

1892-017 Chanery Cause: Virginicus Warren vs Town of Smithfield & W. D. Folke, Mayor. Folder 1
Isle of Wight County

3 Photos in Oversize Box 2

OTHERS URNAMES: [Cooperation
of Smithfield], Smith West
Boykin, Johnson, Butler
Purdie, Davis, Wemble, Day
Atkinson, Thomas, Chalmers,
Whitehead, Morrison, Young,
Andrews, Todd, Jordan,
Watson

Carroll County, N. York 1892

L. Sherwin

45

Sum of 1000000

To V. W. W. W.

The Corporation of Smithfield

Take notice that ~~shall~~ on the 11 day of March 1891, next, at the office of R. E. Boykin in the Corporation of Smithfield in the County of Isle of Wight - between the hours of 8 a. m. and 6 p. m. of that day, proceed to take the Depositions of Jno. R. Parvia, A. R. Atkinson

and others, to be read as evidence in ~~the~~ behalf, in a certain

Suit - , depending in the Circuit Court of Isle of Wight - County, wherein you are are plaintiffs and The Corporation of Smithfield

is are defendants; and if from any cause the taking of the said Depositions be not commenced on that day, or if commenced be not concluded on that day, the taking of the same will be adjourned and continued from day to day or from time to time, at the same place and between the same hours, until the same shall be completed.

Respectfully.

To the Sheriff of
County to execute.

} The Corporation of Smithfield
by R. E. Boykin & R. S. Thummes

its attorneys.

Corporation of
Southfield

No 2 of the 1000
of the 1000

V. W. W. W.

Executed by
advertising to
the weather man
V. W. W. W. W.
true copy of
the within notes
March 4th / 89 /

Ro. H. Edwards

Stff.

The Commonwealth of Virginia,

To the Sheriff of the County of Isle of Wight, Greeting:

WE COMMAND YOU, that you summon *The Town of Smithfield, and*
William D. Folk Mayor of the said
Town of Smithfield

to appear at the Clerk's Office of the *Circuit* Court of the County of Isle of Wight,
at the rules to be held for the said Court on the *third* Monday in *December*, 1890,
to answer a bill in Chancery, exhibited against *it and him* in our said court by
Virginia W. Green

And have then there this writ. Witness, N. P. YOUNG, Clerk of our said Court, at the court-house, the
5th day of *December* 1890, and in the *115th* year of the Commonwealth.

N. P. Young clk.

The Commonwealth of Virginia,

To the Sheriff of the County of Isle of Wight, Greeting:

WE COMMAND YOU, that you summon *The town of Smithfield and*
William D. Folk mayor of the said Town of
Smithfield

to appear at the Clerk's Office of the *Circuit* Court of the County of Isle of Wight,
at the rules to be held for the said Court on the *third* Monday in *December*, 1890,
to answer a bill in Chancery, exhibited against *it and him* in our said court by *Virginia*
Wrenn

And have then there this writ. Witness, N. P. YOUNG, Clerk of our said Court, at the court-house, the
5th day of *December* 1890, and in the *115th* year of the Commonwealth.

N. P. Young clk

Attest, N. P. Young clk

By order of the Judge of the Corporation Court
of the City of Norfolk, the Town of Smithfield &
its agents, officers and employees and the defendant
W. D. Folk mayor of the said town, his agents, appointees
and employees are enjoined and restrained from in any
way interfering with the plaintiff's fence in the front
of his lot as described and bounded in the bill, and
from interfering with the said plaintiff in the erection
and completion of the said fence until the further order
of the court.

Teste, *A. P. Young* *Ch.*

FORM NO. 510

D. Wren

us. }
SUBPENA
IN
CHANCERY.

*Town of Smithfield and
W. D. Folk mayor &c.*

Heath & Harmon p. q.

To *Second Dec* Rules.

Circuit Court

1890.

*I certify that the bond
required by the Judge
awarding this injunction
has been given & filed*

Teste, *A. P. Young* *Ch.*
copy for Mayor

Wren

v

The Corporation of Smithfield

The answer of the Corporation of Smithfield
to the Bill of Complaint of V. B. Wren
exhibited against it by the said Wren
in the Circuit Court of the County of Isle of
Wight.

This Defendant saving and reserving to its
self all right of exception to the manifold er-
rors and imperfections in the said Bill of
Complaint - contained in answer thereto
or to so much thereof as it is advised that
it is material for it to answer, answering
Says

1 That it admits the general allegation of
the plaintiffs Bill that he is the fee simple
owner of the lot - on which he now
resides bounded by Main and Mason
Streets of the Corporation of Smithfield and
the lot of Chalmers and the Hotel lot -
in recent years known as the Wornble
lot, but always known and designa-

ted upon the ^{and Survey} plat of the said town as lot
No 33, a copy of which is herewith filed as Exhibit
And for a further and more per-

fect comprehension and understanding
of all things connected with that lot-
This defendant states that the land upon
which Smithfield is laid out and estab-
lished belonged to one Arthur Smith,
that he had it laid off into lots and
streets in 1752 and had it incorporated
in that year and that he gave the afore-
said lot. lot. no 33 to the ^{County of Isle of} said town of
^{Wright} Smithfield as a public lot for Court House ^{use} here
that it was used as a public lot until
the 7th day of January 1800 when an
act was passed ^{by the General Assembly of Virginia} to alter the place of holding
the Courts of Isle of Wright County from the
said town of Smithfield to the present
place of the present Court House which
was then owned by one Francis Boykin

That on January 6th 1802 an
act was passed to explain that act.

That the said Francis Boykin died
on the 5th day of April 1805 and Smith's
heirs took possession of the same
until the Court of Appeals of Virginia in ¹⁸¹²
ordered Smith's heirs to deliver up pos-
session of the same to the heirs of Francis
Boykin.

That on the sixth day of January
1812 Francis M. Boykin and wife and

James Johnson and Anne his wife (formerly Boykin) sold and conveyed the said and aforesaid lot to one Robert Butler as will appear by their deed of that date herewith filed as Exhibit - "A" and prayed to be taken as a part of this answer.

That on the 24th day of May 1813 the said Robert Butler and wife sold and conveyed the said lot to one Robert West, as will appear by his deed of that date herewith filed as Exhibit - "B" and prayed to be taken as a part of this answer.

That on the day of _____ in the year 1814 the said Robert West sold this said lot to Thomas Purdie, as will appear by his deed of that date herewith filed as Exhibit - "C" and prayed to be taken as a part of this answer.

That on the 4th day of January 1816, the said Thomas Purdie and wife sold this said lot to Wilson Davis who at that time lived and resided at and upon the adjacent lot then and now called the Hotel lot, being lot no 34 on the plot of the aforesaid town of Smithfield.

That the said Wilson Davis, was, from that date to the day of his death, to-wit, subsequent to 1832, the owner of lot no 33 & lot no 34.

A copy of the will of the said Wilson Davis is herewith filed as Exhibit-"D," and prayed to be taken as a part of this Answer.

He left two sons, George W., and James L., and a daughter Susan who married Merit-Womble.

Whilst the said Wilson Davis owned this lot he put upon it a frame building.

That on the 27th day of February 1836, the aforesaid Merit Womble bought the interest of George W. Davis in the said lot, and on the 16th of March 1837 he bought the interest of James L. Davis in the said lot as will be seen by copies of their deeds to the said Womble herewith filed as Exhibits "E" & "F" and prayed to be taken as a part of this Answer.

That a copy of the will of Merit Womble was admitted to probate July 30th 1854, a copy of which is herewith filed as Exhibit-"G" and prayed to be taken as a part of this Answer.

That whilst the said Merit Womble was the owner of the aforesaid lot no 33 he removed the frame building aforesaid of Wilson Davis from where it was on the line of the ~~Street~~ Main Street and on the line of Mason Street where it intersects with

Main and erected in its place and street and on the aforesaid lines of Main and Mason Street the present brick building now ^{just as and where the said frame building stood} owned by V. W. Wern, and used the lower story as a store, and the upper story as a dwelling. That the said store and dwelling fronting as it did on Main and on Mason Streets, had a door on Main Street, and a door on Mason Street, from which you entered immediately from Main or Mason Streets, or ^{from the said store and dwelling} passed out into those streets without one particle of gate, enclosure of any kind, charter, decree or description whatsoever.

That all the time that the aforesaid Robert Butler, Robert West, William Davis his sons and daughter, and Merit Wemble owned the aforesaid lot - No 33, there was ~~was~~ a fence, or railing that ran from the aforesaid Hotel lot, to the aforesaid store and dwelling on a straight line with the face of the aforesaid Hotel, and the aforesaid dwelling, and no one ever thought, supposed, or claimed, that the street boundary of that line extended one inch further than it was placed by the parties aforesaid. All up to that fence has been a street, was a street, was used and occupied, worked on, controlled, governed, and directed as a street

by this Defendant

Deeded as such by Arthur Smith in 1752, and used continuously and without any interruption, question ~~and~~ or suspicion from that day to the institution of these proceedings.

That after the Death of Merit Wemple, Geo. H. Wemple & others plaintiffs, brought a suit on the ~~day~~ of 187, against Merit W. Davis and others defendants, under which George R. Atkinson, Special Commissioner, sold to V. Warren on the 7th day of April 1881, the aforesaid lot No 33, as will appear by his Deed of that date here with filed as exhibit "G" and prayed to be taken as a part of this answer

That in April 1881, when the said V. Warren bought the aforesaid lot, the said fence, ~~and~~ or railing, between the aforesaid Hotel and the dwelling and store aforesaid on the said lot No 33, was, as it has been continuously down to that date, and so it continued during his ownership and occupancy until day of November 1890 when he undertook, with full and complete knowledge of the antecedent history of that lot, to change the aforesaid fence and line

This Defendant

Denies, and does not admit, that the said lot fronts $96\frac{1}{3}$ feet on Main Street in the said town, but in the contrary it alleges and avers that the said property fronts on Main Street 90 ^{and 8 inches} feet, and that the said V. Worm has enclosed on Main Street a strip of land ^{from} $6\frac{1}{6}$ feet ^{to $6\frac{1}{3}$} in width extending ~~to a distance~~ in Main Street to the distance of fifty one feet

This Defendant, positively and absolutely, denies that the diagram filed by the said V. Worm with his Petition and marked Exhibit "A" correctly sets forth the boundaries of the lot of the said V. Worm, and it avers that the said diagram was made by E. M. Morrison, County Surveyor, solely at the request of the said V. Worm, entirely as directed by him, regardless of the true boundaries of the said lot on Main and Main Street, with no intention to correct, but to define those boundaries, ~~and to make~~ ~~made~~ wholly without the knowledge or priority of this Defendant, and it is in no manner bound by it. And it further denies that the lines in the said diagram representing the said streets ~~are~~ are the true lines and boundaries, or that they should be recognized and determined

ed as such.

This Defendant admits, that the said V. Wrenn has placed and located a fence and enclosure according to the line as shown by his aforesaid diagram, but it denies that the said fence and enclosure is placed and located on his land, and nine inches from the inside line of the sidewalk of the said main street. On the contrary, this Defendant avers, that the said V. Wrenn has encroached upon and enclosed a strip of ^{and portion} ~~land~~ main street seven feet and two inches in width, extending from the Hotel Property to Mason street a distance of 96 ^{10 inches} feet, and that he has also encroached upon and enclosed a strip or portion of Mason street, at its intersection with main street, six feet and four inches in width, extending from main street down Mason street a distance of fifty one feet, as is shown by a diagram here with filed as Exhibit "A" and prayed to be taken as a part of this Answer.

This Defendant avers, that for a long period before the said V. Wrenn commenced to erect the said enclosure and fence, he had full knowledge

~~Thoroughly~~

edge, and was, informed, that the said town would not permit or allow the said fence and enclosure to be placed and located as a nuisance, and with such knowledge and information, without claim or pretence of right, or authority, the said fence was erected by the said V. Worm in open defiance and contempt of the authorities of the said town, against their express order and direction, after he had expressly and positively admitted, that he had no right to do so, and no legal right whatever to the afore said strip of land.

This Defendant says, that the said V. Worm, notwithstanding the protest of the said Corporation proceeded to build and construct his said fence and enclosure projecting the same 7 feet and two inches into Main Street, and from 6 ft. 2 in. to 6 ft. 4 inches into Mason Street thereby obstructing the same: that before the said fence was completed, and when he had only commenced the same, this Defendant gave the notice to the said V. Worm as he hath alleged in his bill of complaint, that he was violating Section thirty six of the ordinances of the town in erecting his said fence, and requiring him to remove the same, as it had the

right-to do, under the ordinances aforesaid, and under the general laws of the State.

The said Defendant admits, that the lines of the said Main and Mason Streets as shown on the aforesaid Survey of the said town referred to in the said ordinances and bill of complaint of the said Complainant are straight-lines, as is shown in the said, and aforesaid, Survey of the said town. But this Defendant denies, that the said Complainant, in erecting his said fence, has been particular not to encroach upon the said streets as they properly and legally exist; but on the contrary, he avers and declares, that he has encroached upon the aforesaid streets, and enclosed portions of them as hath been above and before mentioned and described; that he violated the aforesaid ordinances of the said town and the general laws of this State; that the claim of the said Corporation that he has violated them is correct; and that the action of W. D. Folger Mayor was legal and valid.

This Defendant denies that it, through its Council, has ever claimed that there is no official survey

of the said town, or that the lines of the said survey town as shown by the said survey in the ordinances of the said town mentioned are ^{not} the true lines of the said street, and they aver and declare that the said survey is an official survey; and that the lines, as shown by it are straight-lines, and that they have never refused to define the said lines.

And further answering, this Defendant says, that the removal of the aforesaid fence of the said complainant will not be attended with great loss and damage, or irreparable injury, to the said complainant. On the contrary it avers and declares it is not an

ornamental fence - that the portion to which the Council ^{specially} objected is only ^{fifty five} ~~some~~ ^{seven} ~~feet~~ ^{or eight} ~~feet~~ ^{feet} and ^{ten} ~~ten~~ ^{inches} and is composed of only ^{eight} ~~seven~~ ^{feet} ~~feet~~ ^{apart} ~~apart~~, of ^{two} ~~one~~ ^{feet} of plank and scantling, with a cap to the railing & posts, coated with one or coats of paint, costing about - fifteen dollars. The whole completed since

this Injunction was issued, put up in contemplation of removal, and so constructed, with screws and bolts, that

it may be removed without damage,
and if any damage at all should result,
it would only ensue in consequence
of the wilful, & Deliberate violation of
the ordinances of the town and laws
of Virginia by ^{willfully} encroaching upon, and
obstructing the streets of the said town
after he had been repeatedly informed
of the rights of the town; that the land
in question was a part of the streets of

the said town, and had been such ever
since its original dedication by the
said Arthur Smith in 1752; and after
he had admitted that the land in ques-
tion was a part of the street of the said
town, and that he had no legal right to it.

And further answering
-ing this Defendant says, that even if
it be true, which this Defendant denies
that a survey and plan of the said town
has not already been made, showing
distinctly each lot, public street and
alley therein, the size and number of
the lots, and the width of the streets, as
provided by section 1014 of the Code of 1887,
this court is without jurisdiction in
these proceedings to order and require
such plan, and survey of the said town to

be made.

This Defendant further answering, says, that the aforesaid fence and enclosure is in the street and an obstruction to the same; and that they have the right, under the ordinances of the town, and under the general laws of the state, to have them removed: that this Injunction, in this suit, was improvidently awarded; and it prays that the Injunction may be dissolved, and that the suit of the Complainant may be dismissed.

This Defendant prays the benefit of so much of this answer as goes in bar as if the same had been specially pleaded; and having answered it prays hence to be dismissed with its costs in this behalf most unjustly expended. And they will ever pray &c



At a meeting of the Council
of the Corporation of Smithfield
held at the Mayor's Office on the
23rd day of February 1891. Called to
consider the answer of the said
Corporation to the bill of complaint
of V. Wrenn exhibited against it.

Present W D Foster Mayor

P. D. Swatney & A. Hullman +

J. P. Andrews Alderman

It was unanimously resolved
that the answer of the said
Corporation of Smithfield be
approved and adopted as the answer
of the said Corporation to the said
bill of the said V. Wrenn against it
and that J. P. Andrews Secretary
affix the Seal of the said Corporation
to the said answer

J. P. Andrews Secy,

A Copy

J. P. Andrews Secy

Teste

Virginus Mann
v } In chancery
The corporation of
Smithfield

Defendant's
answer

Received of the
Marsh 1891, and
lodged in papers
of the above case,
Teste, A. P. Hargreave

To the Judge of the Circuit Court of Isle of Wight County Va.

Virginus Wrenn of the said County, the plaintiff
in this suit, complains and alleges as follows:

1. He resides in the Town of Smithfield in the County aforesaid, and is the fee simple owner of the lot of land and the improvements thereon, whereon he resides situated in the said town and fronting $76\frac{1}{3}$ feet on Main Street in the said town, and bounded by Main Street and Mason Street and by the property ^{of} Chalmers and the property known as the Hotel property. A diagram of said property made by the County Surveyor of the said County is herewith filed marked Exhibit D.
2. The plaintiff is and has been for some time since, erecting an ornamental fence and enclosure along the front of his property bounded by Main Street and has placed or located the said fence and enclosure on his own land and nine inches from the inside line of the sidewalk of the said Main Street as defined in the survey of his property made by E. M. Morrison County Surveyor, which lines the plaintiff believes and charges are the true lines of the said street, and ought to be ~~so~~ ^{recognized} and determined.
3. The ^{names of the} streets of the said town of Smithfield, ^{a corporation under the laws of Va.} have been declared by ordinance adopted by the Council of the said town, and by ordinance of the said town Main Street is declared to run "from the County Wharf S. $52\frac{1}{2}^{\circ}$ W to the boundary line," and the said town has further declared that Main Street and the other streets named in its ordinances "are more fully defined in the Survey of the town made and recorded as referred." See Revised Ordinances of the town of Smithfield, Virginia Ch. X Sec 34 filed herewith as exhibit "B." proposed to be treated as a part of this bill.
4. The plaintiff believes that the lines of the said Main Street as shown on the ^{Survey} ~~Survey~~ ^{referred to in said Ordinance} of the said town of Smithfield are straight lines and said lines are in fact straight lines, and the plaintiff in erecting his said

fence has been particular not to encroach upon the said street, as it properly and legally exists.

5. On the night of the 24th day of November 1890, the plaintiff received through the town Sergeant of Smithfield a notice in writing dated Smithfield Vt. Nov. 24, 1890 by which he was notified by W. D. Folk, Mayor of the said town, that he was violating Sec. 36 of the Revised Ordinances of the Corporation of Smithfield, in erecting the fence aforesaid, and requiring him to remove the same - Said notice is herewith filed as a part of this bill marked by exhibit "C".

6. Sec. 36 of the Revised Ordinances referred to in said notice reads as follows:

"That it shall not be lawful to encroach upon any side-walk, foot way or street by the erection thereon of any porch, veranda, portico, steps, building, fence or other thing or otherwise; such encroachment shall be deemed an obstruction, and shall be removed by the owner or occupant of the premises where such encroachment may occur, within ten days after notice from the Mayor requiring the same to be removed - Any person violating this Ordinance, shall be subject to a fine of five dollars for each day such encroachment is allowed to continue after the expiration of the notice to remove the same, and in the failure of such persons to remove the same after such notice, the Mayor shall cause it to be removed, and all reasonable charges therefor, with cost, shall be collected of the owner or occupant by the same process by which taxes are collected." See Printed Revised Ordinances, Exhibit "B," filed with bill Sec. 36. of same.

7. The plaintiff alleges that he has not violated said Sec. 36, on any part thereof; that he has not encroached upon any street and that the claim of said Corporation that he has of the said Corporation of Smithfield, and in the action of the said W. D. Folk, Mayor as aforesaid, are without warrant.

of authority, illegal and void, and if persisted in and carried out will be attended with great loss and damage and irreparable injury to the plaintiff.

- 8 The plaintiff believes that by the survey ^{referred to in the town ordinance} of said town, the lines of the streets of the said Corporation are defined as straight lines, but he is informed that the said Corporation, through its Council, claims that there is no official survey of the said town and that ^{lines of the} the streets of the said town as shown by the said survey are not the true lines of the said streets and that the lines of said streets have never been defined according to regular survey, all of which the plaintiff believes and charges is error upon the part of the said Corporation, and that the said Corporation is estopped from making any such claim and assuming any such position.

9 Notwithstanding the position assumed by the town of Smithfield, that there has been no survey ^{and place} of the town and no defining of the streets thereof, the Council of the said town refuse to cause a survey and place of said town and to have the streets thereof defined.

10. The plaintiff alleges that unless restrained by the injunction of this Court, the said Corporation, and its Mayor, acting under the illegal claim of the said Corporation, will subject him to great annoyance, loss and irreparable injury.

In tender consideration of the premises and for as much as the plaintiff is without adequate remedy except by and through the aid of a court of equity, where matters of the kind are alone properly relievable, the plaintiff prays that the town of Smithfield and W. D. Folk, its Mayor, may be made parties defendant to this bill and required to answer each and every allegation thereof - but an answer under oath is waived. That the said town of Smithfield ^{by} its agents, officers and employees and the said W. D. Folk, Mayor of the said town and his appointees, employees and agents, and all

others be restrained and prohibited by the order of this Court from proceeding against or in any way interfering with the plaintiff in the work already done by him or in that which he may do in the erection and completion of his fence and enclosure, or otherwise in the premises; that the lines of ~~Main~~ Street as shown on the ~~diagram~~ of plaintiff's property, ~~Exhibit A~~ be deemed the true lines of said street; or that a survey and plan of said town (if one has not already been made) ^{required to be} be made, showing distinctly each lot, public street and alley therein, the size and number of the lots and the width of the streets, as provided by Sec. 1014 of the Code; that all proper orders and decrees be made; that process issue against the said defendants, and that the plaintiff may have such other, further and more general relief as the nature of his case requires or to equity seems meet.

Mayhemms ipse.

Virginus Wren

Corporation of the City of Norfolk, to wit:

I, James E. Heath, a Notary Public in and for the Corporation aforesaid in the State of Virginia, hereby certify that Virginus Wren, whose name is signed to the foregoing bill, personally appeared before me in my corporation aforesaid, and made oath that the allegations therein which he makes of his own knowledge are true, and that all other matters therein stated, he believes to be true, and that the allegations upon which his application for an injunction rests are of the knowledge of the affiant and are true.

Given under my hand this 3^d. day of December 1890.

James E. Heath, Notary Public.

On motion of the plaintiff by Counsel, and for
good cause shown, an injunction is granted in
accordance with the prayer of the plaintiff's
bill, restraining the defendant, the town of
Smithfield Va. its agents, officers and employees,
and the defendant, W. S. Foltz, Mayor of the said
town, his agents, appointees and employees ~~and restrained~~
from in any way interfering with the
plaintiff's fence in the front of his lot ^{as} described and
bounded in the bill, and from interfering with the
said plaintiff in the erection and completion of the
said fence until the further order of the Court.
But the plaintiff is not to have the benefit of this
order until he shall enter into bond with sufficient
security in the Clerk's office of the Circuit Court of
the County of Isle of Wight, before the Clerk of the said
Court in the penalty of \$250⁰⁰ payable to the Common-
wealth of Virginia and conditioned as the law directs.

To the Clerk of
the Circuit Court of
the County of Isle of
Wight - Va

L. Richard Brooke
Judge Corp. & City of Fairfax
Va

Virginia Wren.
In behavior
Town of Smithfield et al.

Bill + Exhibits v. B. & C.

Decr. 5th 1890. Bill
+ expts: filed + served.
with injun. + pend. the
bond being returned.

Decr. 5th Rules. Success
exp. + decr. nisi a. Dof.

Jan. 1. Rules 1891.
Bill taken for confid.
and set for hearing.

April Term 1892
Final Decree
==

Hammans & Healtz P. G.

2 Question Be pleased to state as well as you
the distances ~~but~~ of the enclosed
spaces of the ~~th~~ cols you have men-
tioned.

I think the vacant space in front of the old Clerk's office, is ~~be-~~
~~low~~ ~~two~~ ~~between~~ and twenty feet wide;
that the aforesaid second vacant-
space has a width of between 20 and
25 feet; and that the third aforesaid
vacant space, is ~~at~~ between 15 and
20 feet wide.

Answer.

It is in front of a part of lat-20.
8, to the best of my knowledge and
belief.

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4 Question Be pleased to state if the open space in front of what is now called the 'Young Men's Christian Association' is not a part of lot no. 7 as known upon the aforesaid plat?

Answer The open space in the question alluded to is in front of a part of lot no. 7.

5 Question Be pleased to state if another portion of ~~the~~ open space there is not a part of the same lot - immediately opposite the Carriage Gate of the said lot?

Ans. It is.

6 Question Be pleased to state if the open space between the Emmett Wilson house and the V.C. Batten house is not a part of lot no. 6 known upon the aforesaid plan.

Answer It is in front of a part of lot no. 6.

7 Question Be pleased to state if the brick house on the aforesaid open space of lot 8 formerly called the Clerk's office when the Courts of the County were held on the aforesaid lot 8, ~~is~~ ^{has} not ^{been} usually rented out to tenant for a tailor's store, cobbler's shop, ice-cream saloon, and in former days for the hiring of negroes etc.

Answer

Within my recollection it has been used for each of the purposes mentioned in the question; also as the office of Merritt Jordan, Attorney at Law and Notary-public; and also as the sleeping room of the late Dr. John B. Butler.

8 Question

Be pleased to state if the ~~building~~ ^{house} that has just been designated as the Young Men's Christian Association, has not been for a long period of time heretofore occupied as a shoe-maker's shop, his family living above, prior to that as a store and sleeping apartments.

Answer

I learned from tradition that the house alluded to in the question, was erected for a billiard room. Within my recollection it has been used for general merchandise purposes by several occupants and very recently as a shoe ^{shop} ~~store~~ and ~~residence~~ above in the question described, and as a jewelry shop and residence.

9 Question

Be pleased to state if all the open spaces aforesaid to lots 8, 7 & 6, have not always been kept open for easy access in to the office and shop and lots aforesaid.

Answer.

The space alluded to in the question have never been enclosed within my recollections, and have never offered any obstruction to the ingress or the egress of persons visiting the houses or lots in front of which they exist.

10 Ques.

Be pleased to state if you know from tradition or otherwise when the ~~of a house~~ premises of lot-8 were under the decision of the Court of Appeals of Virginia in the Case of Boykin's heirs vs. Smith's heirs, delivered up by the said Smith's heirs to the heirs of Boykin.

~~Answer~~

~~I think I have learned from tradition within~~ Question excepted to because it is an examination upon a question not referred to or mentioned directly or indirectly in the cross-examination.

The ~~defend~~ defendant by Counsel replies, that the Counsel for the plaintiffs is totally mistaken as it will be very easy to show.

