability to pay your respondent after he had finished the said vessel.

XXXX

Your respondent further says that the Complainant does not allege that if he (your respondent) should go on and complete the said vessel that he would pay for the same - Your respondent says that the contract being silent as to the date to commence or the day to complete the said vessel, that ^{order} ~~an~~ ^{from} your Hon Court as the one prayed for in the Complainant's Bill would be subversive of all rules of justice and your respondent especially asks your Honor not to annul or set aside the decision of the arbitrators as prayed for but that the same having been agreed on fairly & honestly and the award having been made at the request of the Complainant should be allowed to remain in full force and virtue as your respondent has already insistently

(12)
provided the Complainant would perform his, but to do
the same at this time when the said Barber is
already indebted to him in the sum of \$2405 and
said sum remains unpaid he cannot undertake to perform
the same, especially when he has no evidence of Barber's
ability pecuniarily to comply which he believes to be
he is not, or else he would not for double the sum
of \$1000 - allow the vessel in her unfinished state
to remain exposed to the weather together with her boiler.
It is alleged in the Complainant's Bill that he has treated your
respondent with "perfect fairness" this your respondent, also
utterly denies as by his own compliance he has, among
strangers, ruined the credit of your respondent by the
fraudulent way in which he Barber has acted
and believes that he Barber together with the fraudulent
intent did so to ruin your respondent or make him
resume work under the old contract and not
receive the \$800 the umpire awarded your respondent.
Your respondent for further saith that he is unadvised as
to the right of a Court of Equity to compel the specific
performance of a contract without date as to time
when to commence or when to complete the boat
when the Complainant alleges in his own Bill
that your respondent resumed work and he failed
to pay for the flimsy reasons as well as the untrue
ones that the amount of the bill presented for the
work was in excess of the work done on the
boat including materials for paid time
when he Barber had on several occasions
paid twice as much as will appear from his
own Bill - Your respondent further says that
the bill was not correct but on the contrary a bill
of particulars was furnished

One and placed in the hands of the said Arbitrators all letters &
 papers. together with the Specifications and Contract
 then existing between M Barber & Gr Complainant.
 Of these arbitrators made the said mistake it was
 so done with all of the papers at their disposal
 And thus Gr Respondent is unwilling to charge or
 even intimate, as he had confidence in the
 judgment and honesty of all concerned -
 Gr Respondent further positively denies that there
 ever was any understanding between himself and
 M Barber about the measurement of the vessel on her
 keel instead of her decks and thus the said Barber
 well known. because he had seen her measured
 before there was any dispute in regard to her &
 did not then as he might to have done objected - Gr
 Respondent is at a loss to know how the said Barber
 knew that the arbitrators did not notice that the vessel
 was to be 17 ft. 4 in ~~wide~~ or more wide when he Barber
 was not at any time present when the arbitrators were
 holding their Conference - Gr ~~Respondent~~ Respondent says
 that it seems strange and that he also utterly denies
 the allegation of the Complainant that the width
 in length was the "only excess" when he Barber
 knew and had been so informed that she was 9 ft
 6 inches longer than the Contract called for (See
 deposition filed in this Cause) Gr Respondent states that
 he has no charge of neglect to apply to the arbitrators but
 on the contrary believing they acted honestly & fairly - Your
 Respondent further states that he has always been ready
 and willing to carry & perform his part of the contract

When he thought it was to his advantage so to do
 and paid large sums of money as money fully
 appears from the Plaintiffs Bill. Your Respondent
 further states that he resumed work in good faith and
 would now if necessary be so working provided Barber
 had complied with the decision of the umpire A. Bunkley
 whose honesty and uprightness no one can question -
 but when he Barber failed to pay the sum of \$207.⁷⁵
 mentioned in the Complainants Bill that then he was
 left again by the sole action of the Complainant
 without means to pay his laborers or for material
 necessary to carry on the work. Your Respondent further
 states that he does not believe that N Barber is
 a moral man, and that he is unable to comply
 with his part of the contract in a pecuniary point, but
 believes and asserts that the sole reason for his
 non-compliance was the want of means to carry
 on the work. Your Respondent denies utterly that he
 has failed in any manner to do his duty under the
 contract but on the contrary his "insolvency" as is
 alleged was an incentive to action and he would
 willingly have complied if he had been paid by
 the pretended banker. Your Respondent further states and
 calls attention to a copy of your Respondents letter which was
 accepted as the basis of the arbitration wherein Barber
 agrees to pay "all damages asped against him" if
 the arbitrators should so decide and Your Respondent
 did the same. The Complainant in his Bill alleges
 and charges that the award of the arbitrators was founded
 upon a mistake - when he selected one and your Respondent

19
Sum provided he could pay off the indebtedness
hanging over the Boat or vessel and as the
Umpire had determined that there should
be the Sum of \$800 - added to the contract Yr
respondent believed that and now believing that if the
said Barber had paid the first Bill presented
by him (Seeds Counsel) that the vessel would have
long since been afloat and ready for trade - but
that he Barber refused and asked of Yr respondent
Counsel a Bill for the labor and material for
the week ending as mentioned in the Complainant's
Bill which was furnished a copy of which is
herewith filed as a part of this answer. He Barber
stating that the Bill was too much for one week
and that he would not pay such prices for labor
as therein charged, when he had on many
occasions before paid the same prices and to the
same men - but be this as it may it was no
matter or concern of his (Barber) as he under the
decision of the Umpire only had a certain and
fixed sum to pay and then Yr respondent would
have been compelled to complete the said vessel
but to this latter he urged that Yr respondent was
insolvent if so then he Barber will know at
the time he made the Contract and did then
and has not since required a bond of Yr respondent
to perform his part of the Contract - It is alleged in
the Complainant's Bill that Yr respondent is
insolvent, if so ~~and~~ Barber trusted and confided
in the first instance to an insolvent, especially when

that he was by all of the requirements of law and morals
 bound to abide by the same - Yr respondent
 states further that when submitted to arbitration
 he did so honestly and was determined to abide
 the decision without opposition it matterd not
 whether for or against him - W M Hope Esq and
 Sarny Loz were chosen and they although both
 of them were acknowledged to be skilled workmen
 could not agree and under the terms of arbitration
 it became necessary to call in an Umpire who
 did render his decision giving to Yr respondent
 Eight hundred dollars as an addition to Yr
 respondents contract and to be paid as per decision
 so rendered - The Complainant according to a copy
 of a letter copied into his Bill firmly - solemnly - &
 as a gentleman agreed to abide the decision of the
 said Arbitrators and then too after additions were
 made to Yr respondents "final proposition" to compromise
 were made by his Counsel and sanctioned by him
 Yr respondent states that after the said decision
 he felt in honor bound to resume work upon the
 vessel and did so at sunrise the morning following
 the decision of the Umpire and continued to work
 with all the force he could employ in his then
 pecuniarily crippled condition - He presented two
 bills as is alleged to the said Barber for payment
 and simply for the reason that he thro his Counsel
 had made arrangements to have money furnished

(7)

Amounts to the aforesaid sum of \$ - Yr Respt
further states that as a skilled Ship Carpenter
he knows that notwithstanding the said extra
work done on said vessel that she is now two
thirds completed and could have easily been
completed in weeks if the said Barber
had not failed to pay Yr respondent as
contemplated by the Contract - It is true that the
Complainant did call on Yr respondent thro' his
Counsel to know why he had suspended work
on said vessel and Yr respondent replied that
that it was because he Barber had failed
to comply with his contract and that he would
not resume work until he was pecuniarily
satisfied - Yr respondent further says that the
only thing requisite to assure him at the time
that the said Barber was able pecuniarily to
comply with his Barber's contract was to have
given him some legal evidence of his Barber's
ability to do and perform the same, but in this
the said Barber although he knew that the
workmen had refused to work on said vessel
for the want of money failed to do so and
urged Yr respondent to leave the matter to
arbitration as stated in his Bill except as
to this that Yr respondent was always willing to
abide the decision of two disinterested men.
The Arbitration finally after several efforts did
take place, and it was Yr respondent's firm
and solemn belief that when he so submitted

money to carry on the work upon the said vessel
 was the sole cause of the suspension and the
 said Barber who had agreed to pay every
 two or three weeks as the work progressed failed
 to comply with his part of the contract and this
 failure on his Barber's part, caused distrust
 in the minds of the workmen and they refused to
 work longer unless they were paid - It is further
 alleged in the Complainant's Bill that your respondent
 "suspended work on the Shalloon pretension that the
 Complainant had failed to comply with his contract"
 there can be no Shalloon pretension to the mind
 of yr. resp^t in a case like this, when the
 Complainant was here without funds according
 to his own statement and which also appears
 from the deposition of E Reed and resorted to the
 making of a note to pass through the Bank at
 this place (Smithfield) for discount - which was
 rejected as a fraud - Your respondent further says
 that the sums of money paid him as mentioned
 in the Compt^r Bill were paid as so stated
 and if there had ~~not~~^{not} have been extra work and
 extra material done and furnished on said vessel
 that the same would perhaps have been sufficient
 but that in consequence of the said work and
 material yr resp^t had to lay out and expend
 large sums of money in the due execution of the
 same to wit the sum in yr respondent's opinion