Answer

I have learned from tradition within a few days that the decision of the Va. Court of Appeals, under which the title was granted to Boykin's heirs

92

is contained in the 3d Vol. of Mumfords Reports, and that the date of the said decision, by tradition to me was in the year 1812.

11 Question State if at that time Thos Smith the son of Arthur Smith, the incorporator of the town of Smithfield was living.

Answer I am sure that the said Thos. Smith died in the last decade of the ~~17~~¹⁸th Century

12 Question Be pleased to state if Robt West who married his daughter, Fanny, and the said Fanny herself were living at that date on lot 16, now known as the Andrews lot, and diagonally opposite.

Answer To the best of my knowledge and belief they were living in the lot in question in 1812.

13 Question Be pleased to state if Elizabeth Johnson, the sister of Mrs. West, was not likewise an occupant of the said house and lot, at the same time

The ~~lady~~ ~~illust~~ plaintiff objects ^{on the ground} to the question, ~~and to all other questions~~ that it is not an examination upon any question asked on Cross-examination; and he objects to all

Questions which have been, or may be asked, upon ~~the~~ matter ~~referred~~ in the re-direct-examination upon matters on which the witness was not interrogated in the cross-examination, and asks to have such questions and answers excluded.

The defendants by its Counsel reply that ~~it~~ is entirely irrelevant to the cross-examination as they will hereafter abundantly show.

Answer

To the best of my knowledge and belief the said Elizabeth Johnson was a boarder in the family of Robt. West and his wife, Fanny, in the year 1812

14 Quest.

Be pleased to state if ~~Col~~ Col. Arthur Smith, the son of the said Thomas Smith, was not at that said date living in Smithfield or its immediately vicinity.

Answer:

In 1812 Col. Arthur Smith, owned, occupied, and resided on his farm adjacent to the town of Smithfield.

15 Question

~~The~~ It appears from an exhibit filed with the defendants answer that Francis M. Boykin and Fannie, his wife, and Jas. Johnson and

Jane his wife, very soon after the decision of the Court of Appeals of Virginia, heretofore alluded to, to wit: on July 6, 1812, conveyed the afore-
said lots 8 & 33 to Robt. Butler
Be kind enough to state when and
by whom the enclosure to the
aforesaid lot 8 on Main Street
were put up and erected.

Answer

To the best of my knowledge
and belief the enclosure forming
a to yard in front of the house
was put up by Dr. Robt. Butler.
I remember a new enclosure that
has been erected in front of that
house, when I was a school-boy and
to the best of my recollection, that
enclosure was erected in 1820.

There may have been a preceding
enclosure which I do not re-
member; but the one I allude to was
artistic in its construction, and
must have been costly.

16 Quest.

Be kind enough to state by whom
the enclosure of 1820 was made.

Answer

I am sure it was made, by Dr.
Robt. Butler

17 Quest.

Be pleased to state, if it was
put on the line of the preceding en-

Closure.

Answer

I have not said that there was a preceding enclosure, but the one I allude to is to the best of my knowledge and belief on the line of the one just alluded to.

18 Quest.

Be pleased to state if you ever remember the said lot without an enclosure.

Answer

I do remember when there was an enclosure on lot No. 8. I remember the old Court-house, before it was converted into a dwelling by Dr. Butler, and until that alteration to the house, I am sure there was no enclosure in front of it.

19 Quest.

Be pleased to state, as well as you can, when the said alterations were made.

Answer

Between the years 1812 and 1820; the particular year I am unable to state.

20 Quest.

Be pleased to state what porches or projections there were to the said building before the said alterations were made.

Answer

There was a pavement of stone ~~tiles~~ tiles about 12 feet long and 8 feet wide, I think, in front of the

main entrance door to the Court-room, with an elevation from the ground of about 20 inches, I think, and on a level with the floor ~~rock~~ of the Court-rooms. Over this elevated pavement, there was no roof or covering, to the best of my recollection.

21 Quest. State whether or not the alterations made to the said building, were not interior alterations, made for the purpose of converting a public building into a private residence, such as it has continued to the present time, with the slight addition of ^{a ~~part~~ small} ~~a ~~very~~ out room~~ put next to the Young Men's Christian Association, within the last few years.

Answer

The principal alterations made by Dr. Butler to the old Court house were interior. I think the exterior underwent no alterations at that time, with the exception of a porch erected by Dr. Butler over ~~the ~~passage~~~~ a part of the pavement alluded to in my last answer.

22 Quest. State whether or not the steps to the porch aforesaid were set off

97

Answer

brick and mortar and stone.

I am sure that they were constructed of the materials mentioned and the ascent of that flight of steps was on the south-west side of the porch, and adjoining the wall of the building.

23 Quest.

State the character of the building upon lot 7, at the date of your earliest recollection and the uses and purposes to which it had been devoted prior thereto.

Answer

At my earliest recollection, the building on lot no. 7 was of brick, one story, an attic and a basement-cellar. At that time it was used as a tavern by Wilson Davis, with only two rooms on the first-floor, no passage, or hall, and two rooms ~~in~~ the ~~second~~ attic, with a small interval between them.

24 Quest.

State as far as you can from tradition or otherwise for what purposes it was used prior to the date of your earliest recollection.

Answer

I have no information by tradition or otherwise, as to by whom and for what purposes it had been used prior to that time.

25 Quest. State whether or not there was a porch to that building at the date of your earliest recollection, and if so its size and character.

Answer

There was a covered porch, I think, about 10x12 feet in size. the ascent to which was ^{from the street} by a flight of steps, on the front of the porch ~~from its base~~. I think it was a

~~26 Quest~~ ~~The~~ porch with the same brick underpinning as the one there at present. Mr. Wilsons Davis, who was the hotel proprietor, was also post master at that time.

26 Quest. State whether or not there was an enclosure to the said lot at that time, and if not when it was placed there, and by whom.

Answer There was no enclosure in front of the house at that time. About the year 1820 the lot came into the possession of M. M. R. Todd who stuccoed the exterior brick wall, arranged a passage through the building from the front to the back door, and erected an enclosure in front of the house.

27 Quest. Be pleased to state, if the present enclosure is on the line of that said

Answer

enclosure of 1820.

I believe the enclosure erected by Mr. Todd, was not so wide as the present enclosure, and that it only joined the front corner of the underpinning on each side. The ascent to the porch was also altered by Mr. Todd from the front to the south west side.

28 Quest.

Be pleased to state how many flights of steps there ^{in front} were, from the ground to the level of the porch, and the distance from the bottom step to the line of the present enclosure.

Answer

~~The width of the steps was about two thirds that of the width of the porch. The number of steps in that flight, I don't know, but they were the ordinary height the one about the other.~~

~~I think the distance of the steps~~
Perhaps the number of steps in that flight was six or eight; and I think the bottom step was very near to the line of the present enclosure.

29 Quest.

Please state when and by whom the present enclosure to the said lot was

erected.

Answer

I think the present enclosure is a renewal of the one, erected by Mr M. R. Todd; that it was placed there by the vestry of Newport Parish, who extended the width of the land enclosed, from the front underpinning of the porch to its present location, say some five feet; which enclosure was placed there about 1855.

30 Quest.

Be pleased to state about what time your grand-father Geo. Purdie, came to the town of Smithfield, and about what time he died.

Answer

I have learned from Tradition that he came to Smithfield in 1745; and that he died in 1802.

31 Quest.

Be kind enough to state, when your father John St. Purdie was born and when he died.

Question excepted is on the ground that no ~~exam~~ examination was made in regard to that question on cross-examination

Defendant's Counsel replies that it will show its pertinency and relevancy hereafter

I learned from the late Dr. John H. Pundie that his parents told him that he was born on the 20th day of October 1770; and I know that he died on the 31st day of May 1845.

32 Quest.

Be kind enough to state the earliest date in which your ~~father~~ grand-father went to live in lot no. 4 upon the said Jordan Thomas plat of the town of Smithfield.

Answer

I have learned from tradition that he came to Smithfield as a minor clerk for a firm of Merchants whose residence and store were in lot no. 4 and of course he resided with them in that lot in 1745.

33 Quest.

State the earliest date in which he became the owner of the said lot.

He became the owner of lot no. 4 after the death of the two members of the firm of Merchants with whom he had served as a clerk the date of the deed conveying to him the title to lot no. 4 I presume can be learned from the records of Isle of Wight.

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34 Quest.

State about what date your father, the late John St. Purdie came into the ownership of the said property.

Answer

The late John St. Purdie was the residuary legatee of his father the late ~~John St. Purdie~~ ^{George St. Purdie}, and in the death of his mother in 1810 he acquired the ownership of said lot - No. 4

35 Quest.

Be pleased to state ^{whether or not} if the front-enclosure of that lot - on Main street is ^{now} as it was ~~at~~ found to be by your father the late John St. Purdie, in 1810.

Answer

I do not know if the present enclosure is on the line of the enclosure, when lot no. 4 was purchased by R. S. Thomas. I renewed the enclosure ~~at~~ about the year 1835, and placed it on the line of the original enclosure which was standing when I could first remember. The enclosure was again renewed by William St. Jordan about the year 1843, and I think he placed it on the line of the enclosure renewed by myself; and I am not aware, whether the present enclosure is or is not on that line.

36 Quest. Then there was no alteration made in the line of the original enclosure so far as known to you by your father the late John H. Purdie. State whether or not I understand you correctly.

Answer There was no alteration made in the line of the enclosure by my father or myself, prior to 1845.
~~And I do not~~

37 Quest. There was one question that was omitted, that was intended to be asked when we were talking about no. 6, the old Wilson Davis hotel; what was the chief mode of ^{public} conveyance to and from the town of Smithfield at that time.

The question objected to by the plaintiffs on the ground that there was examination as to this matter on the cross examination.

The defendant by ~~Cross~~ Counsel replies that the relevancy of that question will be made to appear hereafter.

Answer At my earliest recollection it consisted of a four horse mail stage from Petersburg, through Smithfield to Portsmouth.

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38 Question.

The plaintiff has been careful to show that the extension of the lines on the face of the houses through other sections, through ~~the~~ other streets of the town, would pierce houses porches, shrubbery and flowers, to the front enclosures of those houses, except that portion from Pierce street down and along lots 8, 7, 6, 5, & 4 according to the aforesaid Jordan Thomas plat. Be kind enough to state if the enclosure aforesaid existing to those houses, do not enclose porches, shrubbery and flowers, which would be equally damaged by the removal of the said enclosures, and turning them out in the open street.

Answer

I think the articles alluded to in the question would be as much damaged by the removal of the front enclosures to the said lots, as would be the removal of the front enclosures to the lots in other streets of the town.

39 Question

Be kind enough to state, if the extension of the line of the houses aforesaid ~~along~~ from Pierce street aforesaid, by the face of those houses

new
1
aforesaid would not cut the
house of John T. Purvis in lot
3 right through the middle

Answer

It certainly would cut through
it but I cannot say it would be
exactly through the middle.

40 Quest.

Pierce's street is only the ^{North} western ex-
tension of Mason street. ~~It runs~~
~~from lot 33 to lot 36~~ It runs Mason
street to Church street, to wit, to and
from lots 33, 34, 35 & 36, ^{inclusive} accord-
ing to the original Jordan Thomas
plan, how many porches are there
that project into the street

Answer

I think there ~~are~~ are only two, the one
on lot 34, the Hotel lot; and one on
lot 35, called Shabby Hall lot.

41 Quest.

Have either of the aforesaid porches
ever been enclosed to?

Answer

They have never been enclosed

42 Quest.

Has there ever been along the
line just mentioned any shrub-
bery or flowers, or ~~any~~ any thing
of that kind?

Answer

To the ~~the~~ best of the my knowl-
edge and belief there have never
been any such flowers or shrubbery ex-
cept the old box bush ^{on the Mason Street side of} ~~in front of~~ lot
lot 33, ~~the~~ which I do not accurately re-
call

43 Quest.

Be pleased to state, how many houses, shops, offices + buildings, of various kind there are on that side of Main Street, from lots 33 to 36 inclusive.

Question excepted to on the ground that it is a repetition of the examination in chief.

The defendant replies that the examination in chief did not extend below lot 34 and this evidence is now directly responsive to a large portion of that brought out in the cross-examination.

Answer

I think there are ~~some~~ ten.

44 Quest.

State whether or not the line extended from Church street to Mason Street along the face of the said ten buildings is not a straight line.

Answer

To the best of my knowledge and belief, it was intended to be a straight line, I cannot say whether it is a straight line ~~now~~ or not.

45 Quest.

Be kind enough to state if the face of these houses, there being only the two porches mentioned, are not in a line with each other.

Answer

They are so far as my observation has extended.

46 Quest.

Be kind enough to state whether

or not; in this list of ten houses,
~~the~~ situated as aforesaid, there are
 not several that have been erected in
 the last or fifteen years.

Answers

There are several have been erected
 within the time mentioned in the
 question.

47 Quest

Be kind enough to state, whether
 or not all the houses situated
 within the space aforesaid do not
 in their fronts, front on what you
 understand to be the original line
 of "Main Street," at the point indicated

Answers

They are according to my impres-
 sion, adopted many years ago.

6 P.M. Mch. 31, '91

The further taking of these depo-
 sitions is hereby adjourned ^{& continued} until
 tomorrow morning, April 1, at 9 o'clock
 at the same place and between the same
 parties

T. J. Barham, Notary Public

The taking of these depositions was resumed on Wednesday, ^{April 1, 1891} at 10 A.M. in pursuance to the adjournment on Tuesday ^{March 31, 1891} afternoon at 6 P.M.

Present: W. L. Felt, counsel for ^{plaintiff} ~~defendant~~
R. E. Boykin & R. S. Thomas Counsel for ^{defendant} ~~plaintiff~~

4th Question On yesterday and some preceding days, allusions have been made to lot 36 ^{on the former Thomas place, now occupied by the Massachusetts} at the corner of Main and Church streets, and at the intersection of those streets, sometimes called the Byrd lot, the next lot immediately adjoining that is lot No 37 in the said plan. Be pleased to state whether in speaking of the Warble and the Byrd lot, 36, 37 was also intended to be included in the description of lot 36.

Answer My allusion to lot no. 36 related I think only to the dwelling-house on it; I do not remember describing anything else on it. The premises owned and occupied by Maj. Byrd, and several succeeding owners of the premises embraced lot No. 37 & 36 and extended from lot No. 38 now occupied by Mrs. Todd, along to the corner of Church and Main ~~street~~ and

Thence on Main Street, to lot No. 35-
 49 Question Heretofore the Todd lot has been
 designated as 37, which was a mis-
 take; it was 38.

42 Question Be kind enough to state who
 lived on lot 37, at the date of
 your earliest recollection

Answer Maj. Richard Byrd; I think it
 was about 1812

43 Quest. There is on that lot the old and
 the new houses which you have her-
 tofore described. Be kind enough
 to state the section of the new part
 if known to you.

Answer I learned from tradition that the
 two-story new part of that dwelling
 was erected in 1809.

44 Question Be pleased to state if there was
 a porch to it at that date

Answer I have learned from tradition
 that a two-story porch was erected
 in front of the new part of the
 building, when the latter was
 erected.

45 Quest. Be pleased to state when the old part
 of that building was erected accord-
 ing to tradition

Answer It was erected as I have learned from

tradition before the incorporation of the town of Smithfield 1752.

46 Quest.

Be pleased to state, the uses and purposes to which it was devoted at that time and afterwards.

Answer

I have learned from tradition that it was used by a merchant of Smithfield, whose name I have forgotten, as a storehouse for general merchandise.

47 Quest.

Be pleased to state if there is not an end door in the basement, towards Main Street.

Answer

There is.

48 Quest.

Be pleased to state what you have learned from tradition about the backing up of Cattle to the end door, and the delivery of bacon and other things there.

Question objected to, on the ground that it is immaterial to the issue; and for the further reason that the witness was not interrogated on his cross-examination as to same; and ~~further~~ ^{other} reasons therefore stated by the plaintiff's counsel.

The defendant replies that it is

relevant and material; and in the exact line of the cross examination of the plaintiffs counsel, covering exactly the same subject-matter.

Answer Within my own knowledge the door was cut through the basement wall by William St. Day in 1840 and I have no knowledge from tradition or otherwise that the event alluded to in the question ever occurred.

49 Question Be pleased to state whether or not the basement rooms and the rooms above ever indicated that they had ever been used for the salting and packing of meat.

Answer From tradition I have learned that the basement alluded to was used in part as a depository for salt in sacks or loose when I became a resident of that building in 1846, the basement walls on the interior showed plainly that they had been injured by contact with salt.

50 Quest. Be kind enough to state whether or not the walls of the story above gave indications of the same.

Answer They did not, having been fitted up

for a residence by Maj. Byrd
in 1812

51 Quest.

Be kind enough to state what
you have learned from tradition
or otherwise about the delivery of
goods at the door of the said
old building on Church street, be-
fore the same was enclosed.

~~Answer~~

Question objected to on the ground
that it is seeking to contradict
the witness, because he has not stated
~~anything in reference~~ whether or
not the lot was enclosed; and for the
further reason that it is immaterial
to the issue.

The defendant replies that it has
not the remotest purpose, object,
thought, intention, imagination,
direct or indirect, express or im-
plicit, to contradict the witness in
any manner, shape or form what-
soever, conceivable or inconceivable,
and that if a witness has not made
a statement as the objection says
it is impossible to contradict or
to attempt ~~to~~ to contradict; and that
the information sought is directly
responsive to the unnecessary and
discursive course of ^{cross} examination.

Answer

of the Plaintiff himself

In a previous answer, I have stated as learned from tradition that the house alluded to in the question was used as a store for the sale of goods. If goods were ever delivered at the door of the store, I have never heard, and suppose that as usual they were delivered in at the Counter or in the room. Nor have I learned from ^{or was not} tradition that there was an enclosure in front of that house prior to the enclosure erected by Maj. Byrd.

52. Quest.

Please ~~state~~ describe ^{that} enclosure as well as you can

Answer

That enclosure consisted of post-and rails and pickets that passed through the top rail and were fastened to the bottom one about one inch and a quarter square. And to the best of my knowledge and belief, it was located over the line of the present enclosure, in front of the house ~~running over~~ in the line of the present enclosure

53. Quest.

Please state when the house was

erected on lot 38, known now as the Todd lot.

Answer

It was standing as at present at my earliest recollection; and when either the old or the new post was erected, I have never heard from tradition or otherwise.

54 Quest.

Please state the line of enclosure to it at the date of my earliest recollection.

At my earliest recollection it was the residence of Dr. Jos. B. Southall, Sr.; in front of it there was a porch and an enclosure, ~~the~~ running on the line of the present one, to the best of my knowledge and belief.

55 Quest.

Please state if that enclosure related entirely to lot 38, or extended beyond.

Answer

It extended Eastward about 20 feet beyond the location of the old Kitchen which ~~not~~ stands on ~~the~~ Church Street.

56 Quest.

The space then between that and lot 43 on which the ^{Walking} ~~old Presbyterian~~ ^{have now} ~~and present Baptist Church~~ stands, was vacant and unenclosed. Is this correct?

Answer

It was vacant and unenclosed
on the line of the street.

57th Quest.

Please state about what time the
old Presbyterian, which is the present-
Baptist Church, was erected on lot-
42.

Answer

58th Quest.

In the year 1846

Please state if the face of the said
Presbyterian Church, not meaning
the porch or vestibule thereof is not
on a line with the face of the old
Byrd and Todd dwelling-houses.

Answer

Without any observation as to that
fact, I think it is.

59th Quest.

Please & state if the fronts
of the ~~buildings~~ of the dwellings
and Church just mentioned are
not in the original line of the
said Church street.

Answer

The line of Church street within
my knowledge has never been defined
legally, but I have ever been im-
pressed with the belief, that those
houses and Church abutted on
what was generally supposed to be
the south line of Church street.

60th Quest.

Please state, whether or not
the line thus indicated is not

such a straight line as is shown on the aforesaid Jordan Thomas plan.

Answer Without having made any observation as of the fact, I think they are in a straight line.

61. Quest. - Lot 46 in the ^{in East Church St. in the South side of East Church St.} plan, formerly known as the Jesse Hodges lot - is now occupied by you. Please state as well as you can, the date of your earliest recollection of a house on that lot.

Answer From my earliest recollection there was a one story frame house with four rooms on the first floor and a passage, several attic rooms and a basement cell ar.

62. Quest. Please state if there was a porch to the house, and if so, its size.

Answer At the time specified there was neither porch or front enclosure to the house.

63. Quest. State when the porch was added and when it was enclosed, and the then line of enclosure.

Answer The present porch was added by Jesse Hodges about 1835; and the enclosure was put up by the same person about

the same, and it has remained from that time to the present - as it now is.

64 Quest.

State your earliest recollection of the house on lot 48 or 49 now occupied by Mrs. Jas. P. Jordan, formerly occupied by Mrs. Frances ~~the~~ Boykin.

Answer.

As stated in a previous answer there was a frame house on lot 48 or 49 at my ~~late~~ earliest recollection.

65 Quest.

Please state if the same had a porch, and if not when the same was added to it.

Answer.

At the time mentioned there was no porch to that house nor was there one until that erected by Mrs.

Frances Boykin in or about 1835.

66 Quest.

Please state if there ~~was~~ was any front enclosure to that lot about that date, and if not when the same was added.

Answer.

There was not; and I am uncertain whether one was added by Mrs. Boykin or not, or whether another person put the first one there.

67 Quest.

Please state, as well as you can, when and by whom the present enclosure

was put to the said lot.

Answer I am unable to give either to give either the person or date alluded to in the question.

68 Ques. Please state your earliest recollection of the house on lot 53, now occupied by T. S. Weston.

Answer In my earliest recollection there was a one-story frame house, with two rooms on the first floor and an attic, standing on the lot alluded to, without a porch or front-enclosure.

69 Ques. Please state if there be a porch to the same, if so when put there; and if there be an enclosure, when it was put to the said lot, and by whom.

Answer Within the last ten years, T. S. Weston has remodelled the house entirely, by enlarging its size and height. During said remodeling he constructed a porch to the front of the house, and also erected a front enclosure, as it now is.

70 Ques. Please state if the lots just-mentioned on East Church Street, to-wit: the houses now occupied by Dr. John R. Purdie, Mrs. Jas P. Jordan

and J. S. Weston, do not front, by the line of the face of the said buildings on what you have always understood to be the line of East Church Street on its South side.

Answer I cannot say that the three buildings alluded to in the question are in a direct line with each other ~~or~~ ~~for~~ on their front-faces. The house now occupied by John R. Perdie on lot 46, was, as I have learned from tradition erected previous to the incorporation of the town of Smithfield. From which circumstance, I have supposed it to have been, a land-mark for the definition of the line on the South side of East Church Street, and ^{according to the face of the said building} an extension of that line, back East and West. I have supposed to be the ~~the~~ line ~~on the~~ of East Church Street on its South side.

41 Guess.

Please state if the same ~~was~~ is not true of the house of Mrs. Jas. P. Jordan.

Answer I have previously stated my ignorance of the fact, that the face of the house of Mrs. Jas. P. Jordan

is in a direct continued line of the face of the house occupied by John R. Purdie, number 46, but if it be in a direct line with the face of Mr. Purdie's house, it abuts on the supposed south line of East Church street.

72 Quest.

Be pleased to state if the line projected along the face of the said building ~~to its Eastern~~ occupied by you, to ^{the} Eastern terminus of the Corporate limits would not be such a straight-line as is shown on the aforesaid Jordan Thomas plan and survey.

Answer

My answer to that question necessarily be similar to my last preceding answer. ~~By~~

73 Quest.

Please state ~~the date of your earliest~~ recollection whether or not there was a house on lot 69 now occupied by R. F. Barrett and known as the Barrett lot at the date of your earliest recollection, on the North side of Church street.

Answer

There was the present brick dwelling house.

74 Quest.

Please ^{state} if at that time there was a porch to the same and an enclosure

across, and if so state the location of the same.

Answer There was neither porch or front-enclosure.

75 Quest State when and by whom they were added.

Answer By Mallory M. Todd, about 1830

76 Quest Was the front enclosure to said porch ~~part~~ to it erected by the said Todd, on the line of the present enclosure?

Answer It was not. It only extended to the outer face to the underpinning to the said porch.

77 Quest State whether or not there was a building on lot 68-67, now occupied by Judge S. R. Atkinson at the date of your earliest recollection.

Answer There was, with a front-porch and a front-enclosure.

79 Quest State whether the building now on the said lot is the one that was there at that time.

Answer It is.

80 Quest Is the present porch & ^{front-} enclosure on the same lines as then

Answer I think they are

at the date of your earliest recollection

Q1 Question

Please state if, there was a building on lot 62 on the North side of East Church Street, now occupied by Mr. Bergen, formerly known as the Whitfield lot.

Answer

There was with no porch or front-enclosure

Q2 Quest.

Please state when the porch ^{the lot} was added to the same, when it was first enclosed in the front, and the line of the said front-enclosure.

Answer

A porch and front-enclosure were first added to or near that house by Samuel Whitfield, in or about the year 1828, I think. The line of which front-enclosure I think abutted on the ^{outer corner of the underpinning of the} underpinning of the porch.

Q3 Quest.

State whether or not subsequent to the date alluded to, there was an office on the West side of the said lot, occupied by R. H. Whitfield Attorney at Law. And if so, whether or not it was on a line with the west annex or wing of the main building.

At my earliest recollection there was a one-story frame warehouse, with ^{basement} a cell as in the location alluded in the question, which was converted into

into sleeping rooms in the first floor, and the basement into an office by and for the use of R. Whitfield Atty.-at-Law, which warehouse, I did ^{was in} ^{either} ^{or main building} line with the west-wing of the said dwelling-house called the Whitfield house.

84 Quest.

State whether ^{or not} there was any ^{front-}enclosure to the said office at the time alluded to, ~~and if not, when and by whom~~ the same was placed

Answer

When the basement was used as an office by R. Whitfield, there ^{was} ~~was~~ no front-enclosure to the office

85 Quest.

State whether or not the front-enclosure to the said building did not run from the face of the house to the face of the said office, leaving the front-steps of the house unenclosed.

Answer

~~I do not previously think when the side porch was first~~ It did not

86 Quest.

State whether or not there was a building upon lot 57 now known as the Col. C. F. Day lot, at the date of your earliest recollection

Answer

There was a two-story brick house, used by Benj. ~~Drum~~ Dray for mercantile purposes.

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87 Quest. Was there at that time any porch
any porch to the same?

Answer There was not either porch or
front-enclosure.

88 Quest. When and by whom was the porch
added to the said house.

Answer By Jas. Woodley, and about the
year 1830, to the best of my recollec-
tion

89 Quest. Was it of the same dimension
on the ^{present} front and according to the
present brick underpinning?

Answer It was.

~~90 Quest.~~ What ~~was~~ the time of the front-
~~enclosure~~ Was the front of the

90 Quest. Was there a building on the Wilson
lot next to the aforesaid Deay's at
the date of your earliest recollection

Answer There was a dutch roofed
frame house

91 Quest. Did it ~~for~~ then front on East-
Church just as the present building
does.

Answer It did; with no porch or front-
enclosure

92 Quest. ~~Did the State~~ whether or not at
~~the date of your earliest recollection~~
You have always understood and believed
that the aforesaid Whitfield house, ~~was~~

occupied by Mr. Bergen, and the
aforesaid Drew's store since con-
verted into a residence, and ^{now} oc-
cupied by C. F. Day fronted ~~with~~
~~their~~ ~~store~~ on the line of East Church
street on its north side.

Answer

To the best of my knowledge
and belief, it ~~was~~ was the general
impression of citizens of the town, that
the front of the main part of the
Whitfield house, and the store-house
of Benj. Drew, abutted on the north
^{undefined} line of East Church street.

Q3 Quest

~~Do~~ When I say undefined I mean
"undefined by legal proceedings"
Please state whether or not a line
projected by the fronts of the houses
aforesaid, to the Eastern terminus of
the Corporation limits, would not be
a straight line, as is shown by
the ~~fact~~ aforesaid Jordan Thomas
plans.

Answer

Without personal examination, I
think they would

Q4 Quest

Please state ^{mean} what ~~houses~~ ~~there~~
~~were on lot 32~~ whether or not there
^{according to the Jordan Thomas plan}
was any house on lot 32, extending
from the Western lot to Hill street at

Answer

the date of your earliest recollection.
There were two dwelling-houses. One on or near the North-west-Corner of the lot of wood and a Dutch roof, one on the South-East-Corner of the lot, of a similar material and construction. There was also a small Tailor shop near the last-mentioned house. The said houses fronting on the supposed north-east-line of Mason street, without porch or front-enclosure.

Q 5 Quest

If there be porches to the said houses please state when they were added, and by whom.

Answer

To the best of my knowledge and belief the porch to the house on the north-west-corner of lot-No. 32, now occupied by ~~the~~ C. W. Wilson, was erected by Wilson Davis's previous to the year 1826. As regards the porch to the house situated on the South-East-Corner of lot-No. 32, now owned by Maj. Colonna, I cannot say who erected it, as I do not know the owner of lot-32, next succeeding Nicholas Jordan.

Q 6 Quest

Please state if the porch to the lot now occupied by ~~the~~ C. W. Wilson

was not for many years after its erection open to the street and without any enclosure whatever.

Answer

I firmly believe it was.

97 Quest.

Please state if that did not so continue all during its occupancy by the late J. E. N. Wilks.

Answer

It did to the best of my recollection

98 Quest.

Please state if that did not so continue down to the period of the late war.

Answer

I believe it did.

99 Quest.

Please state as well as you can remember, when and by whom the present enclosure was erected.

Answer

I think it was by Capt. Jas. J. Chalmers, but I may be mistaken, about 1866.

100 Quest.

Please state if the porch to the Colonna lat. did not for many years after its erection, remain open to the street and unenclosed.

Answer

I cannot say correctly, and have not a doubt as to the affirmative of the question.

101 Quest.

Please state if there was a house on lat. 27, the Doak lat., now occupied

plied by by A. R. Whitehead, at the date of your earliest recollection, and if there was at the time a porch or enclosure to the same.

Answer There was a shuck roofed frame house without a porch or front enclosure.

102^{Quest} Please state when and by whom a porch was added to the same.

Answer About the year 1830 the late Bartholomew Lightfoot or the late William Folk erected a two-story frame annex to the south-east end of the house. In front of which annex he erected a porch and put a front enclosure to the whole building, and, I think, according to the present line of the enclosure. ~~I think I am mis-~~
~~103~~ Taken about ~~it~~

103^{Quest} State whether or not at the date of your earliest recollection there was a house on lot 26, the Masonic lodge lot.

Answer There was, whose exterior was the same as at present.

104^{Quest} Was there then, or is there now any porch or enclosure to the same.

Answer There was not and is not now.

105^{Quest} State if at the date of your earliest recollection there was any house

on lot 25, now occupied by ^{Mrs. N.} ~~John~~
M. Purdie

Answer There was a Dutch roofed frame house without porch or front-enclosure

106 Quest. State when the porch to the said house was added and by whom.

Answer I think the porch was added by Dr. Geo. Wilson about the time that Mr. Benj. Drew his father-in-law, became an occupant of the house, the date of which occupancy, I think, was about 1832.

~~107 Quest.~~ I do not remember a front-enclosure to the house at that early date; and I think the present one was placed there, by John D. Chalmers, about 1850

107 Quest. State whether or not there was any house ^{now occupied by John Wilson} on lot 24, at the date of your earliest recollection.

Answer There was a Dutch roof frame house used at that time as a school-house by Jas. Blawiehead, with its front facing the end of the street. That was the last house on the Corporate limits of that street.

108 Quest.

108 Quest. Please state if the ^{fore} houses aforesaid

on lots 32, 27, 26 & 25, did not
front ^{and about} on the line of Mason street
according to the best of your in-
formation and belief.

Answer

If the faces of the houses aforesaid
are in direct line with the face
of the Masonic hall, I think they
about - on the ~~for~~ supposed north-
east line of Mason street, inas-
much as the house now called
the Masonic Hall was erected
prior to 1752, and was a landmark
by which I presume, the abutment of
the other houses in the street was
regulated.

109 Quest.

Please state if the said sup-
posed line has not always been
regarded as the true and correct
line of that street on that said north-
east line of that street.

Answer

I have never heard ~~anything~~ me
express a doubt - that the line al-
luded to was otherwise than the cor-
rect line on that side of the street
nor do I entertain any doubt
about it myself.

110 Quest.

Please state if the said Masonic
Hall ^{not in its} was ~~originally~~ ~~total~~ character
a building that was established by

Elizabeth Smith the wife of Arthur Smith, for a free-school for the town of Smithfield.

Answer

There is record evidence in my possession to prove the affirmative of that question, except that the house had been previously used for other purposes, before it was purchased by the trustees of Elizabeth Smith as a free-school.

111 Quest.

Be pleased to state if upon the failure or inconvenience of carrying out ~~the~~ one of the conditions of the direction of Elizabeth Smith, it was not with her assent, or the assent of her heirs, testified to by their written agreement and duly recorded in the Clerk's office of Isle of Wight County, converted into a Masonic Hall, which it has ever since continued to remain.

The question objected to on the ground that it is irrelevant to the issue, ~~and that to prove~~ and for other reasons.

Answer
~~112 Quest.~~

One Generally speaking the question is correct.

112 Quest.

Be pleased to state if it has not

from that day to this as you have heretofore stated, in some sense been a public building and a conspicuous landmark.

Ans.

From the first - Monday in Dec. 1788, and continuously till the present time, it has been used as a hall of Smithfield Union Lodge No. 18, for which reason it has been somewhat a conspicuous building in the street.

113 Quest.

Please state, if a line run straight with the face of that building, and with the face of the building on the aforesaid lots 33, 32, 27, 26 & 25, ~~now~~ would not be such a straight line as is shown on the aforesaid plan of the town of Smithfield by Jordan Thomas.

Ans.

I am unable to answer that question having never made a personal examination ^{as to} of the fact embraced in the question.

114 Quest.

If the houses aforesaid, abut on Mason street as has been stated, and if the line of the said Jordan Thomas plan is drawn according to the face lines of those houses, would not the line of the street, as drawn by him

be correct - and would not those houses ~~front~~ front - on the street?

Question objected to because it is seeking to induce the witness to give an opinion upon a supposition ~~case~~; and ~~not~~ is not testimony as to facts; and for the further reason that it is leading

State whether or not, if the houses aforesaid, abut on Mason street, as has been stated, and if the line of the Jordan Thomas Plan is drawn according to the ^{lines} face of those houses, the line of the street, as drawn by him, would be correct - and those houses would front - on the said street.

Answer

The question contains two suppositions which have not in my opinion been clearly established as facts. If they be in manner established as facts my answer is in the affirmative

115 Quest.

I have understood you to have stated heretofore that the front of the houses on lots 32, 27, 26 + 25 are on what you have always understood to be the line of Mason street. Do I understand you correctly?

Ans.

You do if a line along the face of 32, 27+25 is direct-me with the face of the Masonic hall. I do not; if the face line of the said lots is not a direct-line with the face line of the Masonic hall

116 Quest.

State whether, ^{or not} a line projected, along the faces of the houses medlined, would ~~not~~ practically be just - as straight - as the line projected along the enclosures to the lots on that street.

Answer

I am unable to answer that question inasmuch as I do not know ~~that~~ ^{if} a line along the front-enclosures of said lots is a straight line or otherwise. But I am inclined to believe that the line embraced in the question is more nearly straight than would be a line along the enclosures.

#7

117 Quest.

You have heretofore ^{as I remember it} stated, that the ~~original~~ ^{earliest} line of enclosure known to you ~~at~~ to lot-16 on the south ~~west~~ ^{east} side of Mason street ran from the corner of the building on ~~that~~ corner of Mason street to the Adams lot.

Please state if I remember you correctly.

Answer

I think you do

118 Quest.

Please state if at the date of your earliest recollection there was any ^{dwelling} house on lot 17, now known and called the Adams lot.

Answer

There ^{was the present one} ~~may have been a kitchen, a dairy and a privy, but I remember no other dwelling on the lot, than the present one~~

119 Quest.

Please state if at that time there was any porch or enclosure to the same.

Answer

There was no porch or front enclosure, to the best of my recollection.

120 Quest.

Please state when and by whom the porch was added to the said building.

Ans.

I think it was added by John E. Adams about the year 1850

121 Quest.

Please state when the enclosure was put to the same, and if the enclosure was on the present lines

Ans.

I think an enclosure on the line of the present one, was placed there by the same person and at the same time mentioned in the last answer

136

122 ~~Quest.~~ Please state if the original building was according to your understanding, information and belief, in its front-line put on the south west-line of Mason street.

Answer I think it was generally supposed that the face of the building abutted in the supposed south west-line of Mason street.

123 ~~Quest.~~ Please state ~~if~~ if at the date of your earliest-recollection there was any house upon lot 22, now known and called the St. Clair lot.

Answer. There was a one-story frame house, in the north-east corner of Mason and Hill street, on lot-No. 21, at my earliest-recollections, on which location the present-Methodist Church is located, and there was a one story frame house, ^{or near} on the south-east corner of the said lot. There was no house on lot-No. 22; and to

~~124 ~~Quest.~~ State~~ neither of those houses was there a porch at front-indoors

124 ~~Quest.~~ Please state when the said Methodist Church was erected and if it stand on the same line with the ~~one~~ small house at which you have

mentioned.

Answer

About 1845 the Methodist Church was erected; and I think it ^{stands} is on the line of the original old frame house.

125 Quest.

Please state ^{and by whom} when the dwelling on lot 22 was erected.

Ans.

It was erected by Chas. Newell about the year 1825.

126 Quest.

Please state if it has a porch to it at the date of its original erection.

Answer

I think it had not; and that the present one was erected by the late Archibald Atkinson about 1832.

127 Quest.

Please state if at that time the ~~if~~ said porch was enclosed ~~or~~ or unenclosed.

Ans.

I think a front-enclosure on the line of the present one, was erected by the said Atkinson and about the same time with the porch.

128 Quest.

Please state if the said original houses in ^{their} fronts abutted on the line of Mason street.

I think they were in a line with

the Adams house which was generally supposed to be the South-west line of Mason Street.

129 Quest.

Please state if a line projected from Main Street along the face of the houses indicated would be such a straight-line as is shown in the aforesaid Jordan Thomas plan.

Answer

I think it would, but I am unable to make a positive assertion of the fact without a personal examination.

130

The further taking of these depositions is adjourned and continued until to morrow morning April 2, 1891, at 9 o'clock.

T. J. Barkham Notary Pub.

The further taking of these depositions was in pursuance to adjournment, as above, resumed this morning at 9 a.m.

Present: W. L. Felt, Counsel for Plaintiff
R. E. Boykin & R. S. Thomas, Counsel for Defect.

130 Quest

In the Cross examination on yesterday all mention was omitted of lot 43, the Watkins lot, at the bend and intersection of Church and East Church Street.

because it was the said bend and intersection of the said streets. Please state if at the date of your earliest recollection, there was any house on it.

Answer The Eastern portion of that house was standing at the time referred to. The western portion ~~was~~ ^{was} ~~erected~~ ^{erected} within my recollection by Dr. Geo. Wilson.

131 Quest. Please state if at the date of your earliest recollection there was a porch or front enclosure in front of ~~it~~ ^{each}, and if not, when ~~each~~ ^{each} was erected, and the date of the same.

Answer At the time indicated in the question, I think there was no porch, but to the best of my recollection there was a front enclosure to the house. I also think the porch was first erected by Dr. Geo. Wilson about the year 1816.

132 Quest. Please state the distance between the front ~~part~~ of the house and the original ~~the~~ enclosure as you remember it.

Answer I think the old building that I first remember was not in a line

with the faces of the Byrd and Todd lots; that it date back several feet south of that line. My impression is that the present enclosure is on the line of the original one. I think the distance from the face of the ~~poor~~ old house to the front enclosure was about 18 feet.

133 Quest. In your answer to question "6" upon your cross-examination you say that a porch existed ^{to} the house on lot "12" at the date of your earliest recollection. Please state if the house alluded to was the dwelling ~~known as~~ ~~the~~ on the lot known as the Scott lot, which was burned down about the year 1850.

Answer It was

134 Quest. Please state ~~the date~~ when the limits of the Smithfield were extended.

Answer It was in ~~1855~~ approved ^{Feb'y} ~~March~~ 28, 1856, as will be seen by the ad-
 1 spite records of Virginia, 1855-6 page 168.

135 Quest. Please state who drew that ad-
 ans. I, John R. Purdie, drew the ad-which was sent to the Legistator, which may have been altered before it was approved.

136 Quest.

~~In your answer~~ Please state when the porch to the said ~~By~~ ^{Dick} house was built and by whom.

Ans.

By Jas. R. Wilson, and about 1840, I think.

~~in 1809, by Mary Richard Byrd~~

137 Quest.

Please state when it was enclosed in the main street extension, and by whom.

Answer

By Jas. R. Wilson, and in or about 1840

138 Quest.

Was the ^{front} enclosure of that date in the line of the present ^{front} enclosure? And if not, when and by whom was it changed?

Answer

I think it was in the ~~to~~ line of the present enclosure

139 Quest.

Please state, ~~whether there~~ ^{if} there was a porch to the ^{house on the} next lot - the John A. Jordan lot; - at the date of its erection.

Ans.

There was not, and I think the present one was erected by John A. Jordan about 1844.

140 Quest.

Please state when ^{and by whom} it was enclosed ^{on the} and the line and date of the ^{front} enclosure.

Answer

By John A. Jordan, I think, and in 1844; being in the line of the present front enclosure.

141 Quest.

Please state, if the ^{front} enclosure around the two next lots as they now exist, to wit, the Chalness and Cooke lots

were in 1855 as they now are.

Answer I think they were.

142 Quest. Please state if the front-enclosure to the next lot, viz., the Drummond lot, is now as it was in 1855.

Answer I think it is.

143 Quest. Please state if the front-enclosure to the next two lots, viz., the Goodrich and the Dick lots, are the same now that they were in 1855.

Answer I think they are.

144 Quest. Please state the first house that was erected on the north-west side ~~of~~ of the extended portion of Main street, and the date of its erection.

Answer The house ~~now~~ immediately opposite the store on the O. S. Dick lot, ~~was~~ occupied by John Gwaltney, & belonging to the estate of R. Henley Prettow, was erected by John G. Pinner in or about 1826.

145 Quest. Please state when the porch to its front was built.

Answer I think it was prior to 1855.

146 Quest. Please state the next house that was built on the same side of the street.

Answer A lawyer's office was erected by John G. Pinner, in the present location of

Mrs. S. Pope's building is about -
1828

147 Quest. Is the present-house in its ^{face} fronting
on the line of that ~~said~~ extended
Main Street, on the same line as
the office aforesaid?

Answer I think it is

148 Quest. Was there any enclosure ~~and~~
~~in~~ ~~for~~ to the front of that office at
the date of its erection or at the
date of its removal for the present-
building?

Answer I think there was not -

149 Quest. Please state what was the next
house erected on that same side of
~~the street~~ that extended street.

Ans. The ^{house} opposite opposite to William
Drummond's house and lot; and
#50 one very near to it - ~~was~~ erected
by John B. Pinner about the year
1838.

150 Quest. Were the front-enclosures to those
houses in 1855 the same as now?

Ans. I think there were no front en-
closures to those houses in 1855;

#51 Quest. and that the present-enclosures were
erected when those buildings were con-
verted into dwellings

one ^{of} those buildings was originally erected for Geo. E. & William Hines as a store, and the other for the tailoring business.

151 Quest. State the ^{when} next house on the same side of the street was erected and by whom.

Answer I think the next house was erected by Capt. John P. Thomas, about 1848

152 Quest. State if its present front-enclosure is as it was at that date.

Ans. I think it is

153 Quest. State the next house that was erected on that side of the street, and the date of its erected.

Ans. I think it was the house now occupied by John Willis Johnson prior to 1855, and by whom I do not remember

154 Quest. Please state if its front-extends beyond the line of the front enclosure in 1855.

Answer There was no front-enclosure in 1855. To the annex which has been added since as a residence, there is a porch and a front enclosure both erected since 1855; also a porch to the store, which has been erected

Since 1855.

155 Quest.

Please state the next house that was erected on that same side of the street and the date of its erection.

Ans.

The two-story frame dwelling now owned by J. D. Cofer, was erected by Edward Valentine about the year 1840, and at the same time there was erected to it a porch and front enclosure.

156 Quest.

Please state if the present line of the front enclosure is about what it was at that time, and if not what changes have been made.

Answer.

To the best of my knowledge and belief, no changes has been made in the line of the front enclosure since it was first erected.

157 Quest.

State the next house on that same side of the street ^{that} was erected and the date of its erection.

Answer.

I think it was the house now occupied as a dwelling by Jos A. White; and the date of its erection ^{was} about 1845.

158 Quest.

Please state if its line of its front enclosure has been changed since that

Answer time, so far as known to you.
The present enclosure may have been the first erected, but the date of its erection I do not know. And what ~~have~~ changes have been lately ~~been~~ made in its front enclosure are not known to me.

159 Quest Please state what house on that same side of the street was the next built.

Answer The house now occupied by Jas. A. Johnson, as carriage shop, was erected since 1855.

160 Quest State the next house that was built on the same side of the street.

Answer The house now occupied by Wm. B. Rouse as a cabinet-shop; which was erected since 1855.

161 Quest State the next house that was erected on that same side of the street.

Answer The house now occupied by Wm. B. Rouse as his residence, erected since 1855.

162 Quest State if its front-enclosure on the said extended portion of Main Street ~~or~~ ^{is} now what ~~they were~~ ^{it was} when first placed on the said street.

Answer I think it is.

163 Quest Then speaking generally, the balance of the ^{not enumerated} houses on that same extended side of the

~~Side~~ of the street have been erected since 1835, and the front enclosures to the same remain as they were when placed there. Am I correct or not?

Answer

You are correct - to the best of my knowledge and belief ^{there}

164 - Just

Please state whether or not - I was ~~not~~ by death or otherwise, in about 1810, a lack of trustees of the town of Smithfield, and if that lack did not practically continue until about 1835.

Answer

Within my recollection, the first Board of Trustees appointed for the town of Smithfield, after those named in the Act of incorporation of 1752, if there were any named in that act (I do not know whether there any named in that act or not), were elected about 1816, and only held office for a year or two. Since 1816 and up to 1855 or '56, I think there were no Municipal Officers of the town.

And further this defendant saith not -

M. R. D. M. M. M.

Geo. R. Atkinson being duly sworn depose and saith ~~to~~ in answer to the following questions:

1 Quest.

State your age and residence

Answer

By the family record I was born on the 4th day of August 1823; my residence is Smithfield

2 Quest.

State whether from your youth up it has been your place of residence

Answer

It has with the exception of the time I was off at ~~school~~ school and College

3d Quest.

State your profession and your official position in the County of Isle of Wight

Ans.

Attorney-at-Law; and County Judge

4 Quest.

State whether or not you graduated in law at the University of Va. and if so, the year of your graduation, & how long you have been a practicing attorney at the bar.

Ans.

I graduated in 1844; and was admitted to the bar at ^{the} October term of Court of the same year; and have been a practicing lawyer ever since

5 Quest.

except - from 1853 to 1868

5 Quest.

State whether or not you are familiar with the lat- of V. Wrenn in these proceedings mentioned, and if so how long you have known the same.

Answer

I am, and have known it from my earliest recollection. I can't fix any exact date. I was born

~~6 Quest.~~

on the diagonal corner in what is now called the Coper lat.

~~6 Quest.~~

and moved away when I was about four years old.

6 Quest.

Please state whether or not you were the attorney in the suit styled ~~Beyersbach vs. Goodwin et al.~~ in which Wamble et ux vs. Davis et al., under which the said lat- of the said V. Wrenn was sold, and the Commissioners making the conveyance.

Answer

I was.

7 Quest.

State the number and location of the said lat- as it appears upon exhibit ~~XX~~ filed with the defendant's answer to the plaintiff's bill.

Plaintiff objects to the question on the ground that the plat filed as exhibit "X" and referred to in the said defendants' Answer, is not a properly exemplified, authenticated copy of any record of the Clerk's Office of Isle of Wight Co., or of the Surveyors books of the said County.

Answer

The number of the lot is 33, and its location is at the corner of the streets leading down to Pagan Creek and the street that intersects it at right angles.

8th Quest-

Please examine the paper now handed to you, heretofore filed ^{depositions} with these ~~papers~~ and ^{marked} called exhibit "A" endorsed a plan of the town of Smithfield in Isle of Wight County, laid off by Jordan Thomas, late Surveyor of the said County, and tell us from it the number and location of the said lot ~~as it appears upon the said plan~~ as it appears upon the said plan.

Plaintiff objects to this plat-marked exhibit "A" being introduced until it is shown to be a record

of some office of record authorized to preserve same.

Answer

The number ~~and location~~ of ~~the~~ ~~so~~ of the said lot is 33, and is located at the intersection of a street leading to Pagan Creek by a street which intersects it at right-angles.

9. Quest-

From your knowledge of the town of Smithfield, what are those streets usually called?

~~Answer~~

Question objected to on the ground that it is leading.

State whether or not you are familiar with the names of the respective streets usually applied to them by the Citizens of the ^{of Smithfield} town, and if so what are they?

~~Answer~~

The question is objected to on the ground that it refers to streets, without fixing what streets are meant.

The street leading to Pagan Creek is usually known as Main Street, and the street intersecting it is usually known as Mason Street.

10. Quest-

Please state whether or not

the lot of the said V. Wrenn, ^{is situated} at the intersection of the streets just-mentioned.

Answer It is

11 Quesd- State the date of your earliest acquaintance with the said exhibit "A"; and the time place and circumstance ~~under~~ under which you became acquainted with it-

Answer I don't recollect - this year, but - I think it was about - 1842. I made a copy of a paper similar to this, but whether it is the same paper or not - I don't recollect.

12 Quesd. State where ~~that said paper~~ you found that said paper from which you made ~~that~~ said copy; by whom it was delivered to you, and what was said at the time.

Answer. It was in the possession of Mr. Robt. H. Whitfield; I found it in a cup-board in his room. I should say this was the same paper or a copy of it; I recognized Smithfield from the one I copied from; and I recognized it from this plan

13 Ques- State whether or not you have ever known of any plan of the town of Smithfield other than the Jordan Thomas plan.

Ans. Plaintiff objected to this plan-marked exhibit "A" being introduced until it is shown to be a record taken from some office of record, authorized to preserve same.

Ans. I have never known of any except this plan, and the one I copied, which I think identical with it.

14 Ques. State the date of your earliest acquaintance with the plan of the town of Smithfield endorsed "a plan of the town of Smithfield in Isle of Wight County, laid off by Jordan Thomas, late surveyor of said County, seen and examined by you in the Clerk's office of the County Court of Isle of Wight County in the possession of N. P. Young, Clerk thereof."

Question is objected to on the ground that the plat or paper has not

been proven to be a properly authenticated record of any office of record authorized to preserve same; and for the further reason that it is leading.

State whether or not - you have ever seen in the Clerk's office of the County Court - of Isle of Wight County, the plan of the town of Smithfield laid off by Jordan Thomas late Surveyor of the said County.

Question is objected to on the ground that the plan referred to has not been proven to be a plan of the town of Smithfield, and for ~~further~~ other reasons.

Answer

I have no distinct recollection of having seen the paper in the Clerk's office.

15 Quest.

State whether or not - you have seen in the Clerk's office of Isle of Wight - Co. a paper endorsed "the pt" "A plan of the town of Smithfield," and if so, whether or not - the paper heretofore exhibited to you, and filed exhibit "A" is the said paper.

Answer

I am not positive that I ever saw ~~that~~ a plan of the town of

16 *Quest.*

Smithfield in the Clerk's Office. Please state whether or not, in the suit of Thomas Trustee vs. Eley you were ^{one of the} Counsel for the plaintiff, and whether or not the Clerk of the Court was called upon for the production of the ~~plan~~ plan of the town of Smithfield, and state the facts and circumstances connected therewith.

Question objected to on the ground that the records is the only evidence ~~that~~ that can be introduced as to facts therein, and we call for the production of the same, and for other reasons.

Answer.

I was one of the Counsel for the Plaintiff in the said suit; and the Clerk was called on for a plan of the town of Smithfield, and produced to the best of my knowledge and belief this paper.

17 *Quest.*

State whether or not it was admitted without objections, by the Counsel on either side, to the Court -

The question objected to on the ^{same} ground of Question "16."

Answer It was,

18 Quest- State whether or not - it was used as evidence in that Cause and relied on as such.

Answer It was

19 Quest- State whether or not - from the said paper shown to you, you can locate the lot - called the Hotel lot, and if so state the number.

Answer I can. The no. is 34

20 Quest. State whether or not - prior to Nov. 1898 a pailing ran from the said Hotel lot - to the house of T. Wrenn, and if so describe its location.

Answer ~~It~~ A pailing ran from the south-west corner of the hotel building, and in a line ^{with the face thereof} ~~thereof~~ ~~and~~ to the north-east corner of ~~the~~ Mr. Wrenn's house, and in a line ~~thereof~~ with the face thereof.

21 Quest State the line of the ^{if any} ~~was~~ of the said lot, on Main and on Mason Street as they existed at the date of your earliest recollection

Answer At the date of my earliest re-

collection there was a one-story wooden ^{to building} that stood on the ^{at Main + Mason Street} corner, I think ~~about~~ where Mrs. Wrenn's house stands now. A fence ran from the South ~~&~~ west-corner of the hotel to the North-east corner of that building, then from the South-east corner of the building on Mason Street to the lot now occupied by C.H. Wilson formerly known as the Chalmer's lot. The said

~~22 Question~~ house stood in a line with the ^{the face of the hotel} ~~corner~~ on Main Street, and in a line with the face of the Chalmer's house on Mason Street.