5 page

was an impossibility; and your respondent here positively states that the Complainant never made any such contract and that your respondent never held out any such inducement or hope to him. It is alleged in the Bill of the Complainant that your respondent violated his contract in suspending work on the said vessel on or about the 20 day of Oct 1874 - Thus he also utterly denies and says specially that the sole reason he did so suspend work on the said vessel was because A Barber the plaintiff in this Bill failed to pay your respondent the money due him for the work that had already been done and could give no assurance or security as to the time when, as the last one of the last transactions had with the complainant was this, Barber made a note for \$400 and said note was taken by your respondent to the Bank at Smithfield for discount and was "thrust out" by the said Bank, and although your respondent at the time he received the said note believed that the same would be discounted by the said Bank without trouble and so told the men employed by him, who were promised their pay out of the said note - but and as soon as it was known to the said workmen that Barber's note had not been discounted or received in Bank it was then that they refused to work longer and thus alone caused the suspension of the work on the said vessel - the want of

filed in this cause and that of E. I. Seed John
 Sinclair and Chas Fish reference to which
 is hereby made to fully explain in what the
 work done on said vessel outside of the Contract
 both consisted and the value of the same —
 Your respondent states that he went to great
 expense and trouble to procure labor and
 material for the rebuilding of the said vessel
 under the Contract, a copy of which is embraced
 in the plaintiff's Bill, and that in consequence of the
 additional length width and other additions
 mentioned in the depositions of E. I. Seed and
 Capt. Early, your respondent was compelled
 to lay out and expend a much larger sum than
 was contemplated when by the Complainant in
 this Cause, because he says that for all mistakes
 the Complainant is responsible as he wrote and
 dictated the aforementioned Contract and
 Specifications, and that if the Complainant knew
 at the time that the said vessel was 125 feet
 6 inches long and 17 ft. 10 inches instead of
 the length and width mentioned in said
 Specifications and did not so inform your
 respondent that then and in that event
 it was a fraud which was subversive of the
 said Contract and became liable for each
 and every particle of work done outside of the
 Contract, if in fact it did not vitiate the

Said ways proceeded to do the work required
and expected of your respondent under the
said contract, the specifications as to length
& breadth being therein named to wit one
hundred & sixteen feet in length & seventeen feet
four inches in width, as was at the time of the
making of the said contract represented to your
respondent ^{by Barber} in person to be the length and breadth
of the vessel he wished built, but after the said
vessel was hauled up and measured both
as to length and width, the same was found
to be one hundred and twenty five feet six inches long
& seventeen feet. 10 inches wide, making a very
considerable and costly difference both as to labor
and material, which said difference was at
once called to the Complainant's attention or to
the attention of Capt. Early the authorized
Agent who under the terms of the said contract
was sent to Smithfield to superintend the
construction of the said vessel, and this
being by your respondent known to be extra work
was then and there pointed out and that no
objection was then or afterwards urged to the
completion of the said vessel although both
the Complainant and her said Agent well knew
that it would entail great expense and add
greatly to the stipulated sum of \$3700 mentioned
in the aforesaid contract, but on the contrary
both Barber and Early sanctioned the
doing of the said extra work as will appear
more fully by the depositions of the said
Early

Contract as a whole - Be this as it may your
respondent did not suspect that he would have
x been induced to rebuild a vessel according
to certain specifications and after securing the
same to be required and compelled to do the
work additional which in your respondent's
opinion amounted to the sum of \$ and for
which he was entitled and is now so entitled to pay
both for the labor & material bestowed ^{and paid} on said
vessel - At the time of the signing of the said contract
there was no day mentioned in the same for him
x to commence the work of rebuilding or was any
time mentioned for the completion of the said
vessel as will fully appear from a copy of
the contract herewith filed marked "A" as a
part of this answer - but on the contrary your
respondent never heard of or ever promised to
x complete the vessel by a specified time, because
he will know the trouble and difficulty in
the preparation for the hauling ^{of vessel} up and fixing a
Shipyard - Under the contract the complainant
agreed to pay "every two or three weeks as the work
progresses" this he failed to do as appears from
the allegations in his Bill - Your respondent
utterly denies that there was any understanding to
between himself and the complainant that the vessel
was to be completed by or about the 15 of Sept 1874
on the contrary the complainant well knew this

See 5th page

Barber

as } Answer in Chancery in the Circuit Court
Sued } of Jlec of Wight July Term 1875-

The Answer of Samuel Seed the defendant to the bill of Complaint exhibited against him in the Circuit Court of Jlec of Wight by N. Barber of Kings County New York and the said defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which law or may be had or taken to the many errors, uncertainties & imperfections in the said complainant's Bill of Complaint. That, so much and such parts thereof as the defendant is or maybe material or necessary for him to make answer unto, this defendant answering saith, that he did sometime in the month of July 1874 enter into a contract with N. Barber as above described for the rebuilding of a certain vessel then called and known as the "Rugley" at the sum and price of \$3700 and according to the terms, requirements and specifications mentioned in the Bill of the complainant. He hauled up the said vessel on his ways in his shipyard in the town of Smithfield, which was extra work done and performed outside of the contract there being no stipulation so to do under our said contract, and after so hauling the said vessel up and securing her on her

N. Barton

3 Jan. to 2 1/2
vs. 1 and Bill

J. Seed

To Jan. 1845 S. Kelly-

Thomas 1/2

represented by allowing
to the within transfer
S. Seed a true Copy
of the within Decr.
4th 1844

J. Edward Stiff

The Commonwealth of Virginia,

To the Sheriff of Isle of Wight County, Greeting :

WE COMMAND YOU TO SUMMON

J. Seed

to appear at the Clerk's Office of the Circuit Court of Isle of Wight County, at Rules to be holden for
the said Court, on the first Monday in *January* next to answer *the Bill*
in chancery of N. Barber

of a plea of *non est* for \$ *1000*, Damages \$

then there this writ. Witness N. P. YOUNG, Clerk of our said Court, at the Court House, the *14th*

day of *Decr.*

1874, in the *99th* year of the Commonwealth.

N. P. Young Clerk

A. Barber

is. 3 Depos.

Land. Seed

Jany. 2nd. 1875.

Come to hand under
seal and filed.

Teste, A. P. Young (W.)

Now, as to this road, with the facilities I now in hand
to haul the road out, I have or have build a new road
portion, as to have taken the portion of the old one which
is in it.

Now further this deposit with out
Do M. Hope

State of Virginia.
Deposition of the city of Nelson, to wit: }

I, J. H. Meland, a
Notary Public for the city of Nelson, in the State of Virginia,
do hereby certify that the foregoing deposition was duly
taken, sworn to and subscribed before me at the time and
place mentioned therein. Given under my hand this
31st day of December 1874.

J. H. Meland -
Notary Public,

Notary fee \$3.50

2nd Question. What is the custom in New Jersey, the home of Samuel Seed and in Brooklyn the home of Mr. Barber.
(Objected to by dep^y Sec^y Council)

Answer. I built a vessel for a New Jersey man once, with the understanding that she was to be measured for customs tonnage as they measure in New Jersey, that is for length they measure the keel of the vessel, for width the extreme from out to out for depth from the top of the railing to the bottom of the deck. I don't know the custom in Brooklyn.

3rd Question. Did the said Arbitration agree exactly to how wide the foremast vessel was under the contract to be.
Answer. The contract stated that the vessel was to be eighteen feet four inches or more; he did not observe the phrase "or more", but found her eighteen feet two inches; the difference of six inches we allowed Mr. Seed in the arbitration.

4th Question. How much of the old vessel remains upon which work is being done, under the aforesaid contract, between the said Barber and the said Seed.

Answer. Perhaps there is one fourth ^{of the} frame of the old vessel and three fourths of her keel, and one sixth of her outside planking, that is as near as I can come to it.

Re - Am examined

1st Question. Would it not have been as easy to build a vessel entirely new as it is to use the old timbers that are already placed in the hull of the vessel, to which new timbers had to be joined on?

Were you aware that a suit was pending in Chancery between Mr. Parker, plaintiff and J. Lind, defendant, and if so, was your visit for the purpose of ascertaining what-work had been done on this vessel, in the result of the arbitration?

Answer. I was not aware that there was a suit pending by Mr. Parker. I was requested to see what-work had been done, and what-proportion it bore to that which would be necessary to complete the vessel according to contract. I cannot tell the date of my last visit, it was about a fortnight ago.

2^d Question. You state that you would not contract to build that boat for less than six thousand dollars, please state whether the work done upon her, has been done in a workmanlike manner.

Answer. If it had been my vessel I would have expected to complete the work as it is done. The mounds in which ^{the} Keelson, the side Keelson and the bilge pieces are scarfed and buttled, I think ought to - they are scarfed and buttled in the weakest part of the vessel, the butts should have been distributed in the vessel so as to strengthen the vessel. The bolson of the ship-compartments work is done well, except the siding on the freight-house is too heavy for the fastenings put in it.