22 Quest. State ~~when the said fence~~ whether or not you know if the said store house has been removed, and if so to what point what if any other buildings have been placed upon the said lot, on the Main Street and Mason Street, and if so, all of your knowledge relating to the original ~~&~~ enclosures ~~subsequent-enclosures~~ more, and of the lot generally

Answer

Said building has been removed back from Main Street on Mason Street, in a line with its former position on Mason Street. And there has been erected on the corner of Main and Mason Street where it formerly stood a two-story brick house. This house was built ~~so~~ by Mr. Merritt

Wamble. I do not recollect ~~of~~ the year. As originally built he had a store in the corner of Main and Mason Street, with a door entering from each street. The ~~to~~ entrance to the ~~house~~ dwelling on Main Street was as it is now. The upper floors were occupied as a dwelling, and the room in the North East-corner was an entry to the dwelling part. The house was occupied by Mr. Wamble as a dwelling and as a store-house. As ~~so~~ originally built the house had but two rooms on the lower floor. Afterwards he added a two-story wing with one wing on each floor on Mason Street. The fences around the lot ran as they did

when the old house stood there
 After a few years, Mr. Wampler ceased
 to use the rooms on Main and
 Mason streets as a store and had
 erected a small enclosure on the
 sides of the building on Main &
 Mason streets; which remained up
 to Nov. 1890, when Mr. Wampler
~~was~~ moved it. No alteration
 was made in the enclosure
 between his house and the Hotel
 on Main street, and the ~~Chalmers~~
 Chalmers house on Mason street.

~~23 Question~~ If I understand you correctly,
 that from your earliest recollection
 to Nov. 1890, ^{the enclosure of} the said lot on
 Main and Mason streets were
 as follows: Commencing at the
 Northwest-corner of ~~the~~ the Hotel,
 and in a line with the face there-
 of, from thence in a line with the
 face ~~of the~~ ^{of the} the old house, and sub-
 sequently with the face of the new
 house thence from the Southwest-
 corner of the said house to the face
~~of~~ of the Chalmers house on Ma-
 son street, except the small en-

~~enclosure on the side of the said
present house on Mason and
and Main Street. Am I cor-
rect?~~

23 Question

If I understand you correctly
from your earliest recollection to
Nov. 1890, the enclosure of the
said lot - commenced at the
northwest - corner of the State, &
in a line with the face thereof,
thence to the face of the old house
and subsequently the present -
house, thence from the south -
west - corner of said houses to
the ~~face~~ of the Chalmers
house, with the exception of
the small enclosure, built by
Mr. Wauble. Am I correct?

Answer

24 Question

You are
Exhibit "H" filed with the
defendants answer is here shown
to the witness, and he is asked
to explain therefrom the line
of the original enclosure and
the change made in the said
line by Merritt Wauble, after
he ceased to use the lower rooms
for ~~the~~ store as aforesaid

Answer

The original line commenced at the ~~top~~ North-west-Corner of the State, thence along the black line to the said Wamble's house thence along the said house to Mason Street, thence down said Main Street on the black line to the Chalmer's lot. The alteration made by Mr. Wamble was to erect an enclosure on Mason Street commencing at the South-west-Corner of his house, some distance out; ^{into Mason Street as shown by a red line} the distance not known, thence ~~along~~ along Mason Street, as shown by the red line toward Main, and beyond the North-west-Corner of his house, thence down Main Street parallel to the front of the house to a point opposite the North-East-Corner thereof and thence to the said ~~house~~ Corner.

25 Question

From the said exhibit and diagrams show the change that was made in the said line by J. W. Wren in 1890.

Answer

The change consists in extending the fence on Main Street from

the point opposite the North East corner of the said house to the line of the Hotel lot. ^{as shown by the same red lines} Whether said new fence is farther from ^{the front of} the said house than the old fence, or nearer thereto I don't know.

The further taking of these depositions is hereby adjourned until to-morrow morning, April ~~30~~³⁵, 1891 at 9 a.m.

T. J. Barham Notary Public

The further taking of these depositions was resumed on April 3^d 1891 at 9 a.m. in pursuance to adjournment

24 Quest.

Present: W. L. Fisk, Counsel for the plaintiff,

R. S. Thomas, counsel for the defendant.

26 Quest.

State whether or not - the space in front of the aforesaid removed enclosure, lying between the porch of the aforesaid Hotel, and the front of the said house of V. W. Neum has always within your knowledge and recollection been open to the public and used by them freely as a street.

Ans.

It had the whole of it, up to the ^{time} of Mr. W. Noble's enclosing the front and side of his house, and from that time down to now.

27 Quest.

Please state whether or not, the deeds

that you have examined as an attorney
and drawn as such, have used num-
bers upon a certain plat to desig-
nate them, and your knowl-
edge ^{generally} upon that subject.

Question is objected to on the
ground that the deeds themselves are
the only evidence ~~that~~ of matters
contained therein, and the production
of the deeds is called for; and for
the further reason that the ques-
tion assumes that there is a plat
without fixing which plat is re-
ferred to.

Answer

I have examined deeds of lots in
Smithfield and the early deeds
invariably give the number I
think. I have drawn deeds and
my rule was whenever I knew the
number of the lot to describe it
by its number. I may have
drawn deeds without describing it
by its number. I don't recollect.

2d Quest.

Please examine the deed of Thos.
Smith to William Robertson, of
the 26th day of October 1733, her-
ewith handed to you and marked
"11", and tell me from it, whether

Dutch roof frame-house, consisting of one room and a passage on the first floor; and perhaps the same on the second floor. ~~From~~ about 1825, the late Benj. Drew made a two story frame annex to the west-end consisting of one room only on each floor to which dwelling no alteration has been externally made, with the exception of a porch and front-enclosure; which left the house as at present. The house of Col. C. F. Day, at my earliest recollection, was a two-story brick house, erected by the late Benj. Drew, as a store-house for general merchandise. It remained in that condition until about the year 1830, ^{when} the late Jas. Woodley purchased the lot and made suitable alterations to the house for use as a residence for his family. Since that change it has undergone no exterior alteration with the exception of a porch and front-enclosure, added by Mr. William H. Day.

259 ^{Question} I ^{stare} infer from your examination in this case that it has been the immemorial custom, of ~~city~~ residents of

85
of Smithfield, beginning before
your recollection, and extending to
the present times, to build yard
enclosures and porches in front of
their houses though the ^{faces of} said houses
~~stood~~ ^{abutted} upon what you conceived to
be the line of the street. Do I un-
derstand you correctly?

The defendant excepts to the fore-
going question, because it - presup-
poses that the witness has testified
as to tradition; and that ~~it~~ ^{it} further
presupposes that the ^{face of the} ~~houses~~
~~and enclosures~~ in the said town
~~stood~~ ^{abutted} upon the street lines of the
streets, whilst in his cross examination
he has only stated his impression con-
cerning the same, and for the reasons
heretofore noted; and further that the
witness has not testified to any im-
memorial custom as stated in the
question.

Answer

Your understanding as expressed in the
question is correct. I have never known
any serious or valid objection made
by any person, to the erection of a
porch or front front-enclosure by
another. As regards my recollection

or impression from time immemorial
 I can only say that my grand-
 father and the late Mallory Todd
 Senior, erected porches and enclosures
 in the front of their houses, many
 years before my birth, those in
 front of my grand-father's house
 from tradition, having been erected
 soon after the peace of 1783 the
 ratified between the U.S. and Great-
 Britain

26 Question Please state whether such customs
 applied as well to main street as to other
 parts of said town.

Answer. The Customs did apply to all the
 streets of the ^{said} town.

27 Question Please state whether it was or
 not the practice ^{or custom} so to build such
 enclosures and porches, without ask-
 ing the permission of any one.

Answer To the best of my knowledge
 and belief it was.

The defendant by its counsel
 here renews its exception heretofore
 taken to all questions and answers of the
 witness on his cross examination in
 reference to any matters as to which
 he was not examined in chief, or which
 are not relevant to the issue, and for

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other reasons, ^{and} ask that the answers to
said questions be excluded. And it
further excepts to any answers ~~to~~ after
said witness in said cross-examina-
tion, and that the same be excluded
which are not legal evidence in
this case.

Re-exam

Re-examined without waiver of excep-
tion, by the Counsel for the defendant:

1st Question

In question "5" after cross-examina-
tion, alluding to the vacant space
in front of the V. W. Wren lot No. 33
lying between the State and Mason Street,
asked if you had any more or any other
reason for thinking that the said open
space, was a part of the street, than for
supposing and believing that similar
open spaces on the opposite ^{side} of the street
extending to the faces of the houses on
the opposite side of the street constituted
a part of the street. Be pleased to state
what are now the open spaces on the
said opposite side of the street.

Answer

Yes. at the corner of Main and
~~Mason~~ ^{Pierce} street on the north side, there is
a vacant space in front of the old clock
office extending from Pierce street
to the present enclosure of J. O. Thomas

1
The depositions of John R. Purdie and others, taken before me, T. J. Barham, a notary public for the County of Isle of Wight, pursuant to the notice hereto annexed, and by agreement of parties, at the office of R. E. Boykin, in the town of Smithfield, Va., on the 26th day of March 1891, between the hours of 8 a.m. and 9 P.M. to be read in evidence in behalf of the ~~defendant~~ ^{defendant} ~~Corporation of Smithfield~~ in a certain suit depending in the Circuit Court of Isle of Wight County, wherein V. Wrenn is plaintiff and the Corporation of Smithfield is defendant

Present: Gilmore & W. L. Folk
Kendall, Counsel for Plff.
R. E. Boykin & R. S. Thomas, Counsel for Def.

John R. Purdie, being duly sworn, deposes and says as follows:

1. Question
Answer

State your age and residence
The family record states that I was born on the 31st of July 1809

2. Question

^{in the town of Smithfield, Va.}
State whether you have resided here continuously since that time.

Ans.

I have, with the exception of few months that I resided in the County of Sussex, when I first commenced

practicing medicine

3d Quest.

State whether or not you are familiar with that lot-known upon the plat of the town ^{of Smithfield}, as lot-33 now owned and occupied by V. W. Wrenn, the plaintiff in the pending injunction suit against the town of Smithfield.

Objection

The plaintiff objects to the question on the ground that the plat referred to in the question is not identified; but that it is assumed that there is a plat without fixing what plat is meant.

The ^{defendant} ~~plaintiff~~ replies that for the purposes of identification it will repeat the question, and make it more exact.

Please state whether or not you are familiar with that lot-known upon the plat of the town of Smithfield as lot-no. 33, which is described as such in the plan of the town of Smithfield in Isle of Wight County, laid off by Jordan Thomas formerly a surveyor of the said county, lodged in the Clerk's office of the

County Court of Sale of Wright
County, a copy of which is filed
with the defendant's answer marked
"X", which ^{said but} was conveyed by J. M. Boy-
kin and others, ~~not~~ to Robert Butler
on Jan'y 6, 1812, and by successive con-
veyances to the present owner V. Wrenn,
according to the said survey, which is
repeatedly alluded to in the plaintiff's
bill, and the ordinances of the town
to which he refers.

The plaintiff objects to the question as
amended; first because ~~no~~ ^{no} ~~properly~~
~~the plat~~ filed as exhibit "X"
and referred to in said defendant's
answer is not a properly exemplified
authenticated copy of any record of
the Clerk's office of Sale of Wright
Co. or of the surveyor's books of said
County, ~~and because it is assumed that~~
~~it is the survey referred to in the~~
~~plaintiff's bill, which the plaintiff~~
~~denies~~

1 Question Be kind enough to examine the paper
which I now hand to you, read the
endorsement upon the said paper
and give us your knowledge
of the same.

4

~~Answer~~

Plaintiff objects to this ^{plat} copy being introduced until it is shown to be a record of some office of record authorized to preserve the same.

Answer.

I have seen this paper many times within the last sixty years. It was first shown to me in the Clerk's Office of Isle of Wight County, by the late Nathaniel Young, Clerk of the County ~~of the Court~~. I have no information that it was ever

recognized as an official record. ^{in disputed land cases in Court} It ^{is} engaged! A plan of the town of ~~the town~~ Smithfield in Isle of Wight County laid off by Jordan Thomas late surveyor of Isle of Wight County.

The said paper is marked "A" and herewith filed with these depositions.

I Question

State whether or not this said plan which you have just examined is the first survey of the town, of which you have ever known.

Plaintiff objects, on the ground that the question assumes that the witness knows this to be a survey when he has stated that he has no information that it was ever recognized as an af-

5

official record in disputed land cases in Court.

Answer. It is the final survey of the town that I have ever known or heard of.

6. Question State whether or not you have ^{ever} known this survey to be recognized ^{and acted upon} as the original survey of the said town, and if so in what manner.

Answer I have never known it recognized as an official paper by any official authority; nor have I ever known it acted upon as an official paper by any official authority in Court or out of Court. I have frequently heard it referred to but have never known it accepted as authority by any official authority. I never attended Court during the discussion of ^{the disputed} land cases of ~~the~~ between John P. Thomas' representatives and Barnett. He understood that it was shown in Court in that case but was not accepted.

7. Question State whether or not the lots in this said town have within your knowledge been sold ~~as numbered~~ by the said survey and as numbered in the said survey.

6
Answer.

I have no such knowledge. In deeds conveying the title to these lots, I think the numbers in the deeds accord with the numbers on this plan.

7 Question

On this said plan of the survey as drawn by the said Jordan Thomas, what is the number of the lot owned by V. Wren?

Answer.

It is number 33.

6. Question

State how this lot is at present bounded.

Answer

on the north-west by Main Street; on the south-west by Mason Street; on the south-east by the lot no. — (I don't know the no.) now occupied by C. H. Wilson, and on ^{the} north-east by the lot no. — now occupied by Jas. A. Brown

7. Question

State your earliest recollection of this lot, whether enclosed, or unenclosed, the houses then and now on it; the location of the same and its enclosures down to November 1890.

Answer.

At my earliest recollection it was an enclosed vacant lot without a house on it of any kind. It was generally used for garden purposes, for many years, until a frame house was

moved from the Hotel lot to the cor-
 ner of Main & Mason Street, the pres-
 ent location of Mr. V. Wrenn's house.
 She said that the ~~the~~ old frame house
 was removed to said lot. I am totally
 ignorant of; I think it must have
 been before 1830. It was before I was
 of age. It remained there until it
 was removed to its present location
 on Mason Street, ^{where it is} now used by Mr.
 Wrenn as a stable. It must have
 been about 1835. Its removal was
 occasioned to make room for Mr.
 V. Wrenn's present house, ^{which was built by} by Merritt
 Wamble. ~~as~~ She used the ground
 floor, ^{with the exception of the hall} as a store and counting room,
 and the upper story as a dwelling
 for himself and family, and there he
 resided until his death, in 1834.

It was, ^{when I first knew it,} enclosed by a post-and-rail
 fence, ^{running} from the ^{North-west} corner of the Hotel
 to the ~~corner~~ of Mason Street, and
 then from Mason Street down to the
 lot now ^{occupied} ~~owned~~ by C. H. Wilson.
 After the old house was moved there
 the fence, ^{on main street} ran from the North-west-
 corner of the Hotel to the North-east-
 corner of the old house. On Mason

8

Street the enclosure ran from the South-west corner of the old house to the North-west corner of the lot — now occupied by Chas. Wilson. There was no front enclosure to the ^{or yard} old house. From the erection of the present brick house now owned and occupied by Mr. V. Wrenn, I think the enclosures ~~was~~ ^{were} similar to those in Nov. 1890. I ~~do not~~ In my references to enclosures I do not allude to anything but lot 33.

8 Question

When you first knew this lot, and when it was enclosed as a garden state from what point the fence or enclosure around the same began and where it ended in Mason Street.

Answer

A From the North-west corner of the State to Mason Street; from the point that it struck Mason Street to the North-west corner of lot No. — now occupied by Chas. H. Wilson.

9 Question

When the old house alluded to was placed on the corner of Mason and Main Street; I understand from your testimony that the fence or enclosure ran from the ^{North-west corner of the} Hall to the ~~old house~~ ^{old house}, North east corner of the old house, thence from the

9

South-west Corner of the old house
to the north-west corner of lot now
~~or~~ now occupied by C.H. Wilson and
that no alteration was made in the
said fence except that the old house
was placed on the Corner of Main &
Mason Streets; and so much of
said fence was removed as to allow
the old house to be placed as aforesaid
on the line of the fence, and I correct?

Answer

Your understanding of the language
used in my answers is correct.

10. Question

Did the enclosures remain the same
after the house built by Merritt
Wombell was erected ^{up} to ~~the time~~
~~the~~ Nov. 1898, with the excep-
tion of the yard or enclosure in
front ^{and on the side} of the house of V. Wrenn on
Main and Mason Streets?

Answer

I believe the enclosures did remain
the same.

11. Question

If you know, will you state whether
or not the house of V. Wrenn abuts upon
Main and Mason Streets?

I do not know the line of Main
or Mason Street; or whether these lines
have ever been established by any of-
ficial Authority.

12. Question State whether or not, from ancient reputation the said house is so situated.

Answer I have no knowledge of any ancient reputation about it. I have no knowledge of any ancient reputation as to the lines of ^{either main or mass} the street up there at V. Wrenn's,

13. Question When the frame house ~~that~~ was removed from the Hotel ^{lot} and placed on lot 33, how was it used and by whom was it occupied?

My first-recollection while he was a school-boy, it was occupied by William Falk, the grand father of ~~at~~ Willie Falk as a saddlery establishment; then by J. E. N. Wills as a grocery store; then by the Rev. Smith Sherwood as a shoe-store, and a shop for the manufacturing of shoes; and then by Henry Calcott as a shoe-store and manufacturing of shoes. I am not certain whether I have given the regular order in which it was occupied by those persons; and it may have had other occupants; but I believe Mr. Calcott was the last occupant before Mr. Wamble built his brick-house.

11
14. Question State whether or not you remember among those who may ^{have been} omitted the names of R. L. Thomas and Dr. Robert M. Boykin.

Answer To the best of my recollection Thomas and Boykin did occupy it as a store. I am almost certain of that.

15. Question State whether or not there was any enclosure of any kind to this house on Main or Mason Streets?

Answer I do not remember any enclosure on Main or Mason Street until the death of Merritt Wamble, in 1854.

16. Question Then there was no enclosure to the new dwelling erected by Merritt Wamble on the spot where the old frame building stood before it was removed, on Main or Mason Street, prior to 1854.

Answer I think not; I do not remember any.

17. Question You have stated that the lower floor with the exception of the hall, was used by the said Merritt Wamble as a store. State whether or not there was a door ~~in~~ on the Main Street

12.

side, and a door on the Mason Street side, each within a few feet of the other into which you entered from the said streets respectively, without any enclosure or steps or hindrance or obstruction of any kind.

(Answer) There were the two doors alluded to: one on Mason, and one on Main Street, within a few feet of each other. The ingress and egress to the store through those doors was by a step of about five or six inches from the ground, inasmuch as the floor of the ~~store~~ ^{store} was near the ground. ~~This step was the only obstruction to the doors~~ There was no enclosure or hindrance or obstruction, and the only step was about five or six inches high. There was a door near the North-East corner of the building which led to the hall, by a step of similar height to that of the store-room, and without any enclosure to it. The last mentioned door was on Main Street.

18. Question. This being a store and residence, the place where the old frame store

12,

formerly stood; state whether or not it was understood to be on the line of Main and Mason Street and at the intersection of the same

Answer — I understood the building to be on the line of Main and Mason Street. I did not hear any persons express an opinion on the subject. It is probable that Mr. Wamble placed the building on the line what he supposed to be the line of Main and Mason Street.

19 Question Was it ~~not~~ not placed on the line of the old enclosure, and where the old frame building stood?

Answer I think and believe it was.

20 Question State whether or not you ever heard that Wilson Davis or any preceding owner claimed that the boundaries of the lot ran ~~the~~ beyond the enclosure to the same.

Answer I never heard of any such claim being asserted by Wilson Davis or any preceding owner.

21 Question You have stated that you understood the aforesaid buildings to be on the line of Main and Mason Street; state how that understanding was derived.

16

Answer It was a mere supposition of my own, I never heard any-body speak of it, that I remember.

22 Question State whether or not you were Mayor of the town of Smithfield before the war, and if so at what date.

Answer I think I was; and if so, it must have been in 1857, 1858 or 1859, and probably all three years. My memory is feeble about events that occurred then and I may be mistaken about being Mayor then, but I think I was; I can't say positively. By reference to the records of the Council Meetings ^{which I} ~~I~~ was not Mayor until after the war.

23 Question Do you remember the time when Geo W Britz was sergeant of the town of Smithfield?

Answer Although I remember that he was the sergeant of the town of Smithfield, ~~but~~ I do not remember the time when he performed the duties of that office. It was prior to the war and about the year 1856 or '57.

24 Question State whether or not the side-

walks after said town were made while A. Atkinson was mayor and Geo. W. Britt was sergeant; and whether at the said time the said man was put on the side-walks of the Main Street of Smithfield, between the Hotel lot and the corner of Mason Street in front of the lot now owned by V. Warren.

Answer

I do not know whether man was put on the side-walks while Mr. Atkinson was mayor or not. I distinctly remember that there was man put on the side-walk in the locality in question. But I have no knowledge, by what authority it was put there, by whom or at what date. It was customary then for the superintendant of the streets to fill up holes in them with man. After 1856 it was the duty of the superintendant of the streets to correct any bad places in the streets, but prior to that time (1856) the over-see of the roads appointed by the County Court worked on and repaired the streets.

from the County wharf to Cham-
pin's Run, four miles in
distance.

Qⁿ Question ^{state whether or not} From your earliest recollection
down to 1834, and from 1854 down-
ward to 1890, the streets and
side walks ^{in the locality in question} extended up to the old
failing which V. Wren removed
in 1890

Question objected to on the
ground that is seeking to contradict
the witness, he having stated emphati-
cally that he did not know the bound-
aries of said streets.

The defendant replies that it
has no thought, purpose, ex-
ception or intention to contra-
dict the witness in any respect,
but to bring out the fact from him
that whilst the street ^{or side walk} of Smithfield,
in question was worked by the County
Surveyor and the Superintendent of
streets in Smithfield, they always
worked without any objection by
any owner, right up to the said
old fence removed by the said
V. Wren.

Answer As previously stated, I do not

know that the boundary of the street had ever been legally defined. I supposed that the street ran to the paling of the enclosure referred to.

26 Question State whether or not ~~it was~~ the side-walk was marked up to that said paling.

Answer The marking that I referred to in one of my answers, extended from the paling about 6 or 8 ft. I found it very unpleasant to my tender feet, it was coarse mud, some pieces larger than my fist, nor did I ever know it to be pestled down by anyone to make it smoother. I feel it my duty to state that I suppose the mud had been placed on that part of the side-walk by the owner of lot 33. That was simply my impression. I never heard any one say so. I supposed so because other people did so on other parts of the street. The last sentence was not intended by the witness as a part of his answer, he simply made it as a side remark, and is excepted

to by the counsel for the defendant
~~and~~ as irrelevant and not at
 all responsive to the questions.

27 Question State whether or not the lo-
 cality in question has not always
 been worked upon by the ~~seed~~ town
 of Smithfield, all the grass cut
 from it, and all the dominion ex-
 ercised over it, that a corporation
 could exercise over its sidewalks

Answer I have no recollection that the
 County oversees of the road ever
 made any repairs to the side-
 walks of the town of Smithfield,
 and I believe that the repairs
 which have been done to the side-
 walks by the superintendent of
 street within the last ~~of~~ twelve
 or fifteen years, ^{were} ~~were~~ con-
 sidered a part of his official
 duties. Previous to ^{that date} ~~the last date~~
^{where that it was considered a part of his official}
~~that is within the last twelve or~~
^{duties to repair the sidewalks}
 fifteen years, since that time
 it has been done by the town
 authorities

28 Question Please state whether or not the
 space outside of the enclosure of
 V. W. rem. as you ~~have~~ hereafter

described the same, has from your earliest-recollection been used and occupied as ^a side-walk and street-

From my earliest-recollection it has been considered a part of the Main Street of the town of Smithfield, and used generally as a part of the sidewalk.

29 Question On this old Jordan Thomas plat and survey, which has heretofore been shown to you, and called exhibit "A", what is the number of the Hotel lot in that plat.

Answer It is No. 34.

30 Question State how far the porch of the Hotel projects out from the face of the Hotel into the sidewalk, when it was put there, if known to you, and by what authority.

This question objected to on the ground that it assumes that the porch of the Hotel does project into the sidewalk, which is ~~the~~ a matter in dispute, and because the question is a leading one.

The defendant replies that he will repeat the question in a dif-

20

present-form so as to save ^{time} ~~time~~ and avoid all controversy.

State whether or not the face of the Hotel is in a straight-line with the aforesaid Wamble or Wrenn building, and the aforesaid ~~parlour~~ ^{enclosure} removed by the said Wrenn, ^{as} aforesaid.

Answer It is practically in a line with the aforesaid building and enclosure.

31 Question The defendant here exhibits the diagram filed with its answer marked exhibit "H" to the witness and asks of him to state whether or not the line of the said V. Wrenn's house, the enclosure removed, the face of the Hotel is not as is shown ^{by the large continuous black marks or} on the said diagram.

Answer From an examination of the plan referred to, it seems to be similar to the line ~~sub~~ as ~~be~~ shown by a large continuous ^{black} line ~~and~~ shown in the said diagram.

32 Question State any information that you may have derived from tradition or otherwise, relative to the time of the building of the said porch and

the authority and circumstance under which it was built, and its relation to the State itself.

Answer

My information on that question is entirely traditional, I have no personal knowledge about it. I can distinctly remember about 1816, of having heard remarks made in conversations between my father and my brother-in-law, the late Mr. Nathaniel Young then Clerk of Isle of Wight County, and my uncle the late Thos. Purdie, that the porch to the Hotel now owned and occupied by Jas. A. Brown, by special permission granted to a Mr. Taylor, (I forget his name now), by the legislature of Virginia, to place his porch some feet beyond the line of the street. I have heard those remarks made on ~~many~~^{other} occasions since previous to the death of either of those gentlemen. I have never seen the special act granting that permission, but it was received by persons living at that time as a correct statement of the facts. I have never heard that statement questioned or objected to ~~from~~ until Mr. Warren

moved his enclosure, since that time I have heard that statement objected to, by Mr. J. W. Mitchell, that the act of the legislature had not been passed.

Objection

Answer of witness objected to and asked to be excluded on the ground that acts of the legislature should be proved by the introduction of the act itself not by tradition.

33 Question State whether or not the said Nathaniel Young, referred to was not the Clerk of the Circuit and County Courts of the County of Isle of Wight, ^{at that time} and has not so been for many years, and his death in 1841.

Answer

Nathaniel Young was Clerk of Courts of Isle of Wight in 1816 and held the office until his death in 1841, and ~~he~~ was Clerk of the Circuit Court of Isle of Wight, from the adoption of the present system of Circuit Court until his death. I think he was appointed Clerk of the County Court in 1798.