Re-examined -

1st Question. by plaintiff's attorney. Did the arbitrators before alluded to, in making their award measure the said vessel on her keel or on her deck?

Answer. On her deck; it is customary here, to measure a vessel to get her length, on her deck.

4

3rd Question. You state that you were sent for to examine the boat, ~~and after much delay you were sent for~~. After such examination. Please state whether there was any extra work done upon the boat outside of the original contract (Objected to plaintiff's atty:)

Answer. There could be none under the contract.

4th Question. What was the value of the work done ^{at the best estimate} (Objected to plaintiff's atty:)

Answer. If I had estimated to build the vessel I would not have built her for less than six thousand dollars, but under the contract - which was for thirty seven hundred, I consider the work done worth eighteen hundred and fifty dollars.

5th Question. Were you one of the arbitrators in a matter of dispute between Mr. Parker and I, last, and if so, what was the decision of the umpire between the arbitrators?

(Objected to by plaintiff's atty:)

Answer. I was one of the three arbitrators, the difference between Mr. Parker the other arbitrator and myself was, that he wished to allow for better work and for hauling up the ^{old} vessel and I was for giving Mr. Seed the price agreed on for building a new vessel - we did agree to allow him for extra length of vessel and for extra length of freight house. Of course we could not decide it, an umpire was called in who gave Mr. Seed for extra length of vessel & freight house Eight hundred dollars - which amount was to be added onto the Contract and paid as the work progressed.

6th Question. When you were sent for the last time

and the what-work had been done on the west end since the ~~decision of the~~ abolition. There were about three strikes of the outside planking; that was the extent of the work done after the abolition. A strike is one course of ^{outside} planking from one end of the vessel to the other. There were about five hundred and twenty-four feet of planking in the three strikes, which was worth about eighteen dollars and thirty three cents ($\$18 \frac{34}{100}$). There was also used in this work about fifty pounds of spikes worth about five dollars. That was ~~the~~ all the material that was used. The labor was worth about fifteen dollars a strike.

3rd Question. Were you particularly requested to see and to calculate what proportion this work just spoken of bore to the work to be done and if so, state the proportion.

Answer. I was so requested, and in my judgment it does not exceed one twentieth (1/20) of the work to be done in order to finish the vessel. The best workmen can be gotten in this community for two dollars and a half ($\$2.50$) per day. I saw Highsmith Cross examined.

4th Question by A. P. Brown. Amount for deposit set.

You state that the work was not one half done, and if only half done, what did you tell John Windsor and Capt. John E. Adams, that that work was worth at that time.

Answer. I do not remember telling them anything about it, and I do not think I did.

5th Question. At the time that you first visited this boat was her deck in.

Answer. There were about three strikes of the deck out, and the openings for boiler and engine also.

I am at present employed at Ellis' Shipyard and Railway in the city of Norfolk, I am foreman of the iron Shipyard and Railway, I was foreman at Colley's and at Banks' shipyards and ~~also~~ I was also foreman for the Ship-building department for the Norfolk Manufacturing Company. I have built two vessels, a bark and a brig, by contract; I have designed and built a half a dozen other vessels of smaller size both steam and sail.

2nd Question. Are you acquainted with W. Parker and J. Reed parties in this suit, and if so state the origin and extent of your knowledge of them, and of the boat that was contracted ^{to be built} by the said J. Reed for the said R. Parker?

Answer. I am acquainted with the said parties, I was called on by Mr. Parker some time in the month of November 1874, about the first of the month, and requested to go to Smithfield and look at the vessel referred to in this cause, which is the subject-matter of the suit, and after examining her state in my judgment. Now far the vessel was completed, whether half done or otherwise, I stated to Mr. Parker that I did not think the vessel was half finished, I made a second visit to Smithfield by request of Mr. Parker, selected by him as an arbitrator. I looked over the vessel again and thoroughly examined her, there has been no change since my first visit, I made a third examination of the said vessel at the request of Mr. Parker, this examination was about two weeks after the second visit, the object of my third visit was to look

The deposition of W. M. Hope taken before me J. R. Moulton
a Notary Public for the city of Norfolk, by consent, at my
Office in the said City on this 31st day of December 1874.

between the honor of G. A. Mott & Co. V. W. Cole and a witness
on behalf of W. M. Harbor in a certain suit in Equity - pending
in the Circuit Court - for the County of Essex of which the
said W. M. Harbor is plaintiff and Samuel Reed is defendant.

R. J. Mowbray Counsel for W. M. Harbor Plaintiff -

R. F. Evans " " Samuel Reed " "

W. M. Hope being duly sworn on the Holy Evangelists of
Almighty God, deposes and says as follows:

1st Question by R. J. Mowbray Counsel for plaintiff,

What is your name, age, rank and occupation?

Answer. My name is W. M. Hope, I am nearly two years old.
My residence is Portsmouth. My occupation is ^{that of} a shipwright.
I have been a shipwright from boyhood up. I secured a regular
apprenticeship at it, & I have been in the business up to this time.

St. Barber

75. $\frac{3}{4}$ Depos.

J. Seed

Feb'y. 5th 1875.

Came to hand under
seal and filed

Teste, A. J. Youngblood.

Answer. I cant say I know what the
usual way now is. Years ago we
used to measure between perpendicular
bars. My impression now is ^{that custom} here is
to measure over all

3⁵ Question. After examining the vessel as
far as you could in the manner you
did & from the information received from
Mrs Hope what is that vessel worth as
she now stands.

(Question objected to by counsel for
the plaintiff.)

Answer. ~~The~~ The above question was
quite irrelevant.

And further this I affirm.
Sister Not.

J. R. J. J.

Virginia: State of Loudoun County to wit:
I, John R. Purdie a Justice of the Peace
in the County aforesaid, do hereby
certify that the foregoing depositions
were duly taken, sworn & subscribed
to before me, at the times & places
mentioned therein.

Given under my hand this 4th day
of February 1878

John R. Purdie, J. P.

Fee \$3.00

in entire, her deck in entire except four
shakes, hump and hatch coverings down
hatches down, $\frac{3}{4}$ of rail in, and the joiners
work not in entire completed, of this be
her condition, how near completion is
she under the contract for her rebuild-
ing ~~under~~ made between ~~her~~
Mr. Barber and the said S. Lord.

Answer. Now I think she is a little over half
finished, not it exceeds over one hundred
dollars which will include launching.
Crop Examined by Counsel for Defendant.
1st Question by the same

Mr. Barber in his bill says
that the vessel was ~~about~~ 125 feet
instead of 116 as specified by the contract.
If there was that difference what
would be the additional cost in re-
building of such a vessel.

Answer. You can get at it by the
taking the cost of the vessel under
the contract and if she was so much
you foot-bill the first rate cost for
the additional ten feet at the same
rates.

2^d Question by the same

As an expert what is the usual way
of measuring vessels in Virginia?

(Question objected to by Counsel for
Plaintiff)

Woman and child - Combining two, 3/4 of an inch

met on the edge of the said Quay by a gentleman said to be Mr. Sami Laid. Mr. Hope spoke to him. He asked Mr. Hope if he came for the purpose of examining the vessel and ^{the Hope} told him if he did so, he Mr. Laid did not wish him to examine the said vessel. Mr. Hope then asked him if he had any objection to my examining the said vessel and he replied he did not wish me to do so. We left, returned to the boat, and went back again in company with R. A. Todd & R. S. Thomas as he did not go on the vessel in consequence of the renewed objections of Mr. Laid.

2^d Question by the same

Did you stand upon the adjoining property of R. A. Todd and ^{very} then the said vessel and view and examine her as well as you could from that position - ~~and answer~~ I did.

3^d Question by the same

If the said vessel has in her interior ^{her} clamps in a bilge ~~board~~ ^{the deck frame in nature's deck in except from pieces of} piece of ^{empire frame} in place not fastened, ^{shape of ceiling} in under her clamps, and ^{little or} has ^{or} bottom ceiling in, ^{the} our ceiling from the bilge to the stake under the clamps, and structures under the beam, our thrust bearing, bow in, her deck frame

if ever it will come
Answer. It was.

And for this deponent saith not.
W. M. Hope

F. w. Jett being only sworn in the Holy
Evangelist. I solemnly God do swear
and saith as follows:

1st Question by plaintiffs attorney.

State your age, residence former
and present employment.

Answer. I am fifty six years old. I
reside in Portsmouth Virginia, and
at present employed as collector at
the Norfolk County and Portsmouth
Ferry, was formerly a ship Carpenter
have been working at it all my life
I was about sixteen years old, secured
a regular apprenticeship in ship build-
ing and have built vessels both in
Virginia and California.

2^d Question by same.

Sir you this morning in company
with Mr Hope visit the ship yard
of Captain Samuel Lee for the pur-
pose of making an examination
of the vessel now on the ways in that
yard, and if ^{you saw the examination made} ~~that~~ ~~the~~ ~~examination~~ ~~was~~
not, be pleased to state why.

Answer. I went to the ship yard in
company with Mr Hope and was

in any way to examine the vessel
in company with Major Jett, and
Mr. Seeds who told you he did
not want any one to examine the
vessel again. Why were you in any
way to examine her again, when
you had already examined her
~~three times~~
~~again~~, and by whom were you sent
to examine her.

Answer. I was in my way to ex-
amine her in company with Major
Jett, not that I wanted to see her
again. Captain Early asked me
to come up and bring a competent
competent ship carpenter with
me to examine the boat so that
he might see how much of the board
was done, how much she had ad-
vanced, and that he might give
his testimony in this matter.
Can we not go on board of the boat
in consequence of the prohibition of Mr.
Seeds.

2^d Question. You state that if the state-
ment of Mr. Seeds ^{was} ~~be~~ correct
in relation to the sixty floor timbers and
sixty foot boards claimed as extra work
to correct, that it is worth \$2000; ~~was~~
~~this a part of the extra work allow-~~
~~ed by the arbitrators amounting to~~
~~\$4800, at the time of their conference?~~

3 Question by The same.

Mr Joe Sudd has stated that the extra work done upon the said vessel for which Mr Samuel Sudd claims compensation of Mr Barber is "floor timbers and foot-hooks, bottom ceiling, bilge plank, main keelson, the drying off and squaring the old plank, the refasting her bottom with galvanized spikes and putting in floor timbers taking out ^{and putting in} new main keelson, bottom ceiling, bilge plank, and foot-hooks, galvanized fastenings on the bilge plank, iron fastenings on the ceiling and on the keelson and squaring the replank.

If this be extra work under the contract for the rebuilding of the boat - what is it worth.

Answer. If according to the statement of Mr Samuel Sudd there were sixty extra floor timbers and sixty extra foot hooks, then in my judgment and in accordance with the estimate I have made and now hand you marked "W" the work of extra work under the contract is worth \$900.

to be examined by R. F. Mann. counsel for the Defendant.

1st. Question. You state that you were

1875 in company with F. W. Jett, and did
you this morning go to the ship yard of
Lund and in Smithfield by with the said
F. W. Jett and if so ~~was~~ who occurred
between you and Mr Jett & Mr Lund?

Answer (Question objected to by attorney
for the Defendant-)

Answer. ^{in the yard of the ship yard} we were met by Mr Lund
and he asked me if I was going to look
at the boat again. I told him I was -
He said I could not do so - that he did not
want me to look at her. I told him
that that was sufficient for me;
that perhaps he had no objection at
Mr Jett's looking at her; he said he
did not wish any one to examine her
and we then came away.

2^d Question by him

Mr. Sinclair has stated in his deposition that
you and he had a conversation on the
occasion of your first visit to Smithfield
on the subject of the boat then being built in
Mr Lund's ship yard, and that you then ex-
pressed to him the opinion that the said
vessel was ~~about~~ (2/3) two thirds finished,
that your recollection of that conversation.

Answer. I have no recollection of telling
him that the said boat was 2/3 finished,
my opinion was all along, looking in con-
sideration of the lumbering and all that she
was about half done. That was my judgment

this boat - as far as she was completed done
as in a workmanlike manner
Answer. The work is done in a workman
like manner: the work is complete.

1st What comes this vessel to worth after
the work done is all finally completed,
~~as~~ (Question objected to by Plaintiff's
attorney)

Answer. Well I suppose taking the main
hull alone she would be worth about
\$6000.

And further this deponent - said not
- Charles Earley

No other witnesses appearing, the further taking
of these depositions is continued till to-mor-
row at the same time and place and be-
-tween the same hours.

Wm. H. Purdie, J. P.

1875 Feby. 3rd -

No other witnesses appearing, the
further taking of these depositions
is continued till tomorrow at the same
time & place, & between the same hours.

Wm. H. Purdie, J. P.

Wee Mr. Hope being only sworn in the Holy
Evangelist - of Almighty God deponent and
saith as follows:

1st Question by R. S. Thurman - is attorney for plaintiff
Did you visit Smithfield last night - Feby 3rd

So what was the result of that arbitration,
and why did Mr. Barber refuse to pay the
sum of \$207.75 on the Saturday follow-
ing, after said said award was
served.

(Question objected to by attorney for
Plaintiff.)

Answer. I know that they had an arbitra-
tion. I did not see the agreement of the ar-
bitration. All I know is what Ben Hope
told me, that they had given him \$207.75.
Mr Barber refused to pay the bill of \$207.75
because the arbitration decided that he
should furnish money enough every
Saturday night to pay the sum off.
I was not here at the time.

12th Question. Do you know any thing about
a negotiable note for \$400 that was
put in the Bank at Springfield: of \$400, by
whom made, endorsed, ^{is} what date ~~or~~ whether
it was discounted or not.

Answer. I do know that there was a note put
there, I don't know the maker. I never saw
the name, date, or amount. But Mr Bar-
ber told me that Ben Sears had a note of
this for \$400 and to call on him 1841-1-, and
this note was finally gotten out of Bank
by me.

13th " You say you have fallen ill since
since you were 14 years of age - of
what by cold, or steam, & of by steam

Can you was there any specified time in the contract by which these pay ments were to be made: then if specified why make two pay ments on the same day and two other pay ments on the 24th & 26th of September.

(Question objected to by counsel for the plaintiff)

Answer. I did not pay out the sums of money specified in your question, and I have no knowledge of the pay ment of the same, ^{I know money was paid but} that is, I neither the facts nor amounts.

9th You state that you are the agent of H. Barber, put here to inform him this work: did you approve the bills as presented by Samuel Leeds, to wit, the sums of \$200 & \$250 on one day and \$100 for work done in ten days.

Answer I did not approve the bills for the sums of \$200, and \$250 on one day, nor did I approve the bill for \$100 for work in one day.

10th Question. Did you hear H. Barber object to the pay ment of the several amounts above mentioned in rapid succession

Answer. No, Sir,

11th Have you any knowledge of a compromise, or arbitration that took place between H. Barber and Samuel Leeds: if

2
1
It was extra work, did you not - have the contract in your possession with the specifications for the rebuilding of the main vessel, & if so, why was work to be done that was specified in the contract.

Answer. I have the contract and specifications. I saw no extra work in it; I was authorized by Mr. Barber to have such work done as I thought necessary. I judged the work I saw to be done, as work that was ~~specified~~ contemplated in the contract.

6th Question. At the time you ordered the floor timbers and foot-boards to be put in why did you tell Joseph Sed to put in that many and wait until Mr. Barber came to see the rest of it was not extra work?

Answer. I do not know where I told him so, and at the same time I do not say I did not tell him so.

7th. What was the cost limited to furnished for the work you went to be done.

Answer. To my knowledge there was no limit.

8th Captain, Barre, the agent of Mr. Barber did you pay out the following sums of money or did you have knowledge of the payment of the same on the following days. 1st. Amount \$200 on the day the contract was made; on the 18th of August \$60; on the 20th of August \$200 & \$250; on the 28th August \$50; on the 1st September \$500; on the 28th 26th of September \$1000; on the 9th of October \$350.

1874 and if so when and where made? ^{& before whom}

Answer. The bargain was made in Elizabeth City and no one was present but Parker, Mr. Barber and myself. There was no date of any month mentioned when she was to be finished, more than Mr. Barber asked Parker how long it ~~was~~ ^{would} come into him to finish her and he said he thought he could do the work in two months. This was about the 6th or 7th or 8th of July 1874.

3rd Question. Captain what was the date of the Contract?

Answer. I can not say.

4th Question. You speak of the extra work done upon this vessel: was it an improvised order of you, or Mr. Barber or in some; if so, to what extent, and what was the particular kind of extra work and at what cost?

Answer. I never saw work to be done, some floor timbers, some foot-hooks I can't say whether I ordered all of them or no. I think Mr. Barber ordered some. They were ordered by one or the other of us. I don't know about your men by extent. I think I ordered some when about 2 or 2 floor timbers. I don't know the cost of it. I can't say whether the work done was extra work or not. It was work that might be done or not. I don't know if it should be done.

5th Question. You say you do not know what

He asked me what I meant. I told him
the labor ^{I asked him the whole thing} was the whole thing. His reply
was he did not know exactly but
he thought it was about \$300.00.

4th Question. Are you a Captain of a steamer
by profession, or vocation.

Answer. Yes, Sir

5th Question. How long have you been here.

Answer. ^{Since I was fourteen years of age}
I have been following all my life off
and on

6th Question. On the 19th or 20th of October when work
was first suspended on the vessel that
was then being built by Smith & Co.

Barber how near completion was that vessel.

Answer. I don't think the work was hardly
half done.

Corp Examined

1st Question. You state that you were the Captain of
the steamer Ruffles and that you delivered
her to Smith & Co. on July 15th 1874 in
Smithfield; what connection have you
had with that vessel since that time,
and in whose employment, and are
you the agent of W. Barber in regard to the
rebuilding of the same.