²³
34 Question State whether or not - these gentlemen were men of remarkable intelligence and standing, and old citizens of the town.

Answer My father the late Dr John H. Purdie was born in Smithfield in October 1770, and died in Smithfield in May 1845. The late Nathaniel Young was born in Isle of Wight - in 1777 and died in August - 1841 in the same County. My uncle Thos. Purdie was born in 1777 in Smithfield and died near Smithfield in the County in November 1829. With a few years exception, my father lived in Smithfield from his birth until his death. Nathaniel Young and Thos. Purdie ~~were~~ lived the greater part of their lives in the town of Smithfield. They were educated and prominent men.

35 Question State whether or not - their statement relative to the Oais Hotel and porch has not from their day to this been universally current in the community, and universally believed.

Answer I never heard the statement doubted

until Nov. 1890, and it seemed to be currently believed in this community. I did not hear the subject alluded to very frequently since my early manhood, but I never heard it denied by any one previous to Nov. 1890

36 Question State whether or not you ~~was~~ assisted in making a general index of deeds now in the Clerk's office of Isle of Wight for the County of Isle of Wight

Answer On the first Monday in January 1878, the County Court of Isle of Wight caused an order to be entered directing R. E. Boykin and myself to index the deeds in the Clerk's office of Isle of Wight according to the system patented by a Mr. Campbell. I did one half of that job, covering from the beginning down to about 1760.

37 Question State whether or not in making that said index you noticed many of the deeds from Arthur Smith and wife, and Thos. Smith his son

~~his sons~~ and wife, conveying lots in the town of Smithfield, and if they sold these lots by numbers designated upon a plat of the town, and if so about how many of those deeds do you think you noticed.

Answer

Question objected to on the grounds that the deeds ^{or copies thereof} alone are evidence of their contents, and we call for their production.

In discharging the duty assigned me by the Court I indexed between ten and twenty five deeds from Arthur Smith and wife and Thos. Smith and wife, conveying titles to lots in the town of Smithfield, and I noticed in several of those deeds the lots were numbered according to a plan of the town, but I do not think it stated what plan. I do not know whether all these deeds were so numbered or not; I did not look at them all but those that I looked at were so numbered.

38 Question

From your knowledge of the ~~town~~ of the town of Smithfield

and your familiarity with the Jordan Thomas plat - and survey, did not these lots conveyed correspond with their respective locations and numbers on the aforesaid plat.

Answer

From my acquaintance and familiarity with the plat; I cannot say, but I believe they do.

39 Question

In your answer to question 32, (here used - question) you have answered that your information as to that question is entirely traditional, and among other things your information was derived from the late Mr. Nathaniel Young, your father and your Uncle, the late Thomas Purdie; that in conversations ^{between} ~~with~~ them about 1816, ^{and subsequent times} they stated that the porch to the State, now occupied by Jas. A. Brown, by act of the legislature, permission was granted to a Mr. Taylor to place his porch some feet beyond the line of the street. Did you or did you not understand from these gentlemen, that the

entire porch was placed in the street, and that the face of the State building was placed directly on the line of Main Street? In answering this question state all the conversation if any in reference to this subject which may be explanatory of the main question.

The plaintiff objects to this question on the ground that the acts of the legislature, and grants contained in the same, should be proved by the acts themselves, and the production of such acts is called for.

Answer

How the conversation originated I am unable to say. It was only about one year after the Treaty of Ghent when peace was formed between the United States and Great Britain; which circumstance may have caused the conversation relating to the porch at the State to have occurred. As to any particular part of the conversation I have no recollection. The fact that it was placed there by an

act of the Legislature, made an impression on my young mind, which has never been removed. That the building to which that porch was annexed was immediately on the line, I do not remember to have been stated positively; but the impression made on me was, that the building was on what was supposed to be the line of the street, and that the whole breadth of the porch was in the street.

40 Question You stated in your answer to question 32nd that subsequent to 1816 you heard those remarks about the State porch made on ^{other} ~~many~~ occasions by the gentlemen alluded to, prior to the death of either of them.

State. ^{Whether or} ~~Was~~ not your youthful impression as to the conversations between them, ^{was} rendered more distinct by their subsequent remarks.

Answer

The late Nathaniel Young was my father's son-in-law, and the late Thos. Purdie was his younger brother; both of them ^{were} frequent visitors to my father's family. Thos. Purdie generally visited him between supper

and bed-time, when I was generally at home and in the sitting-room or parlor. Why or how allusions to the porch ~~at~~ in those conversations, during those visits occurred, I am unable to say; but that the fact that the porch alluded to was placed in the street by a special act of the Legislature was stated in my hearing, I distinctly remember. The impression made by the first statement in 1816 was strengthened and confirmed by the subsequent conversations.

41 Question You have stated in your depositions, that the plan examined by you on yesterday marked exhibit - enclosed "a plan of the town of Smithfield, laid off by Jordan Thomas was first shown you ^{the latter} by Nathaniel Young Clerk of the County Court of Isle of Wight; where were you when he first exhibited to you the said plan, and state what, if anything, he may have said as to the finding or discovering of said plan

Nathanial Young was the tenant of the late Mrs. Fanny Boykin, in 1825. I during the school vacation was a frequent visitor to my brother-in-law, for several days at a time occasionally. On one of those visits, I went into the Clerk's office and Mr. Young, to amuse me, showed me some of the oldest record books, and among the old records which he showed, was this plan of Jordan Thomas's. He stated that it was in the office when he first entered it as a deputy under age, and had been on file in the office up to that time. He did not say that it was on file as a record, or that it had ever been used as record evidence in the adjustment of disputed cases.

42 Question State whether or not Mr. Young said anything whatever in reference to the said plan being used as record evidence in the adjustment of disputed cases.

Answer He did not, to the best of my recollection.

43 Question It appears from the deed of Thos.

Purdie and wife to Wilson Davis Jan'y 4, 1816, filed in their papers with the defendants answer, that he conveyed to the said Wilson Davis lots known upon the ^{aforesaid} plat after town ^{Smithfield} lot 33 & now known as the W. nerr lot, and lot no. 34, now known as Stail lot, and occupied by Jas. A. Brown. Robt. West sold to the said Thos. Purdie in 1814 the said lot no. 33. Thos. Smith sold to William Robertson upon the 26th of October 1763, the aforesaid lot 34. Be pleased to explain the relation that the said Thos. Smith bore to Arthur Smith who owned the land upon ^{which the town of} Smithfield was located in 1752.

Answer Through tradition which has reached me, ~~at~~ the said Thos. Smith was the ^{son of the} said Arthur Smith

44 Question Please explain the relation which Robt. West bore to the said Thos. Smith.

Answer The said Robt. West married the Frances, a daughter of the said Thos. Smith.

45 Question Please state anything that you may know by tradition or otherwise of the ownership of lot- 33, and the uses to which it was put before its sale by F. M. Boykin and others to Robert Butler on Jan'y 6, 1812.

Answer It was owned by Wilson Davis when I can first remember. I did not know until yesterday anyone of its previous owners.

46 Questions Please examine the aforesaid Jordan Thomas ^{and survey} plat ^{and survey} and designate on that plat the lot now owned and occupied by Jas. P. Andrews.

The plaintiff objects to the question and to all questions and answers referring to the plan or plat filed as exhibit "A" with this deposition ~~as assumed~~ referred to as the Jordan Thomas plan, ~~as~~ assuming that the said plan or plat is any authenticated record or evidence of any kind of the real plan or plat of the town of Smithfield, no evidence having been introduced to establish that fact.

Answer

my sight is defective, but I think the lot now owned and occupied by Jas. P. Andrews at the south-west corner of Main and Mason streets is marked on said plan as No. 16

47 Question

Please give us your earliest recollection of the owners and occupiers of that lot, its then condition, the character and condition of the houses upon it, and its subsequent history.

Answer

At the date of my earliest recollection, there was a dwelling house on the present location of Mr. Jas. P. Andrews's dwelling house on that lot, consisting of one story and an attic, with two rooms on the first floor, but no hall or passage through it. There was a cellar under the house, and a small porch on Main street. I think the lot and appurtenances ~~was~~ ^{the property of} Robt. West, and I know it was occupied by him. There was a small store-house on said lot fronting on Main street; and distant from

the dwelling about twenty-five or
 thirty feet; which said store-house
 was at that time, occupied by
 Drew and Light ~~board~~^{foot} as a
 store for general merchandise.
 Subsequently it was used by Josiah
 W. Jordan for his tailoring busi-
 ness. Then by Jas. C. Jordan as a
 store-house for general merchan-
 dise; and in 1827 Dr. Geo. Wilson
 established in one room of that
 house the first drug-store in the
 town, which comprised a soda-fount-
 ain. There might have been other
 buildings but I don't remember
 now. The ~~store-house now occupied~~
~~next owner and occupier~~
~~of that lot and premises~~ referred to
 is now occupied & by J. J. Boykin
 as a residence. The next owner ~~and~~
~~occupier~~ of the lot and occupier of
 the ~~main~~ dwelling house was Mr.
 Jas. C. Jordan, to which he made
 no alteration or addition, except ^{to erect a} porch
 in the rear of the house. I think
 the next owner and occupier of that
 lot and all its premises was Wat-
 son P. Jordan, who ~~it~~ ^{the said dwelling} enlarged ~~it~~,
 by adding an additional story to its height.

and an annex to its south-west end about 20 feet square. The next owner and occupant, to the best of my recollection, was Mr. William D. Falk, the present Mayor of Smithfield, who occupied the dwelling as his residence for a year or two, and erected a small dwelling house on the North-East Corner of the lot on Mason street; ~~Deaunt~~ and ^{Mr.} W. D. Falk sold it to Mr. Jas P. Andrews, the present owner and occupant.

48 Question State who lived with the aforesaid Robt. West when he occupied the aforesaid lot.

Answer There lived with Robt. West; his wife's sister Miss E. Johnson and her daughter ~~Miss~~ Eliza, who married Lieutenant Cocke, of the U.S. Navy.

49 Question State whether or not there was at the time it was occupied by Robt. West, any enclosure ~~around~~ on the Main street side of that lot, and on the Mason street side of that lot; and if so, how, and where was it located?

Answer There was no ^{yard} ~~enclosure~~ enclosure on Main or Mason street. There was a line of fence, ^{running} from the ~~South~~ ^{South} East corner

of the ^{dwell}ing house to the lot now occupied by Mrs. Wilson, formerly known as the Adams lot; thence south-west to the south-west boundary line of the lot; thence north-west to Main street; and on Main street the interval between the storehouse and dwelling house, was occupied by a gate and some pailings, on a line with the storehouse and dwelling.

50 Question Please ~~examine the same Jordan~~
~~Thomas plan and designate in that~~
~~plan the no. or that plan of the lot~~
~~now called the Bott lot~~

Answer It is no 15

51 Question

50 Question Please state what if any changes were made in the ~~aforsaid~~ enclosure ~~were made~~ of the aforsaid lot by Jas. C. Jordan.

Answer To the best of my knowledge and belief Mr. Jas. C. Jordan made no ~~enclosures~~ changes to the enclosures of the aforsaid lot.

51 Question Please state what if any changes were made to the enclosure of the aforsaid lot by ~~the~~ Watson P. Jordan.

Answer To the best of my knowledge and belief, Mr. William P. Jordan made no alterations to the enclosure of the aforesaid lot.

52 Question Please examine the said Jordan Thomas plan, and designate on that plan the number ^{on that plan} of the lot now called the Batt lot.

Answer It is number 15.

53 Question Please give us the owners and condition of that lot at the date of your earliest recollection.

Answer To the best of my knowledge and belief, it was an enclosed vacant lot, without any house on it, and was owned by the late Benjamin Drew.

54 Question Please give us the ~~front~~ line of the front enclosure in Main Street.

Answer On Main Street it was enclosed by a post-and-railings enclosure, running in a straight line ^{the} from the south-west corner of the store-house on lot No. 16, to the north-east corner of ~~the~~ lot No. 14 now owned and occupied by J. A. B. Watson.

55 Question Examine the same Jordan Thomas plan heretofore exhibited to you and de-

seignali upon that plan the lot number of the lots now owned and occupied by J. A. B. Watson, G. W. Parker and M. J. Langhorne

~~It is understood that the objection to this question by the plaintiff's Counsel is such as~~

It is agreed by Counsel that the objections heretofore urged to Question number "46" referring to plat filed as exhibit "A" shall be considered as taken to all other questions and answers referring to said plat.

Answer On the plan before me, the lot owned and occupied by J. A. B. Watson is numbered as 14; and the lot occupied by G. W. Parker and M. J. Langhorne is numbered 13.

56. Question Please describe the front enclosures, on Main street of lots 14 & 13 as they existed at the time of your earliest recollection

Answer The enclosures of lot No. 14 on Main street, consisted in, by far the greater part, of a dwelling-house and store house on Main street. The interval between the said two houses was enclosed by a panel or two appailings

As was ~~was~~ also the interval between the store-house and lot-13. The enclosure on Main street- of lot-13 in a line with the enclosure of lot-14 was ~~a~~ made of post-and-railing and formed a yard or in front of the dwelling on lot- No. 13, which was set back a little from the street.

57 Question I understood you then to say that at the date of your earliest recollection of the lots specified, that the line of the enclosures on Main street, was a ~~straight~~ line running straight- with the ~~front~~ ^{face} of the ~~lot~~ ^{house} now in the lot now called the Andrews lot, the house now occupied by Jas. J. Boykin, the 13th lot aforesaid, the Watson lot, ^{the} B. W. Parker ^{lot}, that is lots numbers 16, 15, 14 & 13 in said plan. Do I understand you properly or not-

Answer I never examined to see if there was any variation from a straight-line, but my casual impression was that the enclosure I have ^{of on the lots from 16 to 13, inclusive} described on Main street, was a straight-line from the North-east-corner of No. 16 to the North-west-corner of lot No. 13, which was on the ~~line~~

south-west line of the corporation limits.

58 Question State the first occupant, if you remember, of the Andrews ^{house} lot after its enlargement by Watson P. Jordan.

Answer I do not remember who ~~after~~ occupied it after its enlargement by Watson P. Jordan. ~~It was~~ its occupant before William D. Falk.

59 Question State whether or not you remember it is as having been occupied by Jas. Scott and if so, state as well as you can the date.

Answer I do remember that Mr. Scott resided in that dwelling-house, and died there during the war, ~~and~~ in 1863 I think, where he had been living some two or three years previous to his death. After its enlargement by Mr. Watson P. Jordan. I think Mr. Jas. Scott was its first occupant.

60 Question State whether or not you remember after its said enlargement it was what might be called a double tenement, with a passage at its end towards lot No. 13, and store-rooms facing on Main and Mason street.

Answer It may be considered to have been a

double tenement inasmuch as the room on the corner of Main and Mason streets was used as a grocery-store by the Rev. William Colonna, and also by Levi Ashby as a drug-store. There ~~was~~ was a smaller room on Mason street, which was used by Mr. Colonna and Mr. Ashby as a counting-room. And there was a door in Main and a door in Mason Street within a few feet of each other, like the ~~store~~ of doors to the store upon Wamble on the other side of the Mason street, where Mr. V. Waenn now lives.

61 Question You have ^{herebefore} described lot 15. State the houses that have been put-up on it, and by whom erected and the circumstances connected therewith.

Answer Mr. Samuel Whitfield was a son-in-law of Mr. Benjamin Drew, and came in possession of lot No. 15 by purchase or otherwise about the year 1824. About that time he built the dwelling-house that is now on the lot; which to the best of my

Knowledge and belief was first-occupied by Mr. ^{Bartholomew} ~~Samuel~~ Light-foot; who used the ~~same~~ room on the first-floor as a store for general merchandise. It was next-occupied as a residence and store by the Rev. William McKenny, who remained there only one year, I think. It was next occupied by Shinnel Gadswin as a hotel, for one or two years. who were the next-occupants; until Batt went there, I really have forgotten. My recollection is that just before or just after the erection of the dwelling-house on that lot - Mr. Samuel Whitfield erected a two-story-frame house on Main street which was used as a store for general merchandise by Jordan and Southall, who occupied the first-floor. The second floor was occupied by Jordan and Messersmith as a merchant-tailor's establishment.

62 Question State what remarks, if any, were made by the said Samuel Whitfield about the hotel porch being in the street when he went to put the said store in the street.

43

Question excepted to on the ground that the remarks made by the said Whitfield ~~it~~ cannot be introduced as evidence in this cause.

Answer

In as much as the front of the store-house on the ~~front~~ lot No. 15 was placed in a line with the front of the State porch, that incident was the subject of general remark in the town. I did not hear Mr. Samuel Whitfield make any remark on the subject that I remember. But I distinctly recollect that the incident was frequently mentioned in my presence by citizens ~~by~~ of the town, some of whom stated in my hearing that Mr. Whitfield claimed the same right to place his house on what was generally recognized as a part of the street, that was claimed by the owner of the State who put the porch in the street.

63 Question State about what time Mr. Samuel Whitfield died.

Answer I think it was about 1843

64 Question State whether or not you understood that the claim of Mr. Whitfield to

place the said store in the street - was founded upon any act of the legislature.

Answer I am sure that Mr. Whitfield never did petition the Legislature for such privilege, and consequently was never allowed the privilege.

65 Question Then I understand from your answer that Mr. Whitfield ~~has~~ built the said store ~~house~~ into what was then recognized as Main Street because the owner of the Hotel had built his porch out into the ~~the~~ said street. Am I correct?

Question objected to as leading, and because the witness has not stated that the ^{porch of the} Hotel was built into what was recognized as the street.

Answer You are correct that that impression was made on my mind from ^{what} I had heard in the conversations of several of the citizens of Smithfield.

66 Question State your earliest recollection of the house on lot 14, by whom occupied, and for what purposes generally.

Answer My earliest recollection of the house on Main street on lot 14, is that there

was a frame dwelling of one story
 and an attic; and a small store-
 house about 24X16 feet square, located
 on Main street, and distant from
 the dwelling about 25 or 30 feet.
 The dwelling was occupied as a res-
 idence by Capt. Geddy, and dur-
 ing his occupancy of the dwelling
 I have no recollection of what
 use or purpose the store-house was
 devoted to. The next occupant of
 the dwelling as a resident, if my mem-
 ory serves me, was Wilson Moody,
 who resided there several years and
 during his residence used the
 store-house as a grocery. I cannot
 remember now who was the next
 owner and occupant of the houses
 on that lot; but whoever it was, he
 made an annex of similar size to
 the original dwelling, at its south-
 west end; and between the two rooms,
 the old room and the new, there was
 a passage. I think he also erected
 a porch in front of the dwelling
 on Main street, of which it was
 devoid during the occupancy of Geddy
 and Moody.

67 Question State whether or not this successor of Moody and the party who made these changes was Merritt Wamble, in the year 1832.

Answer I do not remember the year, but I do distinctly ~~reme~~ remember that it was Merritt Wamble who was ~~or the~~ a successor of Moody and made the changes referred to.

68 Question State whether or not he continued to occupy this house as a residence until his removal to ^{his} ~~the~~ new store ~~and~~ residence on his lot 33, on the corner of Main and Mason streets.

Answer He did, I am sure of it.

69 Question State whether or not ~~the~~ the house on this lot No. 14, having always been a residence, is not placed further from ^{the line of} ~~the~~ Main street than the other houses, heretofore mentioned.

Answer If so, I have never had the curiosity to examine, and therefore am ignorant of the fact. The store-house on

70 ~~Question~~ State whether from since lot No. 14, before any alteration was made to it, was used by Dr. Geo

Wilson who conducted a tannery in Smithfield, as a depository and store-room for his leather. When the lot came into the possession of the present owner J. A. B. Watson, he made a thorough alteration in the store-room on the lot; which resulted in a great enlargement in the building, in length and height; which altered house remained as at present. This ^{enlargement} ~~alteration~~ relates to the rear of the house ^{the front} remains the same.

70 Question Give us your earliest recollections of lot 13.

Answer. At my earliest recollection, lot No. 13 was owned, and a residence on it occupied by a Maiden lady named Mary, or Pally, Fulgham, she was generally called Pally. I do not think that there was any other house on the lot at that time, except perhaps a privy in the garden. The cooking for the occupant was done in the ~~the~~ basement. The dwelling was a one-story frame house, comprising four rooms on the first floor; the two rear rooms being shed rooms. The two rooms on Main Street were not separated by a passage.

or hall, but there was a narrow
 passage, I think between the two
 shed rooms. After the death of Mrs
 Pally Fulgham, lot- ~~No. 33~~ No. 13
 was purchased by John Wamble who
 used the dwelling as a residence
 for his family. John Wamble had
 been engaged in mercantile business
 in Smithfield some ten or twelve
 years previous to the purchase
 of that lot. And in order to en-
 large his conveniences for trade,
 he erected a store house at the south-
 west-side of lot- 13, fronting on
 Main street, the front of which was
 in a line with the store-house
 erected by Samuel Whitfield on lot-
 No. 15. The erection of that store-
 house was between the years 1828
 and 1835, I do not remember ex-
 actly the year; in which latter year
 John Wamble removed from Smithfield
 to Richmond City to engage in
 the mercantile business. The houses
 on the lot were tenanted or leased out-
 by Mr. Wamble, after his removal
 to Richmond and before he dis-
 posed of it by sale to several

to several persons. One of whom
 was Shinnel Godwin, who used the
 dwelling as a residence and the store-
 house as a grocery. She also kept
 the post-office in the rear of
 that house, he then being post-master
 in this ~~town~~ town. In the course
 of events Maurice Langborne pur-
 chased the portion of lot No. 13
 on ~~that part of the lot on which~~
 the store ~~to stand~~, enlarged and
 improved it as a place for general
 merchandising, and has occupied it
 for that purpose from the time
 of its improvement to the present.
 Since that first improvement, Mr.
 Langborne has made other altera-
 tions and improvements on the said lot
 to suit his convenience, the said
 alterations and improvements extending
 to the rear. After a time, the Rev.
 Maj. Colonna purchased that por-
 tion of lot No. 13 which did not
 belong to Maurice Langborne,
 simply as an investment in real
 estate. He never occupied the house
 or lot himself, but leased it to the

ants who desired to occupy it.
 And the present tenant is B. W.
 Parker. When Benjamin ^{F. P.} Chapman
 was post-master in Smithfield, Mr.
 Calenna caused a small house to
 be erected facing on Main street,
 on lot 13, ~~was~~ within ten feet of
 the store of Maurice Langhorne,
 the front of which is ~~so~~ in a line
 with the front of Maurice Lang-
 horne's store, and rented the said
 small house to B. F. Chapman
 for a post-office. Within the last
 year or two, the said small house ~~has~~
 has been taken down and a larger
 one placed on its location; which
 is the present post-office.

65 Question State what, if anything, was said
 by John Wauble, when he erected his
 said store-house, about Sam Whit-
 field's having come out into Main
 street, with his store, and he John
 Wauble, was coming out into the said
 street too.

Answer I never heard that John Wauble made
 any remark on the subject - pro or con.
 The question in controversy as regards
 Sam Whitfield's store being in the

street, seemed to have been laid to rest at that time. I heard nothing at all about it.

66 Question ^{State} When the Court-house was moved into the town of Smithfield, if known to you, by tradition or other-wise, and from what source?

Answer I have long had an anxious desire to know the date of that removal. My desire led me to make inquiry of the present Clerk of the Court if he could give me the information, and he was unable to do so. He gave me to understand there was no record evidencing the date of its removal; nor has that date reached me through tradition. I have learned through tradition that the seat of Justice of Isle of Wight County, previous to its removal to Smithfield, was on the Poor-house tract of land belonging to the County, which tract of land in Colonial times, was the Glebe of Newport Parish. I have good reasons to believe that the tradition is correct as to its previous location. One of which rea-

sons is that a County bridge that crosses a narrow tributary of Pagan Creek, is now and has been from my earliest-recollection called the "Court-house" bridge.

67 Question State when the Court-house was moved from Small field to its present-locality if known to you by tradition or otherwise.

Answer In my early manhood, I heard old people say that the first-term of the County Court of Isle of Wight was held in January 1800. I have since heard that that statement was erroneous but-I have never heard the correct date.

By agreement of parties, the further taking of these depositions is adjourned until Monday, March 30, 1891, at 10:00 A.M.

T. J. Barham, Notary Public

The further taking of these depositions was resumed on Monday, March 30, 1891 at 11:30 o'clock, pursuant to adjournment on Saturday March 28, 1891.

The witness John R. Rindie wishes it distinctly understood that in giving the years in which certain events occurred, he ^{does not} claim to be positively correct; but to the best of his recollection, and in accordance with his present belief, the events did occur in the years mentioned.

Present: Gilmore S. Wendall, ^{+ W. S. F. R.} Plaintiff

R. E. Boykin & R. L. Thomas, Counsel for defendant.

Examination by Gilmore S. Wendall Attorney for plaintiff.

1. Question

Please state as nearly as you can when the ~~and~~ enclosures, referred to by you as having existed in the front of ^{the house on} lot No. 33, on Main and Mason streets were put there.

Answer

I & To the best of my recollection there was never any enclosure in front of the house on Main & Mason streets on lot no. 33 until the late Merrill Wamble ceased to conduct his merchandise business.

The year in which he ceased to conduct that business I do not know. It might have been a year or two before his death, which occurred in 1854. The enclosures were put there soon after he had withdrawn from mercantile business.

2 Question Have such enclosures continued to exist to the present time? If not, with what exceptions?

Answer From the first-erection of the first-enclosures, I ~~have~~ think they have existed continuously to the Nov. 1890.

3 Question State whether or not the present-enclosures, embrace the same ground then enclosed as you have stated, with extensions of the fence on Mason street, and also the same on Main street, with extensions of the fence embracing therefore other grounds, on Main street but not on Mason street.

Answer. I have no knowledge of any alteration in the position of the enclosures to the front of the house on lot No. 33, from the time they were first-erected until Nov. 1890.

I have not sufficient information in regard to the extension, owing to my failing eye right to testify in regard to it.

4 Question You have stated that the space now enclosed by Mr. Wrenn in Main street and which, previous to such enclosure was open to the street, was considered a part of the street. You have also stated that it was not known where the boundaries of the street extended.

Do I understand you to mean by saying that said space was considered a part of the street, anything more than that it lay open to the street, convenient for use as a part of the street, ~~and was therefore so used~~

Question objected to because it assumed that the witness has stated that it was not known where the boundaries of the street extended. The witness having only stated that the lines of the street at the point mentioned had not within his knowledge been legally defined by any legal proceedings, but had been used and occupied as a street according to known and designated lines, enclosures

Answer From the time I had an impression in the subject, I supposed that the land referred to was a part of the street of Smithfield; also that that was the general impression of the citizens of the town. Although the line of the street had never been legally defined, the enclosure of lot No. 33 on Main street was supposed to be in the line of the street. Why that impression was made, I that that land was in the street I am ignorant. It might have been because it had always been vacant up to Nov. 1890, or from some other reasons of which I had never heard.