Answer. I was appointed by Wm Barber as
superintendent the building of her as his agent,
and am still his agent for this purpose.

2^d Question. Is the agent of W. Barber or is
he the agent of the said W. Barber and is
known of any other standing, that the said
vessel was to be finished by the 15th of September

2^d Question. When was the said steamer
in its first condition bought & for what
purpose, and under whose care.

Ans: She was bought here on the 15th
of last July and in my care and charge.

V 3 A claim has been asserted by Mr
Samuel Lee for extra work, and Mr
Joseph Lee has specified as extra work
floor timbers, fore hooks, bottom cutting
bidge plank and main keelson &c. Since
of the above of such extra work has been
done, its condition, and whether or
not a bill for extra work was ren-
dered to Mr M. Barbory the said S. Lee.

Answer. The main keelson is very partially
fastened, I cannot say any thing about
the galvanised fastenings. I have forgotten
their condition, ~~the bottom~~ there is about
21 or 2 feet of the bottom cutting down. There was
a bill for extra work rendered which is
the bill I hand you & marked "X" (or
the production of which the defendant's
Council objected) amounting to \$330.94.
The bill is in the hand writing of Mr Joseph
Lee. I have seen it. After this trouble
commenced I was down there one day
Mr Joseph Lee was sitting at the table
with his books, while I was sitting there
I asked him ^{what was} the amount of the extra work
done on the boat - that Mr Samuel Lee was building

The depositions of Charles Early and others
taken before me Juv: R. P. Smith is a justice
of the peace for the county of Loudoun -
presented to the court here to annex
at my office in the town of Smithfield
on the 2^d day of February between the
hours of 6. A. M. and six P. M. to be read
as evidence on behalf of N. Barber in
a certain suit in Equity - depending in the
Circuit Court of Loudoun County wherein
the said N. Barber is plaintiff and S. Sew is
defendant.

Present - R. S. Thomas attorney for plaintiff
R. F. Graves " " Defendant -

Charles Early being duly sworn in the Holy
Evangelist - of Almighty - God depose and
swear as follows.

1st Question by R. S. Thomas attorney for the plaintiff
State your age, residence, occupation
acquaintance with the parties to this
suit - and your employment on the
Steamer Ruggles now being rebuilt in the
Ship Yard of Samuel Sew in Smithfield Va.

Answer I am forty one years old, am a
resident of the city of Philadelphia Pennsylv-
vania, am acquainted with both N.
Barber and S. Sew, was and was
Captain of the said Steamer Ruggles.

Exhibitⁿ Wⁿ men
turned in the depo
sition of W. M. Hope

Geo. R. Pludis, J. P.

Sixty Floor Timbers

Sixty Buttocks

Bilge Planks

Bottom Ceiling, from Bilge to Keelson

Main Keelson - 60 feet 10×12 .

Dressing off Squaring & fastening old planks.

Take on & put in Main Keelson & fasten

With in my judgement cost nine hundred (900)
dollars.

Wm. Hope

25

$\frac{5}{2} \sqrt{2}$
 $\frac{1}{2} \sqrt{2}$

20

8-73-2
10

99

033 — 26

179

60. 5-78

2062

1

152

9

20000

2000
1600

300

2.

5-600

1338

833

930

165-25

1006

165

Smith & Weller & Co.

Charles Cairney

Exhibit - V over-land

Copy Hist. up date - 1844
on Steamer Winter at Smith
field B3.30.94

Barber

v

Sw

Examined & delivered
a copy of the within
to G. Leeds on 23 Jan
on the 23rd day of Jan
uary 1875

B. P. Leifson

Exam Sargent of the Office

To S. Lusk

Take Notice that I shall
on the 2^d of February 1875 at the office of
Jno: R. Purdie, Smithfield Va. between
the hours of 6. A. M. and 6. P. M. of that
day proceed to take the Deposition of W. M.
Hope and others to be read as evidence
in my behalf in a certain suit - Depen-
ding in the Circuit Court of Isle of Wight
County wherein I am plaintiff and
you are defendant; and if from any cause
the taking of the said Deposition be not com-
~~enced~~ menced on that day, or if commenced
be not concluded on that day the taking of
the same will be adjourned and contin-
ued from time to time, and from day to day
at the same place and between the same
hours until the same shall be concluded.

N. Barber

By R. S. Thomas
his atty.

J. Good

ats. ³/₄ Depos.

N. Barber

Feb. 5th 1875.

Came to hand under
seal and filed.

N. P. Youngblood.

Warbur

1 1/2 Enchancery

Seed

Notice of Deft. to Plff
to take depositions on
Thursday June 21/75
at Law office of
R. H. Gray at
Smithfield

Smithfield June 13/75
Executed by delivering a
true copy of the within to R. S.
Thomson atty for N. Barber
B. H. Chapman
Town Sergeant

To N. Barber

Take notice that I shall on ~~Thursday~~ the 21st day of Jan'y 1875 meet at the Law office of R. P. Gray in the town of Smithfield Va, between the hours of 6 AM and 6 o'clock PM of that day proceed to take the depositions of E. Reed, Harry Doy John Sinclair, John Eldams, Charles Fisher and others to be read as evidence in my behalf in a certain suit in Chancery depending in the Circuit Court of J. C. of Wight wherein you are Plaintiff and I am Defendant and if you are cause the taking of the said depositions, be not commenced on that day or if commenced and not concluded on that day the taking of the same will be adjourned and continuing from day to day or time to time at the same place and between the same hours until the same shall be finally completed

Samuel Reed
By R. P. Gray
his atty

built and of good material. I heard Mr
Bartor and Mr Early say at different
times that the prices that were being
put in were not sufficient which
were laid aside and other put in.
I am a free man of color.
And further the defendant must not.

Mills Syder

Virginia Isle of Wight County to wit:
I, John B. Pendler, a Justice of the Peace of
the County aforesaid, do hereby certify that
the foregoing Depositions were duly taken
sworn to, & certified to before me, at the time
& place mentioned therein.
Given under my hand this 21st day of
January 1875.
John B. Pendler, J. P.

the statement of Mr Sinclair. I went
to the bow of the vessel. Hope followed me
and I asked him what he thought of her.
He said to it - was done in mechanical
style or order and that it - was a pity that
it - could not be finished, a skilled brow
as for he said he had to see mechanics
wringed out of their labor: he said because
but - not - of his own will, for he did not want
to have any thing to do with it - He said
it - was worth \$1000 or \$1500 to finish her
I never had any other conversation
with Mr Barber than the one already
alluded to.

And for the this segment with not.

Charles Fish

Mills Dynes being duly sworn as the Holy
Evangelist of almighty God Swears and
Says

Qst - Question State age, name, residence
and occupation & empty went ^{if any} - vessel

Ans: My name is Mills Dynes, am 23
years old, reside in Isle of Wight - country &
am a house and ship Carpenter. I was
at work upon her from the very first - to
the ~~last~~ 19th of October last. She is now

~~Before~~ I said what about the extra work
Mr Barter, and he said it was a matter
of after consideration. Then he withdrew.
And for the the September with Mr-

John Sinclair

Charles Fish being sworn on the very
examples of Almighty God deposes
and says

1st Question. State your name age residence
and occupation.

My name is Charles Fish, age 60, reside
at present in Fruitfield and am a ship
carpenter.

2 Question. Have you been employed by the
Lew in the boat in question. If so how
long, and at what price and what is the
kind character and description of the said
boat.

Answer. I commenced in August last
and worked up to October 19th last - at \$3.00
per day. Mr Barter admitted to me
that he was a well built boat and asked
me if I didn't think she would be worth
\$20.00 ^{when completed with machinery etc and}; And I told him I thought she
would. I was present at the conversation
between Mr Sinclair and Mr Hope & Mr
Barter under the shed and corroborate his

to come up, and see what it would cost
to finish her. I asked him what it
would cost and he told me between
15 and 2500 dollars. I asked him what
the extra work was worth. He hadn't
heard of any. I asked him what the work
already done on the vessel was worth. He
said \$3500. I asked him how near he
considered her done. He told me two thirds.
and said it was a pity but what the
man that commenced her could finish
her. I told him he was anxious to do so
if he could get his rights. Barber came
up in the mean time, and asked why he
didn't finish her. I told him that I thought
it might be satisfactorily arranged
between him and Mr. Sudd in a very
few moments. He said he was very
anxious to have it arranged. I told
him we would meet him at his boarding
house that evening, if Mr. Sudd came
in time enough. He did not get here
in time. We met next morning; at
last at Mr. Gray's in Captain Early's room.
I told him Mr. Sudd was here for the pur-
pose of arranging their matters. He
said he wanted him (Sudd) to go on and
finish the boat according to contract.
that he told him nothing

2^d Question. Have you been employed as a laborer on the vessel being built by Samuel Seed in the town of Smithfield, and if so how long and at what price

Ans: I have been employed about two months on her at \$175 per day.