5 Question Please state if you had any more or other reason for thinking that the said open space was a part of the street than for supposing and believing that similar open spaces on the opposite side of the street extending to the faces of the ~~of~~ houses on the opposite side of the street constituted a part of the street.

Defendants Counsel except to the foregoing question because the

plaintiff has a right to cross-examine the witness save as to such matters as to which he was examined in chief. And the said defendant has not examined the said witness as to any spaces on the other side of the street, nor has it appeared that such spaces actually exist, and ^{the question aforesaid} is irrelevant to the issue.

~~Answer~~

And it is agreed between counsel that this objection shall extend to all questions ^{whatsoever} relating to the opposite side of the street.

Answer

As regards vacant spaces on the opposite side of the street to lot No. 33, from my earlier recollection and for some years afterwards there was no enclosure in front of any house from lot no. 4 now owned and occupied by R. S. Thomas to lot No. 12 now owned and occupied by J. H. Southall. And my impression which I think was the general impression, was that the houses from lot no. 4 to lot no. 12 inclusive were on the northwest line of Main Street.

6 Question State as nearly as you can the various dates at which porches and enclosures were made on the said opposite side of said street, or houses built

Answer As to the dates of the porches, one existed on each of the following lots at my earliest recollection: to wit: lot No. 5 & 6, ⁷8 & 12. As regards those erected subsequent to my recollection the porch on lot no. 9 was erected previous to 1829. ~~The porch~~ ^{that} erected on lot no. 10 was erected about 1840 and the porch on lot no. 12 was erected after my recollection, but I cannot recollect when. I do not know when the enclosures on lot 6, where V.C. Batten now lives, nor those on no. 7 were erected. I do not know the date of the other enclosures, but I am certain they were put there previous to 1830.

7 Question ^{Please} State what porches and yard enclosures ~~do~~ exist on Mason Street on the North East or ^{Virginia} West side, how long they have existed, and what porches and yard enclosures have ever existed on that side of the street within your recollection.

Defendant except to the foregoing question.
And it is agreed that the defendant's
exception to question 5 shall extend to
all questions relating to Mason street,
other than to lot 33.

Answer At my earliest recollection there
was not a porch in front of any
house on the north-east ^{side} of Mason
street. At ^{present} there are ^{three} ~~two~~ porches on lot 32,
~~two~~ front one on lot 27, ~~two~~ ^{and}
two in 25; lot 24 is at the end of Mason
street. The said porches were erected at
different and long intervals of date, be-
tween 1830 and the present time.

~~I Question~~ Please state at my earliest recol-
lection there was not an enclosure
on the north east side of Mason street.
The present enclosures were erected
at different and long intervals of time
since 1830, and they embrace every lot -
except the one in which the Academy & the Masonic Hall stand.

~~I Question~~ Please state what porches and yard
enclosures existed on the ~~off~~ side of
Mason street opposite the Virginians ~~Wm~~
lot, if ~~so~~ ^{and} since what time they existed.

Answer At my earliest recollection there were
three residences on the south-west
side of Mason street, to ~~the~~ which

of which was ~~they~~ there, a front-
porch or ~~enclosure~~. At the present-
time there are four residences on
the south-west side of Main Street,
to one of which on lot 16 there is a
porch and enclosure, also on 17 & 22
there are porches and enclosures.
The date of the erection ^{of the porch} and ~~en-~~
closure on lot 16 was in 1873.

And the date of the erection of the porches
and front enclosures on lots No. 17
& 22 ~~or~~ I am ignorant of: ^{but-}
~~I think~~ ~~about 1840 it was~~ it was 1840 for 17;
and 1830 for 22.

9 Question. Please state whether your impression
that the street extended to the faces of the
houses, applied as well to Church and
East Church Street, as to Main
Street.

It is agreed that the foregoing ex-
ception made by Council for the de-
fense shall be regarded as apply-
ing to all questions which may be
asked in reference to Church ^{and} East-
Church Street, ~~or~~

Answer. As regards Church Street there were
but those residences ~~off~~ on the south
side of it, at my earliest recollection

and these residences were on lots 36, 37 & ⁴³~~44~~. At that time there ^{were} large intervals of unenclosed land between these houses. Lots No- 36 & 37 were enclosed. From 37 to ~~42~~ 43 was unenclosed with only a blacksmith shop on it. On the North side of Church street at my earliest recollection, there ~~were~~ one store house and two residences; the store house was on 71, and the dwelling houses on 69, 68 & 67. The spaces between each of these houses and all of them was unenclosed, except the west end of ~~lot~~ 68.

From the facts stated I am unable to have an impression other than that the store house on lot 71, the dwelling on lot 69, and the dwelling on 68 & 67, ~~were~~ fronted on the street line.

The dwelling on 69 sat back at least 50 feet from the street. I ~~was~~ am also of the impression that the dwellings on the South side of ~~St~~ Church street, were only four dwellings. They were on lots 46, 48, 52, & ⁵¹53. On the North side

of ~~the~~ East Church street there were but two residences and a store house situated on lots 62, 458, and ~~the~~ on lot- 37. There ^{were} extensive unenclosed spaces on each side of East Church street at that time, and my impression was that the dwelling houses and store referred to fronted on the line of the street on both sides.

10 ~~Question~~ Please state what fences and enclosures then existed at your earliest recollection in front of the houses on said Church and East Church Streets, or have been placed in the same since, and at what times they were so placed.

Answer On Church street, there was a fence and a front enclosure to the dwelling house on lot- 37⁶, and also on 384 43. On the south side of Church street there was no fence or enclosure in front of the house on lot- 37¹, but back had been erected previous to my recollection on lot- 68¹ ^{on North Church Street}. There was neither in front of the store on lot 71. As regards East Church Street, there was neither fence nor front enclosure to any of the residences

in the south side, ~~and~~ ^{no} there was ~~a~~ porch
 on lot 61, ~~on~~ ⁱⁿ the north side. ~~But~~
 Neither had been erected on lot 58 or 57
 as to the in the north side

11 Question Please state at what times the various
 porches and yard enclosures have been
 placed in front of the houses on Church
 and East Church street, within your

recollection, and also state any change that may
 have been made in front of the buildings within your recollection
 Answer The three porches ~~on the south side of~~

and front enclosures on the south side
 of Church street, existed at my earliest
 recollection. The one porch and en-
 closure to the Barnett house on lot
 70 on the north side of Church
 street, was erected by Mr. Mallory Todd
 in 1830, and I do not think that
 it has been altered by Mr. Barnett
 of late years. The porch and enclosures
 in front of the house of on 68 ⁶⁷ seems to
 me to have been altered very little
 within my recollection. The porch and
 enclosure ~~on lot~~ in front of the house
 on lot 61 now occupied by Mr.
 Be-ryer, were erected by the late Sam-
 uel Whitfield about the year 1825.

The porch and enclosure on the lot 59 now

occupied by B. P. Chapman, was put up by Walter P. Jordan, when the dwelling was erected, ^{about 1835 or 40.} The porch and front enclosure in the lot now occupied ^{by} K. K. Chapman, numbered 59, were erected by the said K. K. Chapman about 1850. The porch and front enclosure in front of the house now occupied by Col. E. M. Morrison, numbered 57, were erected by the late Willis Wilson about 1840; and the porch and front enclosure in the lot now occupied by Col. C. F. Day numbered 56, were erected, I think, by the late William H. Day about the year 1846. On East Church street, the porch and enclosure of lot 46, now occupied by Dr. John R. Purdie, were erected by Jesse Hodges about 1835. The porch and enclosure to the house in lot 52 were erected by the late Mrs. Frances Boykin about 1835; and the porch and enclosure to the house in lot 54 were erected by Thos. Weston, when he modified and improved the dwelling house within the last ten years. As regards the present Baptist Church, which was erected in 1846, the vestibule or porch was erected at the same time.

The Church was built, and I think encroaches in the street some finer six feet; the whole of it the said porch or vestibule being in the street.

~~12~~ ~~Quest.~~ The numbers of these various lots have reference to the Jordan Thomas plat or plan of the town of Smithfield, herein before mentioned.

12. Question Please state whether the front enclosures on Church and East Church streets are not practically in straight lines, which are extensions of the enclosures ~~on the lot existing in said street~~ before your recollection, or if not existing before your recollection, existing from the date of the earliest of such enclosures.

Answer. I do not think that the enclosures to the lots on the South side of Church street are practically in a straight line, inasmuch as the enclosure to Mrs. Watkins's lot, no. 42, varies from the line of the lots nos. 36 & 35. If Church street extends from Main to the bend, and East Church street extends from the bend out to the top of the hill at C. F. Day's. The front enclosure to the lot now occu-

ped by John R. Perdie, No. 46, was, I
 think, the first erected on the south
 side of East Church street, ^(about 1835) and those
 subsequently erected I think are placed
 on extended lines ~~on~~ of that first ~~the~~
 enclosure. As regards the North side
 of Church and East Church street, the
 enclosure in front of Judge Atkin-
 son's house, nos. 65 & 67, was the first
 erected on the North side of Church
 street, ~~to~~ and I do not think ~~that~~
 that the front enclosures subsequently
 erected on the North side of that
 street are extensions of the line of
 Judge Atkinson's front enclosure.

The front enclosure on the lot now oc-
 cupied by Bergen, 67 was the
 first ~~the~~ erected on the North side
 of East Church street, built about
 1825; and I think without having
 made any minute examination, ~~that~~
 the enclosures subsequently erected
 are practically extensions of ~~that~~ line
 the ^{front} line of that enclosure.

13 Question. You have stated in reply to question
 '20' that you never heard Wilson Davis
 claim that the boundaries of lot No. 33
 extended beyond the enclosures of the same

Did you ever hear him claim the contrary?

Answer I never heard him allude to the subject - pro or con

13 Question You have stated that you never heard that claim made by any preceding owner to Wilson Davis, have you ever heard it made by any subsequent owner to Wilson Davis?

Answer I have never heard it made by any subsequent owner to Wilson Davis, ~~or~~ until it was asserted by Mrs. W. W. W. in 1890. I never heard it alluded to by any ^{other} owner, _{pro or con.}

14 Question You have stated in answer to question "26" that you suppose that the mast placed in front of lot No 33, was placed by the owner of said lot because other people did so in other parts of the streets. State whether the mast placed in front of houses in or along the sidewalks, were generally so placed by the owners of such lots.

The defendant by its Counsel excepts to the foregoing question and any answer thereto, and for as irrelevant

to the issue, to and for the further reasons assigned in the general exception heretofore noted under questions, and by a agreement of counsel it is understood and agreed to that it shall apply to all questions and answers as to localities other than those immediately involved in their proceedings.

Answers I have in my mind several instances where the owners of lots on Main and Church Street, have made improvements to the side-walks in front of their lots at their own expense. One most particularly remembered was that of myself, John R. Purdie, who, in or about 1850 made at his own expense a new side-walk from the east to the west end of ~~th~~ his lot, ^{which} a part of which was on Main, and a part on Church, which was the only improvement in the side-walk until the Corporation put a plank walk there. Other persons have made improvements to their side-walks in front of their lots, in various manners. The vestry of Christ Church

improved the side walk in front of the church & with a brick pavement; and J. O. Thomas, Samuel G. Benson, and Isaac W. White made similar improvements with brick pavements to the side walks in front of the store now owned and occupied by Jas. P. Andrews the ~~the~~ Farmers and Merchant Bank of Smithfield and the drug store of C. C. Chalmer and Son. I am sure that many persons improved the side walks in front of their lots with shells sand and most. Those persons I could mention if I had half an hour to reflect.

14 Question It seems to me that until the last ten or fifteen years it was the general custom for individuals to improve the side walks in front of their houses and lots.

15 Question You have stated in reply to Question "27" of your examination in chief, that ~~you~~ ^{you did not believe} it was ~~not~~ considered a part of the duties of the overseer of the roads for the County or the superintendent of streets for the town.

to repair the side walks prior to twelve or fifteen years ago. Did they or either of them as a matter of fact, or the town in any way, repair said side walks, prior to twelve or fifteen years ago?

Answers

I do not remember but one instance in which an overseer of the road made an effort to repair the side walk. About 1830, when M. M. Todd was overseer of the road from the County wharf to Champin's Run, four miles distant, he commenced to grade the streets of Smithfield, by cutting down the side walk which was elevated some two or three feet above the level of the street, by cutting ~~it~~ down the elevation opposite Mr. R. S. Thomas' residence which was then owned and occupied by John H. Purdie; which cutting down and removal the said Purdie opposed, and inasmuch as said surveyor of the street, Todd, was convinced by the opinion of the citizens generally, that his work was confined to a breadth of 30 feet only the said Todd abandoned his effort to cut down that side walk. I have no recollection

tion that any superintendent of the street holding office under the municipal authority of the Corporation of Smithfield ever worked on the sidewalks of the streets prior to the last twelve or fifteen years.

16 Question State whether or not the porch of the Hotel does not appear to have been built at the same time of the Hotel. ~~Answer~~ And is not ~~at~~, in fact a mere extension of the roof of the house.

Answer I learned from tradition that at a date prior to my birth but how many years prior I cannot say, a house which is now a part of the Hotel, owned and occupied by a gentleman named Taylor as a public house, the said Taylor desired to improve and enlarge it; in doing so he placed the porch under the same roof, that is by an extension of its rafters, as it now exist; and that to make a commodious porch, under the roof of the house he petitioned and obtained from the legislature a special act granting him permission to place the porch in the street where it now stands. Tradition did not ascribe the

date of the passage of this act of legislation, but I am under the impression that it was ^{18004 1810} ~~in 1800 or 1812~~, but I cannot give the reason for this impression.

17 Question

Please state when Main Street was extended ^{eastward} southward, beyond its original terminus.

Answer

In 185⁶ the limits of the Corporation of Smithfield was extended southwestward from the original boundary at lots nos 12 + 13, to the Culvert - just below white store. Previous to that date, that extended portion of Main Street was a part of the Court-house at the date of ^{my earliest recollection} ~~there was an~~ ^{road} ~~On the north side of it there~~ ^{was only one residence, then occupied by Dr. Dick, now owned and occupied by William Cofer. There was also a negro cake shop at the corner of Cock's lane on the lot owned by William Dammant, and also a blacksmith shop then occupied by William Mahone, near the brow of town hill. On the ^{of the said extended street} ~~north~~ ^{west} side, there was a small frame house on the lot now owned by Mrs. Maggie S. Pope, about twelve feet from the store now owned and occupied by Mrs. F. H.}

Actually, the said dwelling being
 occupied within my recollection
 by the widow of William Mahoney
 From that house to the Culvert - as
 Joe White's there was no building of
 any kind. About the year 1818
 the late Thos. Purdie contracted to
 with Jos B. Whitehead to build him
 said Whitehead a brick two-story
 house with two rooms and a pas-
 sage on each floor, with a base-
 ment and attic; that house ^{is} now
 owned by O.C. Goodrich, The bricks
 for that house were burnt in
 the lot. It was the first brick house
 I had ever seen in town, and it was
 the first brick house built in
 Smithfield within my recollection.
 After the death of Mr. Robt. West and
 his wife, Mrs. Elizabeth Johnson, a
 sister of Mrs. Robt. West built the
 Eastern part of the brick house
 now owned by her great-grand
 daughter, Irene Hayden, known
 as the "Cocke" lot. After the marriage
 of Eliza Johnson to Lieut. Wm. Cocke
 of the U.S. Navy, inasmuch as it was

necessary to have more extensive accommodations, a western annex was made to the house of nearly its size. And no alteration has been made to the house, within the exception of a front-porch, since that time.

About 1836, Wiley & ~~Clary~~ Clary caused to be erected a two-story brick house now owned by the estate of John A. Jordan, which is located between the ~~Co's~~ house and William Coffey's.

About the same date, 1836, Jas. Chalmers erected a two-story frame-house now owned and occupied by T. C. Chalmers. About the same

date 1836, a frame store-house was erected by Isaac Jordan, to be used by Clary & Jordan for general merchandise purposes. Within the last 20 yrs. that house has been enlarged by an annex now owned and occupied by William Drennum and his wife, the latter, that is Mrs Drennum, using the old store as her millinery establishment. About the same date 1836, Dr Robt. Butler erected a frame house with a Dutch roof, now ~~is~~ owned by O. G. Delt.

which has been improved since
 its erection by the substitution
 of a square ~~and~~ second-story
 and a shed-room in the rear of
 the room on the first-floor.
 About the same date in the year
 1836, Archibald Atkinson erected
 a ~~a~~ two-story brick house for
 mercantile purposes, which was
 first occupied by Willis H.
 Woodley and Jas. C. Jordan, under
 the firm style of Woodley & Jordan
 or Jordan and Woodley, I forget
 which, as a store for general mer-
 chandise, which is now occu-
 pied by John R. Gwaltney. I omitted
 in the early part of my answer
 to mention an old one-story frame
 house located about 20 feet
 back from the present line, which
 has been taken down, as on its lo-
 cation, and in a line with the other
 houses in the street. That was erected
 by Wamble and Chapman, and ^{now} occupied
 by Bob Pitman. About the same
 date, 1836, a one-story frame house
 was erected by A. Atkinson just

Answer

I have no information as to the line of Church and East Church Streets on either side, but I was ever under the impression, that the residence of Maj. Richard Byrd, now occupied by the Misses Wamble, and the house now occupied by Mrs. Angelina Todd, were situated on the South side of the line of Church Street. That the store house now occupied by Jos. W. Holloway, and the house now occupied by R. F. Barnett, were situated on the North line of Church Street. Also that the house ~~that~~ now occupied by Judge Atkinson was situated on the North line of Church Street. I have ever been under the impression that the house now occupied by myself, John R. Purdie, and the house now occupied by Mrs. Jas. P. Jordan were located on the South line of East Main Street. That the houses now occupied by Mr. Bergen and Col. E. M. Morrison, and Col. C. F. Day were located on the North line of East Church Street. In as much as all the aforesaid houses were standing as at present - at the date of my earliest

and that therefore the porches and the front-inclosures to the aforesaid houses, do encroach on Church & East-Church streets.

24 Question Please state the character of the houses you have described. I am now referring to the houses ~~you~~ that you have mentioned as existing in your earliest-recollection.

Answer The houses which I have described as Maj. Byrd's and Mrs. Angelina Todd's, on the South side of Church street, and the houses of R. F. Barnett and Judge G. R. Atkinson on the North side of Church street, have undergone no exterior alteration within my recollection.

The house called Maj. Byrd's house is constructed of wood, consisting of a two-story piece on the East; with one room on each floor and an attic and a Dutch-roof annex on the West - consisting of two rooms and a passage or hall on each floor, with a porch in front of the two-story part. That the house now occupied by Mrs. Angelina Todd, consists of a Dutch roof part on the East-end, with two

rooms and a passage on each floor; and annex on the West-end, of one story and one room on the first floor and one in the attic; and a small vestibule between the room on the first floor and the passage connected with the East End. All of which were wooden. That the house of R. T. Barrett, is of one story constructed of brick; a basement and an attic, with four rooms and a passage on the first floor. That the house now occupied by Judge Atkinson is constructed of brick, with four rooms and a passage on each floor with an attic and a basement-cellar. That the house now occupied by John R. Purdie was originally and until 1855 constructed of wood of one story, an attic to which in 1855 Jesse Stodges erected a second square story, making it a two-story house with an attic and basement. It contains four rooms and a passage on the first floor. The house occupied by Mrs. Jas. P. Jordan, when I can first recall, was of one story of wood, with the end to the street

which house underwent a great alteration
 and improvement, made by Mrs.
 Frances Boykin about the year
 1838, which left it in its present
 condition, with the exception of a
~~for~~ front porch and front enclosure
 which were added by Mr. Jas. P. Jor-
 dan, within the last fifteen years,
 since which date no exterior alter-
 ation has been made to it: The house
 occupied by Mr. Bergen consisted
 of a frame building, the central
 portion of which, is of two story with
 and a smaller annex at each end
 each of which are of two stories. The
 number of rooms in each was three
 and a passage in the first floor -
 at my earliest recollection, and
 three rooms without a passage on
 the second floor, which building has un-
 dergone no exterior alteration with
 an exception of a front porch and a
 front enclosure, which were added by
 Mr. Samuel Whitfield about the
 year ~~1825~~ —, I think about the
 year 1825. The house now occu-
 pied by Col. E. M. Morrison, at my
 earliest recollection consisted of a

beyond the old Corporation line,
now owned by Dr. W. J. Davison.

Within the last few years Mrs. De-
mond has built a frame house on
the Eastern part of her lot now
occupied as a residence by Mrs.
John Goodson, though formerly
built as a store.

18 Question Please state whether or not the
prolongation of Main Street, be-
yond its original terminus, is not
in a direct straight line with the
old part of Main street.

Answer. I think it is. About thirty five
or forty years ago, as a matter
of curiosity and for my own in-
formation, with a surveyor's compass
I took the direction of Main Street
from its centre opposite the present
residence of R. S. Thomas to the
centre of the road at the top of town
hill, and ~~if~~ I found the direction
to ~~be~~ ^{be} South $52\frac{1}{2}^{\circ}$ West, and
in a straight line between these
two points, which makes the new
part of Main street simply an
extension of the old part.

19 Question Please state if a line prolonging

~~the~~ a line in the face of Virginus Wrenn's house on Main Street, in a direct-straight line, Southwestwardly would not pierce the yard enclosures or porches or houses themselves on every lot - from and including No. 16 to 13, on Main Street, ^{heretofore existing} as you have described them.

Answer

I think such an extended line would pierce Maurice Langhorne's store and the present post office. And I think it would also pass through each porch and the front-enclosure of each house, from lots 16 to 13, save and except the house now occupied by Geo. W. Parker, the porch to which I think would not be pierced but the enclosure in front of the house would be pierced or passed through. In saying that the porches would be pierced, I mean to ~~say~~ say that such a line would pass in some instances perhaps where the porch joins the house.

2d Question Please state whether or not, the

Continuation of that line, would pierce the yard enclosures, porches, or houses on the new part of Main Street, and which ^{it would so pierce} ~~of them if any~~.

Answer

Such an extended line I think ~~we~~ would pass through the house now occupied by John R. Swabney, but I cannot say if there be any other house on the south side of that new portion of the street, which such an extended line would pass through, inasmuch as I have never examined as to that circumstance. I think such

Q^d Question an extended line would pass through the porches and front enclosures of ^{all} the houses wherever there are any porches and enclosures, and perhaps such a line would pass through ~~such a~~ Dr. Davis's dental office, I don't remember.

Q^d Question Please state whether or not in your earliest recollection, ^{there was a porch or extension} ~~to~~ ^{recollected} to lot no. 35, adjoining the Hotel lot; or if not at your earliest, ^{recollected} state when it was placed there, and whether it was in a line with the Hotel porch.

Answer

At my earliest recollection there was no porch to the dwelling on lot - no 35

was such a porch ~~as~~ erected in front of that dwelling, until it was occupied by the late Jas. St. Woodley as a residence, which I think was about ~~at~~ the year 1838. And I think the porch was placed ⁱⁿ a line with the Hotel porch, and ~~it~~ ^{that} it encroached upon the ~~Hotel~~ street.

22 Question State whether or not a line prolonging a line drawn upon the faces of the houses which you think ~~were~~ built have stated you considered as built upon the line of Church and East Church street, would not cut the yards, enclosures, or porches of all other lots upon said streets, ~~and here~~ ^{times} you have heretofore stated.

Answer.

~~To~~

Answer.

~~To the best of my knowledge and belief, the north faces of the houses on the south side. I cannot~~
I am unable to answer that question
Sir, without a personal examination

23 Question State whether or not the yard enclosures in Church and East Church street do not generally encroach upon what you consider to have been the original boundary of the streets.

Smithfield. Va.
Sept 4th 1883

At a regular meeting of the Council
Present-

J. H. Nelson Mayor

Jos. G. Womble

J. A. Fulmer

J. P. Andrews Secty & Treas.

At the last meeting of the Council held August-
7th it was ordered that the porch to the house
occupied by Saml Gallop and the property of
H. Pollard should be removed. On motion of
J. P. Andrews to reconsider the matter, and
allow the porch to remain the vote was taken
and carried, but in consideration the Council
agreed to allow no porches or steps in the future
future to be placed on the ~~side~~ side-walk

There being no other business before the
Council they adjourned to meet again 1st-
Tuesday in Oct.

Signed J. H. Nelson Mayor

and
Signed J. P. Andrews Sect & Treas.

Smithfield, Virginia
April 3^d 1891.

I, James P. Andrews, a member of the Council of the Corporation of Smithfield and its Secretary and Treasurer do certify that the writing within statement on the other side of this paper is a true and correct copy of an Extract taken from the records of the Council proceedings on the 4th day of September 1883. Given under my hand as Secretary of the said Council, and under its corporate seal this 4th day of April A. D. 1891

J. P. Andrews (Scty)

Exhibit 14

Should be 15

Smithfield, Va. July 1st - 1884

At a regular meeting of the Council held
July 1st - 1884

President J. H. Helms Mayor

Geo. G. Womble

L. A. Fuller } Aldermen

W. D. Fork }

J. P. Andrews Secy & Treas.

There being no action held in May the
Council held one another year.

On Motion. It was ordered that the
fence near J. D. Coffey's ~~store~~ Black-Smith
shop running across the street to the line
of J. D. Thomas be removed and sign to
be that the fence ^{is} taken down
signed J. Henry Helms
Mayor.

Smithfield, Virginia, April 4th 1891

J. James P. Andrews a
member of the Council of the Corporation of Smith-
field, and its Secretary and Treasurer do certify
that the above is a true and correct copy
Extract from the records of the Council pro-
ceedings on the 1st day of July 1884. Given
under my hand as Secretary of the said
Council and under its corporate seal

Dear Sir 4th day of April 1891.

J. P. Andrews (Secy)

Exhibit 15-
Should be 16

Extract from the records of the meeting of
the Council held on the 9th of May 1856, and
at other times as shown by the dates respectively

At the meeting of the Mayor and aldermen
as a Council for the Corporation of Southfield
in the County of Derbyshire - elected accord-
ing to law at the office of Arch^d Atkinson
in the said town - present 9th May 1856

Arch ^d Atkinson	Mayor
Wm ^h H. Jordan	First Alderman
James B. Southall	Second Ditto
Robt H. Whitfield	Third "
Wm ^h H. Stephenson	Fourth "

James E. Moody Deputy for Thos Hall
Sheriff of Derbyshire County - made a return
to the board showing that an election held
in the said District, the following named
persons were elected for one year from the 3^d
of May 1856 for the said town as follows to-wit:

Arch ^d Atkinson	Mayor
Wm ^h H. Jordan	First Alderman
James B. Southall	Second ditto
Robt H. Whitfield	Third ditto
Wm ^h H. Stephenson	Fourth ditto

the return were found upon examination to be correct
and the said Archibald Atkinson as Mayor
and the said Wm^h H. Jordan, James B. Southall
Robt H. Whitfield and Wm^h H. Stephenson each
produced a certificate of a Justice of the
peace showing ^{that} he had taken the several

Oaths prescribed by law and was duly
qualified it was ordered that the return of
the Sheriff, and the certificates of election
and of qualification be filed with the
clerk and as a part thereof.

On motion, the Council proceeded to the
election of a Surveyor of the Streets of the
town and of such part of the public road
in the County over which the Council have
control for one year, or till successor is
appointed and George W. Burt was unan-
imously elected for one year from 1st Saturday
in May.

Extract from the record of the proceedings of
the Council of the Corporation of Smithfield
held on the 5th of September 1856

h 22

George W. Burt Surveyor of the Streets of
the town and that portion of the road over
which the Corporation exercises control
made his report - showing the sum of \$27.25 -
due the said Surveyor - and it is ordered that
a copy of these proceedings with the account
of expenditures to date be placed at the post-
office of this town and at some other places.

Surveyor
Balance due Geo: W. Brant & Date

32, 25

At a meeting of the Council of the Corpora-
- tion of Smithfield at their office in
Smithfield on Friday the 19th day of June
1857 - present -

A. Atkinson Mayor
James B. Smithall First Alderman
Edwin Morrison Second Alderman
Wm. H. Stephenson Third Alderman
Jesse Hedges Fourth Alderman

138

It is ordered that the said George
W. Brant be, and he is hereby appointed
Surveyor of the Streets of Smithfield and
each portion of the public road of the County
of Dorset Weymouth over which the Mayor and
Aldermen have jurisdiction according
to the Act of the Assembly passed the 28th
day of February 1856

At a meeting of the Council for the Corpora-
- tion of Smithfield at their Hall on the 16th
day of October 1857 - Present.

A. Atkinson, Mayor, James B. Smithall,
Edwin Morrison, Wm. H. Stephenson
and Jesse Hedges

4 x x x x x x

It is ordered that the

Surveyor of the Streets do proceed to improve
the sidewalks to the best-advantage, and
report to the Board as soon as the work is
Completed.

At a meeting of the Mayor and Aldermen
of the Corporation of Smithfield at their Hall
on the 18th day of December 1857.

Present - A. Alderson, Mayor
W. H. Stephenson, Edwin Morrison, Aldermen
Jesse Hodge, Alderman

x x x x x.

Geo. W. Burt, Collector of the Corporation,
this day produced his account of Debts
and credits from July 1st 1856 to this date
showing due him as Surveyor of the Streets
£43. 21

Council of the
At a meeting of the Corporation of Smith-
field, at their Hall on the 21st day of May
1858 being the 3rd Friday in May

Present. A. Alderson, Mayor
Edwin Morrison, Sampson White
and Jesse Hodge, Aldermen

x x x x x

Geo W. Burt Surveyor of the Streets made
his report showing the sum of £5. 20 due to
him by the Corporation.

At a meeting of the Mayor and aldermen
for the Corporation of Southfield at their Hall
on the 17th of December 1858

Present - A. Atkinson Mayor

E. Morrison, S. White, Jesse Hodges

Aldermen

On motion - It is ordered that George W. Burt
Treasurer out of any money in his hands
not otherwise appropriated pay

. to George W. Burt Surveyor of
the Streets the sum of £19.79 cents for
work and expense on streets.

Ordered that a fund shall be raised for
the purpose of keeping in repair the streets
in the town instead of requiring the able-
bodied laborers to work on the streets and
that for that purpose a tax be laid on

At a meeting of the Mayor and Alder-
men of the Corporation of Southfield at
their Hall on the 20th of January 1860

Present - A. Atkinson Mayor

Edwin Morrison, S. White, Jesse Hodges
and W. H. Stephenson, Aldermen

+ + + + +
George W. Burt, Surveyor of the Streets of
the Corporation presented his a/c for one year

up to this date for expenses on the Street
showing also the amount of road tax
collected, the account being sworn to by the
Mr. Rust.

The Account shows amount-received by him	91.58
Amount-expended	100.26
Amount-Cross & personal Services	<u>14.86</u>
Balance due Surveyor	<u>118.12</u>
	<u>26.62</u>
	118.12

At a meeting of the Board of Aldermen &
Mayor at their Hall the 17th February
1860

Present- Archib. Atkinson, Mayor
E. Morrison, Isaac Hodges, S.
White & Wm H. Stephenson, Aldermen

On Motion, and resolved, it is ordered that
Geo W. Rust Treasurer out of any monies
in his hand not otherwise appropriated
pay to the following persons the following
sums, to-wit to the Surveyor \$19.31 to
Rust Surveyor of the Street \$19.31 &c

At a meeting of the Mayor and Alder-
men for the Corporation of Smithfield called
by the Mayor the 3^d May 1860 at their
Hall. Present- A. Atkinson
Mayor

E. Burdick, Jess Hedges, Sam White &
Wm H. Stephenson, Aldermen -

+ x x x x x

Ordered that the Treasurer pay to Geo: W.
Birt Twenty Dollars and Twenty five
cents out of money of the Corporation
in his hands it being for money expended in
and for repairs of Streets & this done.

At a meeting of the Mayor and Aldermen
of Southfield held at their Hall per se
and with the consent of the Mayor C. B. Hayden
appeared and filed before the Certificate
of his election as Mayor on the 5th inst.
do

At a meeting of the old Council called
per se and held by the Mayor at their
Hall on May 18th 1861 Present -

C. B. Hayden, Mayor

S. White, Jess Hedges, Wm H. Stephenson
and C. C. Chalmers

+ x x
Mr Jess Hedges submitted his report -
on the account of the Treasurer, Surveyor
and collector from Feb'y 1st - 1860 to Feb'y
1st 1861

Which is as follows

Am't in hands of Treasurer	164.58
do in Surveyor	<u>21.41</u>
	185.99
Am't of taxes not collected & doubtful	17.09

At a meeting of the Council held in
Smithfield at Town Hall on the 29th of
April 1862 pursuant to the call of
the Mayor.

Present O. B. Hayden, Mayor

Jesse Hodges, D. White, S. J. Wilson
and C. C. Chalmers.

+ + + + +

And the said G. W. Butt made his report
as Street Surveyor showing a balance
in his hands on this date of \$16.37
which report was accepted and confirm-
ed

At a regular meeting of the Town Coun-
cil held in Smithfield on Friday Sep 7th
1866 Present-

Jesse R. Paine Mayor

Wm. H. Stephenson } Aldermen

T. H. Southall }

Jesse Hodges }

The Committee appointed at the last meeting made the following reports which were adopted and ordered to be filed, viz

We the undersigned Committee appointed by the Mayor and Aldermen to examine the vouchers of G. W. Burt late Treasurer of the Corporation of Southfield after careful examination find the said Treasurer charged on April 29th 1862 with \$199.07. We find he had disbursed during ~~1882~~ 1862 with proper vouchers the sum of \$88.87 leaving in his hands as Treasurer \$110.20. We also find that he has disbursed for 1883 the sum of \$4.00 thus leaving in his hands as Treasurer the sum of \$166.20, and we find he paid Surveyor of Streets for years 1862 & 1863 the sum of \$106.62 showing the Corporation owe the said Surveyor the sum of \$1.43cts bal on account.

Signed

Jesse Hodges } Com-
W. H. Stephens } mittee
J. H. Smith }

(Teste)

J. R. Andrews (Secy)

Smithfield, Virginia, April 1891

I, J. P. Andrus, Secretary of the
Council of the Corporation of Smith-
field do certify that the foregoing
~~are~~ are true and correct extracts
from the record of the proceedings
of the Council of the Corporation
at the time and dates mentioned
respectively.

Given under my hand, & the
Seal of the Corporation this 10 day
of April A.D. 1891
J. P. Andrus (Secy)

Exhibit 16

Should be 17

[Faint, illegible handwriting in cursive script, likely bleed-through from the reverse side of the page.]

[Faint, circular stamp or seal, likely bleed-through from the reverse side of the page.]

✓ This Indenture made this 26th
day of Octo. in the year of our Lord
Christ our thousand seven hundred
and sixty three, and in the third year
of the reign of our sovereign Lord
King George the third; Between
Thomas Smith of the Parish of
Newport, in the County of Isle
of Wight, of the one part, and
William Robertson of the Parish and
County aforesaid of the other part
Witnesseth, that the said Thomas
Smith for and in consideration
of the sum of Forty One Pounds,
current money of England to him
in hand paid by the said William
Robertson at or before the executing
and delivery of these presents, the
receipt whereof is hereby acknowledged
and thereof receipt and
discharge the said William Robertson
his heirs, executors, administrators, he
the said Thomas Smith hath granted,
conveyed and sold, aliened,
released and confirmed, and by
these presents doth grant, convey
and sell, release alien and con-
firm unto the said William Robertson
and his heirs and assigns forever

all that tract or parcel of land
situate, lying and being in the
Parish and County aforesaid, and bounded
as follows (to wit:) beginning at the
back part of lot number twelve
in the Town of Smithfield, and
running from thence to the line
between the said Thomas Smith and
Thomas Miller, thence down a line
of marked trees between the said
Smith & Miller to Pagan Creek,
thence along the water course of the
said Creek to the town lot number
one, thence joining the back part
of the lots numbered in the foregoing
Plot of the said Town of Smithfield
one, two, three, four, five, six, seven,
eight, nine, ten, eleven and twelve
to the beginning. The said tract or
parcel of land including all
the vacant land between the
upper part of lot number twelve
bounded by the line of Thomas Miller
on the one side, and the back part
of the Town lots on the other, down
to the main run of Pagan Creek.
And the said Thomas Smith for
and in consideration of the sum

of Thirty Five Pounds current money
of Virginia, to him in hand paid by
the said William Robertson or or
before the sealing and delivery of the
present, the receipt whereof he doth
know by ac knowledge, and thereof
accept and discharge the said Wil-
liam Robertson, his heirs and assigns
forever, he the said Thomas Smith
hath granted, bargained & sold,
aliened, released and confirmed,
and by these presents doth grant bar-
gain and sell, aliened, released and
confirmed unto the said William
William Robertson and his heirs &
assigns forever, two lots or half
✓ acres of land situate, lying and
being in the Town of Smithfield in
in the County of Isle of Wight and
known in the surveyors Plat of
the said Town by lots number six-
teen and thirty four, and bounded
according to the surveyors Plat of
the said Town, relation being thereunto
had may now fully appear, to-
gether with all orchards, houses,
gardens, waters, ways, profits,
advantages, commodities, heredi-
taiments and appurtenances to

the said tract or parcel of land
and the said lots or half acres of
land belonging or in any way ap-
pertaining, and the reversion and
reversions, remainder and remain-
ders, issues and profits thereof;
and also all the right, title, intent,
property, claim or demand
whatsoever of him the said Thomas
Smith and his heirs, or assigns of
in and to the said tract or parcel
of land, and of the said lots or
half acres of land or any part
or parcel thereof. To have and
to hold the said tract or parcel of
land and the said lots or half acres
of land and premises with their
and every of their appurtenances,
unto the said William Robertson
his heirs and assigns, to the only use
or use and behoof of the said
William Robertson his heirs and
assigns forever. And the said
Thomas Smith for himself, his
heirs executors and administrators
do covenant, promise, grant and
agree to and with the said Wil-
liam Robertson, his heirs and

of and by these presents, that he
the said Thomas Smith, his heirs
executors and administrators shall and
will at all times hereafter at the
request and cost and charges
of the said William Robertson,
make, do or execute, or cause to be
made, done or executed all such
further or other deeds conveying,
and assurances in the law as
shall by the said William Robertson
and his heirs, or of and by him
or be required. And truly that he
the said Thomas Smith for him-
self, his heirs executors and administrators
the above granted tract or parcel
of land, and lots or half acres of
land and premises, with all &
singlar the affortances against
himself, his heirs and against
all and every other person or
persons who shall or unto the
said William Robertson his heirs or of and by
him shall and warrant and defend
by these presents. In witness whereof
the said Thomas Smith hath hereunto
set his hand and affixed his seal the
the day and year first above written.
Sealed and. Thomas Smith

delivered in presence of
James Robison
Alexander Gregory
John Joyner

Received this 26th. day of October
1763. of the within named William
Robertson the sum of Seventy Five
Pounds { £ 75 } being the consideration
money within mentioned to be by
him paid to

Witness, Thos. Smith [L.S.]
James Robison
Alexander Gregory,
John Joyner.

At a Court held for the county of Isle
of Wight on Thursday the 3rd. day of
November 1763.

This Indenture and Receipt was
proved by the oaths of James Robison,
Alexander Gregory and John Joyner, the
witnesses thereto, and ordered to be
recorded.

Test, Richard Baker Ck.
a copy.

Testo,

A. P. Youncey Ck.

Thos. Smith
To $\frac{1}{2}$ Reed
Our Robertson

a copy.
Exhibit "14"

Mrs. *Benjamin T. Atkins*Magisterial District, *5*

1887.

To J. O. BRANCH, Treasurer of Isle of Wight County, Va., Dr.

LAND.

NO. ACRES VALUE

To State Capitation Tax.....

To State Tax on *lots 66, 67 & part 68* acres Land, value \$ *2000*....., at 30c. on \$100.....To State Tax on Personal Property, value \$ *515*..... at 30c. on \$100.....To State School Tax on Real and Personal Property, value \$ *2515*....., at 10c. on \$100.....

Total amount of State Taxes.....

To County Capitation Tax.....

To County Levy on *lots 66, 67 & part 68* acres Land, value \$ *2000*..... at 30c. on \$100.....To County Levy on Personal Property, value \$ *515*..... at 30c. on \$100.....

To County School Tax on Real and Personal Property, value \$....., at 10c. on \$100.....

To District " " " " " value \$....., at 5c. on \$100.....

Total amount of County Taxes.....

Total amount of State and County Taxes.....

DECEMBER 1.—5 per cent. added.....

TOTAL AMOUNT.....

RECEIVED PAYMENT *11,288*

J. O. Branch, TREASURER.

....., DEPUTY TR.

Exhibit "12"

2791
70

2861

Mr.

J. B. Thomas

Newport Magisterial District,

189.

To J. C. Branch, Treasurer Isle of Wight Co., Va., Dr.

LAND.

No. ACRES. VALUE.

unimproved property 800
part lot 8 1800
200
tail lot 600
part lot 2000
part Tanyan 500
5900

To State Capitation Tax.....
 To State Tax on *lots* acres Land, value \$ *5900*, at 30c. on \$100
 To State Tax on Personal Property, value \$....., at 30c. on \$100
 To State School Tax on Real and Personal Property, value \$ *5900*, at 10c. on \$100

~~1 00~~

1770

590

Total amount of State Taxes.....

23 60

To County Capitation Tax.....
 To County Levy on *lots* acres Land, value \$ *5900*, at 33c. on \$100
 To County Levy on Personal Property, value \$....., at 33c. on \$100
 To County School Tax on Real and Personal Property, value \$....., at 10c. on \$100
 To District " " " " " value \$....., at 5c. on \$100

~~50~~

1967

Total amount of County Taxes.....

19 67

Total amount of State and County Taxes.....

43 27

DECEMBER 1.—5 per cent. added.....

2 16

TOTAL AMOUNT.....

45 43

RECEIVED PAYMENT.

TREASURER.

DEPUTY TR.

Thomas J (C)
45, 43

Exhibit 13

Mr. Amanda M F Day

Newport Magisterial District, ✓

1889.

To J. C. Branch, Treasurer Isle of Wight Co., Va., Dr.

To State Capitation Tax.....		1 00
To State Tax on <u>13 6/10</u> acres Land, value..... \$ <u>600</u>, at 30c. on \$100		1 80
To State Tax on Personal Property, value..... \$....., at 30c. on \$100		
To State School Tax on Real and Personal Property, value \$ <u>600</u>, at 10c. on \$100		60
Total amount of State Taxes.....		3 40
To County Capitation Tax.....		50
To County Levy on <u>13 6/10</u> acres Land, value..... \$ <u>600</u>, at 33 1/3c. on \$100		2 00
To County Levy on Personal Property, value..... \$....., at 33 1/3c. on \$100		
To County School Tax on Real and Personal Property, value \$....., at 10c. on \$100		
To District " " " " " " value \$....., at 5c. on \$100		
Total amount of County Taxes.....		2 00
Total amount of State and County Taxes.....		4 40
DECEMBER 1.—5 per cent. added.....		22
TOTAL AMOUNT.....		4 62

RECEIVED PAYMENT.

, TREASURER.

, DEPUTY TR

6-10-90

Day Mrs. A. M. F.
#62

to
Exhibit 13

Should be 14

10 V. W. W. W.

Take notice that I shall on the 11th day of March 1891, next, at
the office of R. E. Boykin in the town of Smithfield and County of Isle of Wight
between the hours of 8 a. m. and 6 p. m. of that day, proceed
to take the Depositions of Jno R. Pavia, G. R. Atkinson and others
and others, to be read as evidence in my behalf, in a certain
suit - , depending in the Circuit - Court of Isle of Wight -

County, wherein

John Pavia

are plaintiffs, and The Corporation of Smithfield is

are defendants; and if from any cause the taking of the

said Depositions be not commenced on that day, or if commenced be not concluded on that
day, the taking of the same will be adjourned and continued from day to day or from
time to time, at the same place and between the same hours, until the same shall be com-
pleted.

A. R. Whitehead Constable of the
To the Sheriff of
County of Isle of Wight, & acting Sec. }
County to execute.
Agent of the Corporation of Smithfield
to execute.

Respectfully.

The Corporation of Smithfield

By R. E. Boykin &
R. S. Thomas

its Attorneys

V. Wrenn
vs. Notice to take Depositions
Corporation of Smithfield

March 3rd 1891

Executed the within
by delivering a true
copy V. Wrenn.

A.R. Whitbread
Const

Sargent at
Smithfield

The Commonwealth of Virginia,

To the Sheriff of the County of Isle of Wight, Greeting:

We command you that you summon

N. P. Young

to appear at the office of R. E. Boykin in the town of
Smithfield

in the County of Isle of Wight, on the *10* day of *April*
1891, before me, between the hours of 8 A. M. and 6 P. M.

to testify and the truth to speak on behalf of the Corporation of
Smithfield

in a matter of controversy pending in the Circuit Court for the County
of Isle of Wight between *N. Wrenn*

Plaintiff and the Corporation of *Smithfield*.

Defendant And have then there this writ.

Given under my hand this *9th*

Signed

day of *April*

1891

T. H. Barham Notary Public

W. W. W. W.

vs. J. In Chancery
Corporation of Smithfield
Summons

Executed by de-
claring to the
within named
W. W. W. W. a
true copy of the
within sum-
mons April 9th
1891

B. A. E. E. E.
J. J. J.

The Commonwealth of Virginia,

A. R. Whitehead, Constable
To the Sheriff of the County of Isle of Wight, Greeting:

We command you that you summon

John R. Purse, G. R.
Johnson, L. C. Chapman, J. O. Thomas
Mr. G. W. Smith
to appear at the office of R. E. Boykin in the town of
Smithfield

in the County of Isle of Wight, on the *11th* day of *March*
18 *91*, before *me*, between the hours of *8 a. m.* and
6 p. m.

to testify and the truth to speak on behalf of the Corporation of
Smithfield

in a matter of controversy pending in the Circuit Court for the County
of Isle of Wight between *V. Wrenn*

Plaintiff and *the Corporation of Smithfield*

Defendant And have then there this writ.

Given under my hand this *2nd* day of *March*

Signed

T. J. Barham, Notary Public 18 *91*

March 3rd 1891

Executed the within
by deluging a true
at which name

J R Purdie

Geo R. F. Kinman

W. C. DeKalms

J. S. Thornhill &

J. T. Thomas

A. R. Whitfield
const

or not - the lots therein mentioned Nos. 16 + 34, are ~~not~~ therein described as two lots or half-acres of land situate lying and being in the town of Smithfield, in the County of Isle of Wight, and known in the Surveyor's plat of the said town, by lots Nos. 16 + 34 and bounded according to the Surveyor's plat of the said town, relation being thereto had, may if more fully appear.

Answered
24 June

They are so described.

Examine the deed of Robert Butler and wife to Robert West, filed as an exhibit with the defendants answer, bearing date the 24th day of May 1813, and tell me whether or not the lot No. 33 therein mentioned is not described as ~~the~~ a certain lot of land ~~is~~ lying in the said town of Smithfield, designated and known, by the appellation of lot No. 33, as will more fully appear ^{by reference to the Surveyor's plat of the said town}, which said lot was formerly held as public property - by the County, the right of which was granted to Frances Boykin by an Act of the General Assembly of

Virginia, and which was sold by James Johnson and Nancy his wife Frances M. Boykin and Fannie his wife, the heirs of the said Frances Boykin and the heirs of Thomas Smith deceased to the said Robert- Butler.

Answer
To Quest.

It is

State if the nos. therein referred to do not agree with the nos. on the aforesaid Jordan Thomas plan

Question objected to on the ground that the paper purporting to be a plan and survey of the town of Smithfield, and filed with the defendants' depositions and marked as exhibit "X"; and called a plan of the town of Smithfield made by Jordan Thomas late County Surveyor, first that the only authority legally competent to make or cause to be made a survey plan or plat of an incorporated town is the Council of said town; secondly that the plan after having been made must ^{be} ~~be~~ accepted and adopted by the Council of the town ordering such plan, survey or plat to be made and

must define the streets and widths of same, and size number and boundary of lot in said town; Boddy said plat after being made accepted and adopted, shall be recorded in some one of the books of said town, and filed recorded in the Clerk's office of the County in which such town is situated, neither of which requires this Jordan Thomas plat-possessor, and which facts can only be proven as to the genuineness of the plat by the records themselves, or properly authenticated copies thereof which said records or copies thereof have not been produced by the said defendant and the production of same is called for by the plaintiff

Answer

There are lots Nos. 16, 33 & 34, but there is nothing upon the plat to identify these lots 16, 33 & 34, with the lots 16, & 33 & 34 mentioned in the deeds.

\$ Lots 16 & 33 are separated from each other by a street on the plat. I should say it was Mason Street of the town

Lots 33 + 34 are contiguous and front upon Main Street.

Lot 33 upon this plan is situated as the W. Wrenn lot is situated, and lot 34, ^{there} is situated as the State lot is situated, in the streets of the said town. The streets are not named in the ^{Jordan Thomas} plan, or survey ~~of~~ of the town. But from my knowledge of the town, I can easily distinguish the different streets as marked upon the said plat. Main Street is the street running from the outer limits of said town to down to Pagan Creek. Mason Street is the first cross street, and in the plat of said town, lots 8, 9, 16 + 33 are at the intersection of said streets.

31 Quest- Please state who lives on the lot on that plan designated as lot no. 8

~~Answer~~ Question is objected to on the ground hereto given in regard to the said plat.

Answer Junius O. Thomas

32 Quest- who lives on the lot on that plan designated as lot no. 9

Answer Isaac D. Cofer

33 Quest- Who lives on lot designated on that

Plan as lot- 16.

Answer Jas. P. Andrews.

34 Quest. Who lives on the lot ~~opposite~~ ^{V.}
~~33~~ designated in the said plan
as lot- 33?

Answer W. Wrenn

35 Quest. Who lives on the North side of ^{Main}
street, in the lot- immediately
opposite W. Wrenn's

Ans. Junius O Thomas

36 Quest. Who lives on the North side of Main
street diagonally opposite from
W. Wrenn?

Ans. Isaac D. Cofer

37 Quest. Who lives on Mason street im-
mediately opposite the lot of V.
Wrenn?

Ans. Jas P Andrews

38 Quest. Who lives on Mason street im-
mediately in the ~~an~~ rear of V.
Wrenn?

Ans. C. H. Wilson

39 Quest. Coming down Main street and
going towards Payam Creek
who lives on the lot immediately adjoin-
ing V. Wrenn?

Ans. Jas A Brown on the lot known as the
State lot-

40 Quest.

When my line of thought, as indicated by Questions 27, 28 & 29 was interrupted, I was in the subject of the descriptions of lots in the earliest and latter deeds concerning lots in the town of Smithfield, and descriptions of those lots were read to you and read by you from and in those deeds. Please state whether or not the conveyances made, of lots in the town of Smithfield do not generally allude to the lots and the numbers of those lots according to a certain plan.

Answer

As far as I have examined, I think the earlier deeds invariably do. And I think it is a general practice for the later deeds.

41 Quest.

State whether or not, you have traced up some of your ancestry by an examination of the said deeds; and if so, mention the ancestor and describe the lot.

Question is objected to on the ground that it is immaterial to the issue

Answer

I found the will of George Wilson in which he gave lot No. 59 in the town of Smithfield to his daughter

Mary. I afterwards found the deed of Jesse Atkinson and Mary his wife conveying lot No. 59 in the town of Smithfield which had been devised to the said Mary by her father Geo. Wilson; and the said Jesse Atkinson was my grandfather.

42 Quest. State who now lives on lot 59.

Answer I think lot. 59 is the lot ^{formerly} ~~lot~~ ^{spoken of as the} Atkinson lot - but I am not positive about it.

As in many instances several of our lots have been owned by the same individuals, and their boundaries lost sight of, being contained in the same enclosure.

43 Quest. Please state whether or not some of the original lots have not been escheated to the Commonwealth, and have not since been sold by the State, and the Nos. in the deeds of conveyance, specified according to the original numbers of those lots. And if so, give us the facts and circumstances concerning the same, and any efforts that you may have made to find the deeds.

Plaintiff objects to the questions on the ground that the only evidence, admissible to prove the facts stated in the question, are the records of the es-

the reasons hereafter given to the introduction of, or reference to the Jordan Thomas plan.

Answer

The lots now occupied by me are held by me as trustee under the will of my late wife. The lots 64, 65, 66, 67 & 68 were owned by my father and after his death, they were held by my mother as her dower, & the reversion being in myself, my brother and sister. After my mother's death, I bought ~~my~~ the interest of my brother and sister in said lots, and they were afterwards acquired by my wife. As the town was originally laid off, there was a lane between lot 65 & 66 and by an act of the General Assembly of Virginia, the said lane was moved between lots 63 & 64. After my wife acquired the said property, she conveyed portions of said lots to different individuals; viz., ~~lot~~ lot 64 and ~~a~~ I think a part of 65 to W.D. Falk and K.K. Chapman, separately and K.K. Chapman afterwards conveyed to W.D. Falk. A part of 68 was conveyed to Mrs. Silvan T. Boykin, or A.R. Boykin her trustee; a part of the same

lot was conveyed to either J. H. or W. J. Nelson, and there stood remaining as designated in the land book after this coming to my wife at the time of her death lots 66, 67 and a part of 68, ~~the~~^{as} is shown by a tax account of J. O. Branch for the year 1887, herewith filed along with this deposition and marked exhibit 12

45 ~~Quest.~~ State the location and description of the lots that you have just mentioned

~~Answer.~~ The said lots lie at the lower ^{end} ~~part~~ of Church Street ~~on the north side thereof~~ and the upper end of East Church the said lots being contiguous and on the north side of said street. These lots extend from the said street to Pagan Creek

46 ~~Quest.~~ Please state who lives on lot 69.