3 Question. During the time of your employment on said vessel had you any conversation either with Mr Barber or Capt. Early, agent of said Barber, in regard to the vessel, as to her work, and completion. If so where, and before whom.

~~Answer~~ Question objected to.

Answer. I heard a conversation between Mr Seed (Joe) and Capt. Early before I went to work there in reference to pulling the old timber out of that boat in which Early told Mr Seed to pull ~~the~~ out the other timber, ceiling and Kelson and put in new timber. I had no conversation with Mr Barber until after I had had one with Mr Wm. M. Hope. The day previous ^{Hope} he came up and ^{Mr Hope Barber & Early} went over the vessel. Hope came under the shed where I was I asked him how he liked the vessel. He said she was a fine vessel, good timber and wonderful workmanship. Hope remarked that Mr Barber got him

4
Ans: W, the money was paid in the contract

work.

Re ^{crop} Examined

1st Question. Did you the money that was
paid ^{by Mr B.} paid to you.

Answer. Yes Sir. It was paid to Samuel
Leed

2^d Question. How then do you know that
it was paid for the contract work

Answer. Because Mr Barber asked me
to make out a bill of the ~~contract~~ extra
work and how much was it. I told him
I could tell in a little while, about \$300
labor, or from more than about. I never
made out the bill. I was not informed
by Mr Barber where money was paid
in what account it was paid.

~~And for this deposit~~

Re And for this deposit with not-
Exam J Leed

John Sinclair being duly sworn in the Holy
Evangelist of Almighty God deposes and says

I Am State your name, age, residence, and oc-
cupation.

Ans John Sinclair, age fifty, residence Smith
field, a sister of timber.

and again suspended November 26th 74.
How many men were employed in
this vessel & this work in November
22^d, 3, 4, 5th, & 26th, and how much
work did they do.

Ans: There was E. J. Saw. (2 days) Saml
Saw (4 1/2 days) Charles Saw (4 1/2 days),
Joshua Saw (4 1/2 days) Geo Sinclair (4/2)
There were 1118 feet of plank & 2 1/2 white
oak plank: one keg and a half of galvanized
spikes. The plank cost \$35 per thousand.
The nails cost \$4 eleven dollars per hundred
penny nail. A keg containing about ~~100~~
100 pounds.

Re-Examined

1 Question At the time that this note that you
speak of was put in Bank in Portsmouth,
was it because Mr Barber was unable
to furnish the currency.

Answer. I suppose so, because he
was to pay us the Saturday previous which
I am was ~~at home~~ ^{away}, but I had no right to
go ask him for money for I expected Barber
had the money with him to pay: so we
worked that evening well.

2^d Question. Was the money paid as the contract
proposed under the contract, or was it paid for extra
labor and materials furnished to the said vessel

Ans. Mr Barber was the maker, Mr S. Seed
the indorser I suppose. Date not given
immaterial, the amount was \$400;
its period of pay ment - I don't know. I never
saw the note: my information of it was
from a conversation between Mr Barber
and my brother. The man told me ^{they} advanced
the money. Goes to Sam and gets him \$14-
the money, the man went the money to
pay the board note. Mr Barber & Sam were
in the shed and Sam mentions it to Mr B.
and that's what he said he would do. He said
he hadn't the money, but - he would find a
note in Bank here for \$400 - for him to use
that & when he got to N. York he would cash
up some more. This was Friday and Sam to
go Saturday & get the money. During this -

23. Did not Mr Barber ~~as the date of this~~
conversation tell Mr Saml Seed that
he (B) did not owe him (S. Seed) but
that he would endorse a note for him
S. Seed would then be might get the
money.

Answer. I did not hear that. No, Sir,
he didn't say that in my presence.

24. The work upon the said vessel was com-
piled & on the 19th of October, I think, and
was resumed on the 22^d of November.

Mr Barber failed to supply the money because
the money went out of Bank.

16th Was any money due by Barber to
you before said day at the time
the note alluded to was put in the
Bank at Smithfield

Ans. The way I looked at the contract there
was money was to be paid every two
thousand as the work progressed.

17th Was the money paid as the work pro-
gressed?

Answer. No. I think not sir.

18th How near completion was the vessel
^{when} ~~was~~ the note was put in Bank.

Ans. Pretty nearly as much as she is
now. I allowed her $\frac{2}{3}$ and a little over
one of her contract work.

19th Was she under a one $\frac{2}{3}$ done
One $\frac{2}{3}$ done of her contract work.

20th How much money had Mr Barber
paid to me said at the time alluded to.

Ans. I understood 2300 dollars.

21st ^{Question objected to after an question put and answered.} When note was it. What was put in
Bank.

Ans. I suppose Mr Barber's note sir.

22^d Who was the maker of the note,
what its endorser, its date, & period
of payment.

11th Could the said vessel have been rebuilt-
according to the contract. With out putting
in the bottom ceiling, bidge plank and
port hooks added to by you

Answer. Yes. if you let the old owner
remain in her.

✓ 12th Where is your third Book.

Answer. Down town, where I am staying.

✓ 13th Can you get that Book.

Answer. I can.

✓ 14th How many days did Charles and Gump
and Miles Jynes and the other parties ac-
cuse it is in your answer to question
6th in your examination as chief work
with Mr. David and in the vessel you
said.

✓ Answer. They each worked the number
of days and parts of days specified in
the statement - true with files marked X

15th Before ~~what~~ is you have stated that
David and was always ready to comply with
his contract, & that he ceased to work upon
the vessel because Mr. B. Carter failed to com-
ply money there was one by him. Before
what & how & knowledge or information
is this statement based.

Answer. Because he said so, and his actions showed he
was ready to comply with his contract. I know

Ans. Yes, Sir.

5th Question. Were you present when the contract was written

Ans. No, Sir

6th Question. Are you familiar with the contract and have you carefully and attentively read it-

Ans. Yes, Sir. I have read it several times.

7th And the said vessel have been built or rebuilt properly and according to the contract between Messrs Barber and Lee without refusing or squaring the red plank

Ans. ^{Yes} No, Sir. She could have been squared but the squaring had to be done.

8th And she have been built or rebuilt as aforesaid without refastening her bottom with ^{galvanised} ~~galvanised~~ iron spikes.

Ans. She could, but it would not have a job six. The floor timbers would have been loose, we call it drift; no strength to the vessel. The red floor timbers did not give her sufficient strength.

9th And the said vessel have been built or rebuilt as aforesaid without tearing out and putting in the new Marine Kelson.

Ans. No, for the contract didn't say anything about the Kelson

120' dock crew and no money. When
we would work. I would it. any more.

Carp Examined.

1st Question. You have said that Captain
Early and Mr Barber, ordered extra floor
timbers, and foot hooks, bottom ceiling,
bidge plank, and Main Kelson. What
part of this work was ordered by Captain
Early, and what part by Mr Barber.

Answer. A portion of the floor timbers by Captain
Early and a portion by Mr Barber, Sir,
and foot hooks the same. and the Kelson
by Mr Barber; and bidge plank by Mr Early
& Mr Barber.

2^d Question. Who was present when these
things were ordered by Mr Barber, or by
Mr & Captain Early.

Answer. Charles Richardson. Jim Roberts
and George Dymus and Jim Sinclair were
or twice, different times at different times.

3^d Question. Was not the work just alluded to
embraced in the contract.

Answer. No. It was not embraced in the con-
tract.

4th Question. Was it understood by Mr Early &
by Mr Barber that the work just alluded
to was and part of the work contemplated by
the contract.

we were depending on a note put in
the Bank in Smithfield for discount
which was not discounted. The note
was put in Bank by Mr Barber who
then went to New York: finding no
set money we stopped work. We went
to see Mr Eddy and asked him what
about it - and when Mr B. returned
and he was for the dividend. But
would not, and did not. I suppose he
did. He said he did. When we would have
2 or 3 mths.

10th Question.

After the failure on the part of Mr
Barber to comply with his contract - his
~~contract~~ in paying the money, & you
know of any arbitration that took place
between the said Messrs Barber and Seed
in regard to the boat, and if so, what
was the result of that arbitration?

Question objected to

Answer. Yes Sir. I know about the arbi-
tration, some eight hundred dollars decided
in favor of the length and width of the boat
all, extra I believe, they call it. And
for us, a day to resume work. And
we did so. And the money was to be
paid us on 12 o'clock every Saturday.

2
7th Question. What is it worth to build
a vessel of that character and description.
furnishing materials complete?

Answer. It is as much ^{tried or} trouble to rebuild ^{wholly or in part} ~~as to~~ build a new. It is worth seventy five
thousand dollars to build a new one & make
any profit off of it.

8th Sir Samuel said, the contractor, for
building the said vessel, was diligent, prompt-
ing, and good material in performing the same?

Answer. As good material as ever I saw
put in a vessel of that class. Yes, Sir he
was prompt as far as he could be. Yes Sir
and was diligent in performing the same.

9th Do you know, Sir, was Samuel said
always ready to comply with his part
of the contract, and if so, why did he cease
to work upon the vessel.

Answer. Yes Sir he was willing to comply
with his part, and was very cautious to be,
and the reason we stopped, he didn't
stop, we stopped on account of money
the failure of Mr Barber's part. He ex-
pected he didn't know nothing of it, he
went to living plant earlier in the morn-
ing before time to go to work as usual.
The men came there and Mr Barber failing
on a Saturday to pay us we wouldn't work.

how many hands were employed?

Ans: Yes I kept an account of the time separately. What I mean by separately is, the extra work by itself and the contract-work by itself. The following men were from time to time employed on the vessel, Charles, and George and Mills Tyner, Eli Barton, Joseph Jamaica E. J. Samuel, ~~Charles~~ Joseph Joshua and Charles Lud, senior and Junior Charles Fish Mrs. Sinclair, Birnie Mical Henry, Hickey Lockland, Barney De Vore Frank Buford James Watts, Samuel P. Furmenum, Jim Roberts, Charles Clarke, Charles Rich and son, Mrs. Paxon Thomas Weston, Joe White Jim Brown and J. A. Fullmer. The following prices were paid Jim Say to the above men, viz

E. J. Lud \$4, Mikkilkenney \$3.50. Lockland, James Watts, Frank Buford, ^{and} Barney De Vore, ^{and Jim Roberts} \$3.50, and Furmenum \$3.50 part of time + \$3.00 at other times:

Jim Roberts \$2 part of the time and \$2.50

for part of time, Mrs. Sinclair \$1.75

Mills Tyner \$1.50. Eli Barton \$1.25. Old man

Charles Lud \$3.00, Charles Rich and son \$1.50

Fish \$3.00: Charles ^{+ George} Tyner \$1.50 I think. Jim Wes-

ton \$1.50.

footboards foot-hooks, bottom ceiling, bilge
plank, and main keelson. That's the ex-
tra work that Captain Early, and Mr
Barber does. The extra length, ~~width~~
she was to be 100 feet, when she was
an old boat. instead of that she was
only 96 feet on top. stripping it and squar-
ing the old plank, and re-fastening her
bottom with galvanized spikes, and put-
ting in the floor timbers, ~~and foot-hooks~~
tearing out and putting in ~~the~~ ^{new} ~~bottom~~ ^{and keelson}
new main keelson ^{and foot-hooks} and putting back ceiling,
bilge plank; galvanizing fastenings in the
bilge plank; re-fastening in the ceiling &
in the keelson & squaring the old plank &
4th What was the extra work done on said
vessel worth.

Answer. Some fifteen or sixteen hundred dollars
length and all.

5th What was it worth to have out that vessel
in the condition she was in when brought here
Answer objected to

Answer. In the first place we had to lay
the ways to have her out with, and then
to rig and buy false work, it was worth
five hundred dollars.

6th Question. Did you keep an account of
the labor performed on the vessel, and

to October, ¹⁹⁰1874. and I received when
so employed from Ocean for Say, and
was employed by Saml Sew, the contrac-
tor for the building of said vessel.

3 Question. What is the character, length,
and width of said vessel.

Ans. She is one hundred and twenty six
feet six inches overall; in width she is
seventeen feet six inches I think. She is
built of white oak and pine: white
oak frame, white oak Kelsons, white
oak keel, white oak stem, Teak wood
Decks, heads, apron, platings, stern
post; Transoms, bottom ceiling, bottom or side
plank, six oak beams, fore and aft pieces
along the sides, head logs, comings, a set of
sister Kelsons, white oak breast hook,
white oak Sampson post, pine oak
pine beams, carlins, pine clamps, side
ceiling, and house work, main deck of deep
plank and curled joints: pine waist or
white oak rail. The keel is $2\frac{1}{2}$ inches thick
ten inches wide, the ^{frames} ~~boards~~ ~~sides~~ are
four and a half inches thick, 7 inches on
the stern and five inches on the head, doubled.
And the same vessel is built according to
specifications and contract except the ex-
tra work which was floor timbers, and

1

The Depositions of E. J. Seed and others taken before me Just: R. Purdie a justice of the peace for the county of Isle of Wight at the Law Office of R. F. Graves in the town of Smithfield, Va on the 21st day of January 1875 between the hours of 6 A.M. & 6 P.M. do hereby make evidence in behalf of E. J. Seed in a certain suit at Equity depending in the Circuit Court of Isle of Wight County wherein R. Barber is plaintiff and E. Seed is Defendant.

Present R. F. Graves, attorney for Defendant

R. J. Thomas " " Plaintiff

E. J. Seed being duly sworn in the Holy Evangelist of Almighty God Deposeth and swears as follows

by R. F. Graves attorney for Defendant - E. Seed.

1. Question. What your name, age, occupation, and where do you reside.

Ans. My name is Evans J. Seed, my age is about forty three. I am a captain of vessels and a builder. I reside at the present in the town of Smithfield, Va.

2. Have you been employed upon the building of a vessel now in the ship yard of Lawrence Seed at Smithfield, Va: if so, when; at what price per day, and how long have you been so employed?

Ans. I have been employed in the said ship, and was so employed from July

Barbon
or {Inchy

Seed

Roughleam July
2nd 1875 (

To be entered
Geo: V. Blows.

Entered (38)

Barbory
Said } Inchy

~~Barbory~~
This Cause, came on this day
to be heard upon the Complainant's
Bill and exhibits filed & the deft's
demurrer to said Bill and was
argued by Counsel. On consideration
whereof the Court overruled said demurrer
and adjudged ordered and decreed that
a Commissioner of this Court, ascertain
and report to Court whether the Complainant
has complied with the terms of the contract
^{up to the time the first was constituted}
between him and the defendant in the
proceedings ^{of this suit} mentioned and report to Court
with the evidence on which his opinion is
founded—

Barber

as Sp. chg
Leed

1867

Enter this

Geo. B. Stod

Appl. Term 1876

Entered (30)

Barber
vs In Chancery
Seed

It appearing to the Court that the order made by this Court at the April term 1875 requiring that the plaintiff should as he was a nonresident of the State of Virginia appear and give security for the costs in said cause upon the motion of the defendant Seed and unless said security for costs be given that the said suit be dismissed from the docket at the next term thereof, and it appearing to the Court that the said order has not been complied with by the plaintiff It is ordered that the Bill of said plaintiff be dismissed and that the Defendant recover of the plaintiff his costs by him expended in the defence of this suit

11

3 or 4 inches thick by 9 inches wide Engine frame of
proper size and of white oak Panel Doors and Sashes
of suitable size to all Rooms and pilot house Sliding
Doors to freight house one mast and gaff to be repair sep-
arately all the Carpenter and joiners work to be done in
a good and workman like manner and to the entire
Satisfaction of the owner or who ever he may appoint and
Also to do all the Caulking pitching and Scraping

and in consideration of the foregoing Specification we the
under signed Parties to wit Samuel Seed of the Town
of Bridge Burrough County of Burlington and State of —
~~New Jersey~~ of the first part and ~~Simon Barber~~ of the City of
Brooklyn County of Kings and State of New York of the Second
part the said party of the Second part in consideration of the
fulfillment by the Party of the first part of the foregoing Specifi-
cation agrees to pay to the Party of the first part the sum
of three thousand and seven hundred Dollars as follows
to wit Payments to be made every two or three
weeks as the work progresses — any thing that may be
omitted or left out of the foregoing Specification necessary to finish
and complete the job will be done by the party of the first part
at his own cost and Expense and the said party of the first part is
to furnish and pay for all material and labour for the above
mentioned job

Simon Barber

Samuel Seed

Specification of the Carpenters and Joiners
work and materials necessary finish and complete a steam
propeller for N. Barber to be when finished one Hundred
and fifteen ft Long Seventeen feet and four inches or more
of Beam or width, Depth of hold Seven feet one inch at
main hatch

Frame to be four inch flitched of white oak. Stern and
apron and sternpost and Keel to be of white oak outside
plank to be $2\frac{1}{2}$ inches thick of white oak Rider Keelson 4×10 ^{in in}
of white oak Hatchway beams 7×7 ^{in in} of white oak balance
of Deck beams of best hart pine 7×7 and two feet apart—
ceiling to be pine or oak clamps to be Double of 3×12 hart
pine one Stringer on each side 4×8 of oak or pine Deck
be $2\frac{1}{2}$ inches thick of best hart pine, Rail to be 3×7 inches of
white oak outside spikes to be galvanized up to load line
balance of spike fastenings to be black Iron bolt Iron to
be $\frac{1}{2}$ $\frac{5}{8}$ & $\frac{3}{4}$ inches in there proper places to have suitable
Hatches and Hatchways as Directed to have a freight House
on main Deck about 72 ft Long and the whole width of
the boat and 6 feet and 6 inches high in cleer between Beam-
and Deck the posts of House to be 4×4 ^{in in} of best hart pine the Carlines
of house to be 2×4 ^{in in} clamps of freight house to be 4×7 of hart pine
House beams to be 4×7 ^{in in} of hart pine house over freight house
to be about 40 feet Long and about fourteen feet wide
and 6 ft and 6 inches high in cleer between Deck and Carlines and
to be divided as follows Pilot house Staterooms Kitchen
and mess room to be inclosed with one inch hart pine
or cypress tongue and grooved boards Bulw Keelson to be

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Mr R J Thomas
Smfld

161

Mr R S Thomas

Smithfield Nov 14/74

Dear Sir

Your letter of the 13 is to hand - In reply I will say that I will not go to work on the Boat until I am satisfied pecuniarily - You say he ^(B) hopes to be spared litigation, this can easily be done if he will comply with his contract - The reason I suspended work was that Mr Barbour failed to furnish the necessary funds as agreed on -

If Mr Barbour is anxious to avoid litigation he can do so by adopting one of the ~~two~~ suggestions - ^{in this branch of business}
1st - I am willing to leave to two impartial workmen the matter in dispute, who shall decide how much and of what value the work has been done on the Boat including the Cost of material ~~lost to abide their decision~~
2nd - If Mr Barbour will pay all of the debts of the Boat now outstanding against her including materials & labor and will pay me three hundred dollars in addition thereto I will give up the Boat. otherwise I will not. & aft. by due process of law I will give up the yard when I see fit -

Very Resp^y
Samuel Seca

19

act-as umpire whose decision and award
like the decision and award of the CTD en-
acted ~~and~~ by us as just stated, shall not be
made be ultimate and final, and that
they the arbitrators as aforesaid shall
determine under our contract whether or
not I have not complied with it-and
paid as the work proposed, and if there
has been any extra work outside of the
said contract its extent and value I will
accept it- the first proposition as amended
by me in accordance with what I conceive
to be its spirit-and meaning, and I shall
be pleased to comply and will comply with
the award that they may make, and you
are to do the same. If these arbitrators
shall say I am in default I will im-
mediately pay whatever they may adjudge
me to be in arrears, and if you are in de-
fault you to resume work immediately
and go forward and complete the work ac-
cording to our contract.

Smithfield, Va Nov: 14th 74.

Dear Sir:

Yours of this date in reply to the note of Mr Thomas of yesterday has been submitted by him to me. In this reply you state that you will not go to work on the boat until I (you) are satisfied personally and that litigation can easily be avoided if he (I) will comply with his (my) contract, and you submit for my acceptance a rejection either of these two propositions, viz (1) That we submit to two workmen skilled in this branch of the business (ship carpentering) the matter in dispute between us - who shall decide how much and of what value the work has been done on the boat including the cost of material and (2) that I pay all debts of the boat now outstanding against him including material and labor and pay you in addition the sum of three hundred dollars.

In reply I will state (1) that I am anxious ready and willing to comply with all of the requirements of my contract and that if your first proposition means this, viz, that we submit to two workmen skilled in the business of ship carpentering, one to be selected by you, one by me, and if these two cannot agree they to call in a third who shall

43"

2nd Note

Smithfield Nov 14/74
Mr. M. Barbour

Dear Sir

Your second
note is to hand - In reply I have to
say that I will accept your terms
with the proviso herein after named -
I agree to leave to arbitrators our whole
matter in dispute - they to carefully examine
everything in connection with the contract and
to allow me for all extra labor and extra
material furnished outside of the contract
which is to be separate - Also that for my
detention and loss of labor they are to make
a just allowance according to their best
judgment since the failure of yr self to furnish
me with the necessary means to carry on
the work upon the Boat - You to select one
and I one - and they call in the third
party should they not agree - The steel
~~and tools~~ and Wags now in my possession
to be mine after the Boat is completed &
I am to be allowed to remove all tools and utensils
now in the shed belonging to me as I may think
best - If this is not accepted then
your proposition is declined as embraced
in yr. last letter

Very Respy
R. F. Graves.
For J. Seeds

I And I for this agree that if the award of
the arbitrator is against me I will
immediately either go on and complete
the boat according to our contract, or deliver
her intact to you and give you the free
use of the yard to go on and then complete
the work upon her, and if against you
you pay the amount of the award within
such time as the said arbitrator shall
send upon. The ways and shed to be given
when the boat work upon the boat is complete

Very Respectfully

S. Seed

by R. F. Evans his
Atty

who shall be skilled workmen in their business of
Shipbuilding

Smithfield Nov. 17 1874

Mr M Barbour

D Sir

Since my letter of
the 14th Nov. I have under the advice of counsel
determined to submit as a final proposition
to settle our difficulty in regard to the Boat
now in my yard the following
I have to say - That the arbitrators shall
determine whether the contract existing between
us for the rebuilding of the Steamer ^{or ship} Razzle has
been violated by you or by myself and by
whom. If it has been violated by either
what damages shall the other be entitled to.
If they shall determine that it has been
violated by you the loss of my time and
detention in performing the work shall be
estimated in fixing my damages. And if they
shall determine that the contract has been
violated by me, that then you are to be paid
for such violation as the arbitrators may agree
on. The arbitrators shall also determine
whether any extra work has been done or extra
material furnished by me outside of the contract
and what compensation I shall receive. Each
party agrees to pay any damages as fixed against
and you are to pay for the extra work &
Extra material at the same time that you
may have to pay any ^{other} damages that may be awarded
against you ^{for} the Boat. Very Respy

Yours
By R. Pease
in atty

1911

I. Augustus Bunkley the umpire
there was ~~chosen~~ ^{chosen} by W. M. Hope
and Savory Jry the arbitrators chosen
by the said N. Barber and S. Sud
to determine the difference between
the said arbitrators so decide that the
said N. Barber pay ~~to the said S. Sud~~
shall add to the contract price of ~~the~~
for the building of the vessel con-
templated by the contract between the said
N. Barber and S. Sud which is the sub-
ject in arbitration the sum of Eight-
hundred dollars to be paid as by
the contract contemplated that is in
~~the~~ proportion as the work progresses
with this amendment that the pay-
ments hereafter made are to be made
Every Saturday. ~~at noon~~ ^{at noon}, and the said
S. Sud shall finally complete the work
on the said vessel under the contract
and launch and deliver her in good order
and condition to the said N. Barber at-
testified. Witness my hand and seal
this 23rd day of November 1874

Augustus Bunkley *Umpire*

499

Smithfield Isle of St. John's County

November 23rd 1874.

The undersigned arbitrators in the matter
referred to them by N. Barton and Samuel Seeds,
having before them the Contract entered into by
the above named parties & acting on the same
to the best of their judgement as shipwrights,
do award to said Samuel Seeds in consideration
of additional size of vessel above & beyond
the length width & depth named in the Contract
& also in consideration of additional length
& height above the sum of Four hundred
& eighty seven dollars to be paid by said
N. Barton to Saml. Seeds. And further
we say that in our judgement the vessel
cannot be completed at less expense than
fifteen hundred dollars with material furnished
on the work.

Wm. Hope

I as one of the arbitrators think that in addition
to the above, N. Barton should pay to Samuel
Seeds four hundred & ninety five dollars for
hauling out & for extra floor timbers not
contemplated in the agreement.

Lavory Jay

Wm. Hauling & Co.
Nov. 23/74

467
313
800

Mem: of estimate for labor
and material done & furnished
on the ^{original} Ruffley by Sam Seed
for the week ending Nov-28/74

To One half of R. & W. Neely	\$ 53.37
" " " " W. Moreland	\$ 64.69
To amt. of J. O. Thomas apptd	\$ 30.00
" a part of Hancious Bill	150.00
" R. & W. Parrett's Bill	8.00
" a part of labor due old hands	200.00
" Labor and Material this week	209.75
	<u>\$ 713.81</u>

Mr. W. Barbour

Will please
pay R. F. Gray, the above
amt. and charge same
date of yr. Ruffley

Smithfield } Samuel Seed
Nov. 28/74 }

32 00
6 00
2 00
22 00

2 2 3

1 1 2

Josh Will

David H. Reed

to
J. P. Barber

\$207.75-

Wells ending

Nov. 28th 1874

I decline to pay this account for the sole reason that the total charge is out of proportion to the work done. I am ready to pay as the work has progressed.

Nov. 28th 74

J. P. Barber

Mem: of Work done on the Ruggles
by Saml Seed under the decision of
A G Bunkley the umpire in the
arbitration difficulty between S Seed &
N Barbour and material furnished
on said Ruggles for said week
ending Nov 28, 1874.

Labor

To Samuel Seed 4 1/2 days @ \$4 ⁵⁰	\$20.25
To Charley Seed 4 1/2 days @ \$3.	13.50
To Joshua Seed 4 1/2 " @ \$2	9.00
" Capt Joe. Seed 2 days @ \$3 ⁵⁰	7.00
" John Sinclair 4 days @ \$2	8.00
" To lumber & win	150.00
	<u>\$207.75</u>

Mr N Barbour.

Please pay R
A Gray the above amount for
this week and Charge same
to my account & oblige

Smithfield Samuel Seed
Nov 28/74