~~Answer.~~ J. B. Boykin.

47 ~~Quest.~~ Name from that, the occupants of the families down to the land aforesaid, as they come in succession.

~~Answer.~~ A. R. Boykin, M. J. Jordan myself, and W. D. Falk.

48 ~~Quest.~~ State whether or not, the lots aforesaid are mentioned ~~on~~ on the assessor's books after the lower of Smithfield for the

purpose of taxation as by the numbers
aforesaid.

Plaintiff objects on the ground that
the only proper evidence of matters
fact, designation or descriptions
of things contained in the assessor's
books ~~set~~ of Smithfield are the
books themselves, or properly authenticated
copies thereof.

Ans.

I don't know

49 Quest.

State when from tradition or otherwise
the Court house of the County of Isle
of Wight was moved to the town of
Smithfield

Plaintiff objects to the question on
the ground that the removal of the Court-
house to the town of Smithfield is
a matter of record, and the record is
the only evidence that can be in-
troduced to prove the fact, and the
production of same is called for by
the plaintiff

Answer

The only knowledge that I have of it, is
derived from the case of Boykin's devisees
vs. Smith et al., decided by the Supreme
Court of Appeals of Virginia, and re-
ported in 3d Munford's Reports, p. 102,
in which it is stated, that on the 1st day
of Nov. 1754, ~~that~~ Thomas Smith

being seized in fee of certain lands, in order to enhance the value of his adjoining estate then agreed to the erection of certain buildings thereon for the public use of the County of Isle of Wight - and that the land was kept in the public use and occupation of the said County, for the purposes aforesaid, from that time until the year 1801. In the statement of the case the holder of the lands is called Thomas Smith, but it is shown on p. 105 that Arthur Smith, uncle of Thomas, was at or about the year 1754 seized of the said lands.

~~It is by a~~

50 *Quest* = State whether or not - there is within two or three miles of Smithfield a farm called the glen farm on which the poor-house of the County is located

Ans. There is.

51 *Quest* State whether or not - there is a road leading to that farm and thence from that farm to Smithfield, formerly called the Court-house road, an old road now disused.

Answer There is a road in the County called

the "old - court house road, but I do not know where it is located.

52 Quest.

State whether or not there is at or near that locality the ^{evidences} ~~remnants~~ of an old bridge formerly called the "Court-house bridge"; and a small

Answer.

crack ^{formerly} called Court-house Creek

Answer.

I have heard such designations but I do not know where they are located.

I only once, as a boy, casually went over that section

53 Quest.

Cross-examination

The Cross-examination of Judge George R. Atkinson by W. L. Falk atty for the plaintiff.

1 Quest.

In your answer to question # "16", you stated that you were one of the Counsel for the plaintiff in the suit of Thomas trustee vs. Eley.

Please state whether or not there were any other Counsel employed in the case. If so, who?

Answer

R. S. Thomas and myself were counsel for the plaintiff; and R. E. Boykin for the defendant.

2 Quest.

In your answer to question "17" you said that the paper marked exhibit-"X" filed with the defendant's depositions, was admitted ~~admitted~~

without objection by the Counsel on either side. Please state whether or not it was so admitted by agreement of Counsel; and whether or not it was judicially recognized by the Court, and the lines thereon followed in the decision of the case.

Answer

I do not recollect any agreement of Counsel; my impression is that there was none. The question was submitted to the jury, and the verdict was in favor of the defendant; but after the jury retired, and in deed, I may say, I think, after they had rendered their verdict, the Judge alluded to this plat as a witness to which every grantor of the lands or of the lot in contest, had referred to on the question of the boundary thereof.

The lines as stated by the jury did not agree with that plat.

3d Quest.

~~State whether or not the lot owned by Thomas trustee and Mrs. J. A. Ely~~

3 Quest.

In answer to question 22, as I understand you to mean that only one-half of the lower floor of the original building ^{erected} by Merritt Wamble

was used as a store by him, and that the balance of the said original house was used by him as his dwelling.

Am I correct or not?

Answer

You are correct. The lower floor was composed of two rooms of about-equal size. The room next to Mason street was occupied as a store; the other ^{room} ~~room~~ was a hall with a stairway to the upstairs which he used as a dwelling. ~~Since it~~ At the time ~~that~~ he used ^{the} room next to Mason Street as a store, he used the hall above mentioned as a part of his dwelling.

4 Question

You have said in answer to Question "24" that Mr. Merritt Wamble extended the fence as shown by the red line in ~~at~~ defendant's exhibit "H" out into Mason street.

Please state whether or not - you know ~~any~~ ^{the} legally defined line of Mason street.

Answer

I do not. What I meant to say was that he extended his fence ~~into~~ over a piece of land that had always ~~so~~ as far as I could recalled, been unenclosed and used as a street.

5 Quest.

State whether or not - the lines and

boundaries of the lots in the town of
 Smithfield, ^{on Church & East Church Streets} correspond with the line
 laid down in the said Jordan
 Thomas plan

Answer

They do with the exception of lots 68,
 69, 70, ~~71~~ 72, which now run to
 the Creek; but on the said plat
 there seems to have been a marsh
 intervening between the back of
 said lots and the Creek. And ~~lots~~
 that marsh does not appear from the
 plat to have belonged to those lots.

~~The~~ Lots 37, 38, 39, 40, 41, 42,
 43, 44, 45, 46, 47, 48, 49, 50, 51,
 52, 53 & 54 as shown by the plat
 have lands at their back which seem
 to have been no part of them; but
 which I believe is now a part of
 them; but how acquired I don't know,
 whether it was included in the
 original conveyances or subsequently

Re-direct
Examination

Re-direct Examination of Judge
G. R. Atkinson by R. J. Thomas
Counsel for the defendant -

1 Quest.

Allusion has been made to the suit
of Thomas trustee vs. Eley; Please
state what sort of action that was
and the particular piece of ground
to which it related.

Answer

It was an action of ejectment
brought for the recovery of a portion
of ~~the~~ a slip the lower part of lot
69 and of the Marsh in front of it

2 Quest.

State who then occupied ~~and~~ and who
now occupies lot 70 + ~~71~~.

Answer

Mr. ^{R.F.} Barnett occupied 70, and
then and still occupies it together
with his son A. S. Barnett.

3 Quest.

who then occupied lot 72?

Answer

R. F. Barnett, unless he has sold
a part of it to Mrs. Sarah A. Eley

4 Quest.

State whether or not the question in
that case was, ^{as} to the ownership of ~~the~~ 69
the piece ^{of land} of land in the rear of ~~70~~
bordering on Pagan Creek, between
J. A. Eley, a purchaser from R. F.
Barnett, and Jas. Thomas trustee for
Mr. L. Baykin and Lucy A. Thomas

Answer

~~I don't know I don't~~

~~I might say the same thing about~~
 My impression is that the conveyance
 by R. F. Barrett to Mrs. Eley embraced
 a part of 70 as well as of 72. It was
 as to the ownership, ^{of a part} of a piece of
 land in the rear of 69 and a part
 of 69

And further this deponent saith not.

Wm R Atkinson

W. H. Thomas having been duly sworn
 deposes and saith as follows:

The plaintiff by his counsel ob-
 jects to the taking of the deposition
 of W. H. Thomas on the ground: 1st

That he had not been duly summoned
 according to law; 2ndly due notice not-
 having been given to the plaintiff in the
 cause or his attorney.

~~The plaintiff that having had due
 notice of the taking of the deposition
 of W. H. Thomas was not present himself
 or by his counsel.~~

And thereupon the plaintiff I and his
 counsel left the place of the taking of
 the deposition of W. H. Thomas without
 moving for a continuance or adjourn-

ment ~~without~~ or requesting the same

1 Question Please state your age and residence

I was born Mich. 13, 1827; and have resided in Smithfield ever since I was fourteen years old.

2 Quest. State how the lot now called the V. Wrenn lot was enclosed at the date at which you came to town.

Answer As well as I could recollect - it ran from the corner of the Hotel on ~~at~~ Main street next to V. Wrenn's house, to the corner of V. Wrenn's house on Main street next to the Hotel. It commenced again on the ^{South-east} corner of ~~the dwelling of~~ of V. Wrenn's dwelling house ~~to the~~ in Mason street, and ran to the north west corner of the frame building now used as a stable, and thence from the south ^{East} ~~west~~ corner of the same ^{frame} building to the north west corner of ~~the~~ the house now occupied by A. W. Wilson the said frame building forming a portion of the line of the enclosure in Mason street.

3 Quest State how long that ^{aforsaid} enclosure remained as you have described it.

Answer Up to a short while ago, Mr. Wrenn

recently, about Nov. 1890...

look up a portion of it on Main street, and run the fence out on Main street. ~~Except~~ ~~Either~~ Mr. Morrison ~~has~~ made an enclosure on Main and on Mason street. ^{portion of} of equal length ^{of} with the house facing on each street.

4 Inst.

~~State whether or not you have ^{any} knowledge of the location of the present building occupied by W. Wrenn ~~located on~~ Main street, and was placed on the line of Main and Mason streets and at the intersection of the same.~~

Answer

~~I have always understood that.~~

5 Inst.

~~State whether or not you have always understood that the portion~~

4 Inst.

State whether or not you have any knowledge of the location of the said house of W. Wrenn, the line of the same, and if so, ~~whether or not~~ state it.

Answer.

The house, as I have always understood, is right on the line of Main and Mason streets

5 Inst.

State whether or not the ^{space in front of the} ~~small~~ enclosure

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that was ~~put~~^{erected} by Mr. Wamble or Mr. Morrison, as you have heretofore stated, projected into what was considered Mason & Main Streets.

Answer
6 Quest-

It was put on the street land.

State whether or not you have ever heard anything from tradition or otherwise, about the location of the porch to the State, and ^{of} the ~~at~~ State itself, and if so, state it.

Answer

I have heard my father, Wm. J. Thomas and my uncles Jas. Thomas and John P. Thomas, now dead, frequently say the ~~the~~ face of the State itself was on ~~the~~ line of the ^{main} street, and that the porch was put into the street by an act of legislature. I have heard a great many old people years ago, now dead, say the same thing.

My father would have been ~~80~~^{about 83} ~~and~~ years ~~to~~ were he living; my uncle John P. Thomas would have been about 76, and ~~the~~ Jas. Thomas would have been two years younger than my uncle John P.

7 Quest.

Will you please state whether or not the space outside of that portion of the enclosure of V. W. room

running from the face of the Hotel to the face of the house of the said Wrenn has or has not been used, recognized, and occupied as a part of ~~the~~ the side walks of Main Street, from your earliest recollection.

Answer It has always been used, recognized and occupied as a part of the side walk of Main Street from my earliest recollection.

8 Question State whether or not the said space referred to in the above question, outside of the enclosure of V. Wrenn as aforesaid, was considered and regarded as much a portion of Main Street as any other portion of said street.

Ans. Yes sir it was regarded and used as much as a portion of Main Street as any other part of the street.

9 Qu. Will you please state whether or not the face of the Hotel is upon a straight line with the face of the house of V. Wrenn.

Ans. Yes Sir. About as near in a line as they possibly could get them.

10 Qu. Will you please state whether or not the faces of all of the houses from the corner

on the Western side of said street
of Church and Main street, to the Corner
of Main and Mason street are in a
straight line with each other.

Ans.

As near as ~~as~~ they well could put
them; they are practically on a straight
line.

11 Quest.

State if Geo. Britt was ever the sur-
veyor of the streets of the town of Smith-
field; and if so when.

Ans.

12 Quest.

He was surveyor, ^{before the war,} for many years
State whether or not, as surveyor of
streets, he did any work upon the side-
walks, of the said streets, and if so, state
the nature of such work if any,
that you may recall.

Ans.

It was his business to keep the street
and side-walks in order all over town.
He mended the side-walks and filled
in the holes in the streets with the same.

This material came from the rear of
the lot that I sold to the said Britt.

It was coarse rocky material in large
pieces, which had to be beaten to pieces
with a sledge-hammer, though some
of it was finer. ~~The~~ The space between
the Hotel and V. Wrenn's house, ^{in the street &} up to the
Enclosure, ^{was used as a sidewalk} was covered with ~~this~~
this material, the larger pieces being covered

with the finer ~~road~~ ^{road}. The ~~difference~~
~~between the soil of the sidewalk in~~
~~question~~ The soil of the sidewalk
differs from the soil of the garden
within the enclosure ~~as~~ as may be
seen by any one who will inspect
it to-day. I know positively that ~~the~~
this was done by Mr. Britt as sur-
veyor of the streets, and not by any
owner of the adjacent lot.

13 Q.

Please state whether or not the said
Geo. Britt as ^{surveyor of} streets, and
the subsequent ^{surveyors &} sergeants of the said
town worked upon that portion of the
street between the State and the house of
V. Wrenn ^{to the enclosure aforesaid up} to the time ^{of the} ~~an~~ altera-
tion in the said enclosure made by
V. Wrenn.

Ans.

They did whenever it needed it up to
the time of the alteration made by
V. Wrenn. They ^{also} worked up to the en-
closure of V. Wrenn's ^{lot} ~~house~~ on Mason
Street.

And further this deponent saith not.
Wm. Thomas

The further taking of these depositions
is adjourned until to-morrow at the
same place and between the same hours

T. J. Bankham, Notary Public

1897

1 f 3

April 4, 1891.

Present: W. L. Dett, Counsel for plaintiff
R. S. Thomas, Counsel for defendant.

John G. Wamble, having been duly sworn
deposes and saith as follows:

1 Quest.

Please state your age and residence.

Ans.

I was born in 1828, ~~here~~ and have resided here forty-three years and one month.

2 Quest.

State whether or not you are a member of the present Council of Smithfield.

Ans.

I am.

3 Quest.

State how long you ~~have~~ have known the lot ~~in~~ in the town of Smithfield now occupied by W. W. Allen.

Ans.

I hardly could tell how long I have known it; but ever since before I came to town to live.

4 Quest.

State whether or not it was enclosed at the date of your earliest recollection; and if so, describe the line of the enclosure.

Ans.

~~It was not enclosed at the date of my earliest recollection~~

Ans.

The enclosure, at my earliest recollection

lection, ran from the North-west-corner of the Hotel, in a line with the face of the same, to the North-east-corner of the house of V. W. Neum, and in a line with the face of the same on Main Street. On Mason Street the enclosure ran from the South-west-corner of the house of V. W. Neum and in a line with its face, to the North-west-corner ^{what is now} of the old stable, and in a line with the face of it; thence from the South-west-corner of the same ^{stable} ~~building~~, in a line with its face to the North-west-corner of the house ~~at~~ now occupied by C. H. Wilson.

5. Quest-

For what-purpose was the house at the intersection of Main and Mason streets used, at the date of your earliest recollection.

Ans.

The lower part was used as a ^{general} store and counting-room, and the upper ~~so~~ part was used as a dwelling.

6. Quest-

State whether or not there were doors to the said store, and describe their location.

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Cus.

There were two doors to the ~~store~~ store, one on Main street and the one on Mason street; I ~~don't~~ ~~suppose they were more than ten feet apart.~~ The ~~door~~, each ~~door~~ door opening very near the ~~corner~~ ^{next} ~~at~~ the intersection of Main and Mason streets.

7 Ques.

State when Merritt Wamble ceased to use the said room as a store?

Ans.

About 1851 or 1852, I think. Reuben Butler succeeded him a short time at the same place

8 Ques.

State when there was any change made in the enclosure as you have described them.

~~Ans.~~

Plaintiff by his Counsel objects to the question as leading.

State whether or not any changes have been made in the enclosure as you have described them; and if so, when and by whom made.

Cus.

Merritt Wamble run his ~~house~~ ~~and~~ enclosure out in front of his house on Main and Mason streets; I suppose, about 1850 or 1851, ~~in order to~~ and I think ⁱⁿ order to prevent being annoyed in front

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of his doors and windows by people ~~standing~~ ^{change} and as passing by ~~there~~

9 Quest.

State what ^{change} if any, was the next change made in the ~~line~~ ^{of} the enclosure, and by whom and when made.

Ans.

The same enclosure which was in front of the V. Wrenn house, was in ^{now} 1890, continued by Mr. Wrenn down to the corner of the State porch in a line with the Column of the same. When the old enclosure was taken down and removed.

~~10 Quest.~~

10 Quest.

State how much, if any work had been done, in the extension of the new line of the enclosure to the porch of the Hotel, when the said V. Wrenn was notified to discontinue the said extension.

Ans.

They were digging ^{the} holes. I remember, when I walked up to Mr. Wrenn and said to him, if I were in your place, I would not do this. ~~There had been an ordinance passed by the town Council, but not recorded, forbidding that all fences should remain as it was, but I did~~

Then Mr. Wren said to me, "Sir, I am going to ruin this fence. I am going to do it. I don't believe the land belongs to me."

The plaintiff by his counsel objects to the answer of the witness on the grounds: 1st that it is not responsive to the question. 2nd by a portion of it is hearsay. and asked that it be excluded.

11 Q. State as nearly as you can, when this conversation took place.

A. It was in the last of Nov. some days before the notice from the Hon. W. D. Falk, Mayor, was ~~sent~~ ^{was} given to Mr. Wren, which ~~notice~~ ^{notice} is filed with the complainant's bill, marked exhibit "C."

J. D. D.

Cross-examination of J. G. Wamble by W. L. Falk ~~attor~~ counsel for plaintiff

Cross-exam.

ination

1 Q. In your answer to Question No. 2 you said that you were a member

of the present - town Council State whether or not you are a member of one of the Committees of said Council, and if so which one.

Ans.

The Council appointed me the street-committee

2 Quest

State whether or not you as a member of the aforesaid committee superintended the laying of the first plank-walks, ~~to~~ put down by the town.

Ans.

Yes sir, & I did.

3 Quest

When the town laid the plank walk beginning at the corner of Main and Mason street coming ~~down~~ down ^{Main} street toward Church; did they or did they not, pay for the laying of the portion of the ~~the~~ plank walk beginning at the North-East-end of the Hotel porch, in a straight-line with the face of the porch, up to the buildings extending down to the Shabby-hall porch, a distance of about 50 or 60 feet, and about 8 feet in width.

Question accepted to by the Council for the defendant, for the reason that

the witness ~~must not~~ was not-
 examined as to such matters in
 Chief, and can only be cross-
 examined in the matters as to which
 he was examined in Chief, and be-
 cause the town did not, ~~and could~~
~~not~~ by putting a plank-side
 walk of some 3 feet, mean to
 give the balance of the side-
 walk to any individual, and
 could not thus give it. And if
 persons choose for their own ac-
 commodation and for the accommo-
 dation of their stores, to add to the
 said plank-walk, they did it for
 their accommodation and con-
 venience and did not, and could
 not by this act acquire any
 title to that portion of the street
 that was voluntarily covered by
 them for their comfort and con-
 venience, ~~nor was any claim~~
~~asserted~~ and for the convenience
 of their customers, for the offices, shops
 and stores in the spaces mentioned
 nor was any claim to the said
 streets asserted by the men who
 did this voluntary work and

paid for the same; or by the owners of the property on the line of the street embraced in the space aforesaid.

¶ The plaintiff by his counsel replies to the objection; first because the defendant assumed that the space so covered by a plank walk ^{that part of the streets of the town} is ^{which} a matter in dispute; and asked that it be over-ruled. Truly, because the town did lay the plank ~~and~~ walks aforesaid, and compelled the adjacent property owners and tenants therein to pay for the laying of said portion; and the plaintiff by his counsel prays that the defendant's objection may be overruled.

Answer. ~~In~~ when ~~we were~~ we commenced to lay down this plank-walk, we agreed to lay a certain number of feet; ^{about} ~~or~~ four feet in width, ~~as width~~, for the benefit of the public; and then as we would come to a store or some business place, a man would say "I would like to have

this come up to my hands ~~so~~
 I will pay the extra cost for the
 extra work. They wanted this for
 their own convenience and com-
 fort. We did not undertake to
 cover the whole ~~st~~ sidewalk,
 we did all we were able to do with
 the money we had. Since the
 running of the first sidewalk
 we found that four feet was
 too narrow, so we put in another
 plank lengthwise so as to make
 the walk five feet; and in run-
 ning additional side walks,
 cut the planks five feet.

4 Quest

In answer to question no. 5-
 you stated that Mr. Merritt Wauble
 used the ~~the~~ lower floor of the V.
 W. house as a store, and the
 upper portion as his residence
 when he owned it. Please state
 whether or not you intended to
 say that he used the whole of
 the lower floor as a store, or
 only ^{about} half of it, the other part being
 used as a passage or hall.

Ans.

That portion of the lower floor ~~was~~
 which was not used as a store was
 used as a passage or hall.

Re-direct Without waiver of objection
 Examination heretofore made, the counsel for
 the defendant: proceeds to interro-
 gate the witnesses upon the new
 matter brought out upon the
 Cross examination

1. Ques. Please state when the plank-
 walk just alluded to was first
 put down by the town of Smith-
 field.

Ans. In 1888, as well I remember.
 The last put down ^{the latter part of} was in 1890

2 Ques If I understand you correctly
 when you ~~put down~~ the ~~plank~~ town
 put down the plank-walk afor-
 said, it only put down such ~~and~~
 width of plank-walk, as its fi-
 nances justified, and ~~you~~ the
 town did not mean by its fail-
 ure to cover the whole side-walk
 with the said plank to give
 up the uncovered portions of
 the said side-walk to the
 individuals of the town; and that
 when plank in addition to the four
 or five feet as you have men-
 tioned, was put down in front of

an office or shop or store as above said, it was done at the request of the occupants or owners thereof, and with the understanding that they would pay for the addition at work, and additional cost voluntarily, and at their own accord; and that there was no compulsion about it. State whether or not I understood you properly.

Plaintiff ~~by~~ by his counsel objects to the question on the ground that the motive, of intentions and meanings of a Municipal Corporation cannot be proven by oral testimony.

Answer You do

And further this deponent saith not
J. G. Wombles

Junius O. Thomas having been duly sworn, deposeth and saith as follows:

1 Quest. State your age residence and occupation.

Ans. I am 57 years of age, reside in the town of Smithfield, and am

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engaged in farming and lumber business.

2 Quest.

State when you first came to the town of Smithfield to reside

Ans.

when I was ~~8~~ 8 or 10 years old; and remained a resident of the town until 1854, when I removed to my farm of "Four-squares" some four miles from Smithfield. I returned to town ^{on Nov. 29} ~~about~~ 1868 or 1869 and ^{have} been residing to it in the town ever since.

3 Quest.

State whether or not you are familiar with the lot now occupied by T. W. W.

Ans.

Yes, ~~as~~ I am.

4 Quest.

State whether or not you have been familiar with it from the day of your coming to town up to the present time.

Yes, I ~~am~~ have been.

5 Qu.

State whether or not you live on a lot immediately opposite and if so how long you have resided there.

Ans.

I do; and have lived in that lot since ⁱⁿ ~~about~~ 1874 or '75.

6 Qu.

State what is the name of the store on which your house fronts.

Ans.

Main.

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7 Qu.

State what is the name of the street running from the V. W. Wrenn corner to the property of John Wilson:

Cus.

Mason

S. Qu.

Describe the enclosures of lot 33 now occupied by V. W. Wrenn as the said enclosures ~~at~~ existed at the date of ~~your~~ earliest recollection, if any there was.

Cus.

The enclosures commenced at the north-west corner of the ^{main building of the} stable and ran Westwardly in a straight line to the north-east corner of the V. W. Wrenn house, then occupied by Merritt W. Wrenn; then the enclosures commenced at a Mason street at the south-west corner of the said Merritt W. Wrenn house, running southwardly in a straight line to the north-west corner of the frame building now used as a stable; ~~that~~ the said ^{stable} ~~building~~ being on the line and forming a part of the enclosures; then commencing off at the south-west corner of the said stable it ran southwardly to the north-west corner ^{of the main building} of the house

then occupied by J. E. N. Wells,
now occupied by C. H. Wilson.

The main building of the Merritt
House, on E. W. Newn house formed a
part of the enclosure on Main &
Main Streets.

9 Q.

State how that said ~~main~~ main
building was used at that time
and many years subsequently.

Ans.

~~It~~ ~~It was used~~ The lower room
and corner room ^{which was the main room} fronting on Main
and ~~street~~ Main streets, was used
by Merritt House as a store.

It had two doors, one on each side
of ^{and near} the north west corner, one open-
ing on Main and one on Main Street.

The floor of said room was not
much above the ground, with no
steps or blocks, so that one might
step right out of the door upon
the ground or street.

10 Q.

State ~~not~~ whether or not there was
any enclosure of any kind in front
of either of the said doors.

Ans.

There was no enclosure in front
of the walls of the house on ^{Wagon} ~~Wagon~~ or
~~street~~ ^{Wagon} street, at that time.

11 Quest.

State for how long this building

remained without any end as you have just stated, and if any ~~was~~ afterword added; by whom and when.

Ans. It stayed unenclosed from my boy-
hood until manhood; and was en-
closed in recent years, ~~but~~ but
when and by whom I do not remember.

12 Q. State ~~with~~ whether or not the afore-
said Marble or Wrenn building
was placed on the line of any street;
and if so, name the streets.

Ans. The house was there from my ear-
liest recollection as the well known
stand; and I have always heard that
it was on the lines of Main and Mason
Streets.

13 Q. State if that has always been
so stated, ^{to be on the lines of Main + Mason streets} by general reputation
throughout the town, so far as known
to you.

Ans. Yes, I used to play marbles all
along there as a boy.

~~14 Q. The plaintiff by his counsel~~
~~objects to the answer as hearsay,~~
and asks that it be excluded.

14 Q. State whether or not there was a porch
to the building now occupied by

Wilson, in your boyhood known as the Hata Will house, and ^{as the} latterly the Chalmer's lot.

Ans. I remember a porch as being there a part of the time; ^{but} I cannot say that I remember a time when it was not there.

15 Quest. I run the time of your Earliest Clear remembrance of that porch, state whether or not there was any enclosure to the same.

Ans. There was no enclosure.

16 Quest. I run your Earliest Clear recollection, state whether or not there was a porch to the house, ^{on Mason Street} in what was known as the Reuben Butler lot; now owned by Maj. Calouma.

Ans. According to my memory there was a small porch; and I don't remember any enclosure. I don't think there was any.

17 Qu. State as well as you can whether or not there is an enclosure ~~as~~ to either of those lots, and if ^{so} when and by whom they were placed there.

Ans. There are enclosures to both of them, but the exact date, and by whom placed there, I cannot say, but it was of late.

dall, and I think perhaps ~~Colonna~~
Colonna and Chalmer, the respective
put them up; but I don't know posi-
tively whether they did or not.

18 Q. State the line of enclosures, ^{on Main & Mason Streets} to lot 16
now occupied by Jas. S. Andrews at
the date of your earliest recollection.

Ans. Commencing at the North West corner
of the main building of the said lot
^{on Main Street} running in a westerly direction
to the North East Corner of an old
store house on the same lot; occupied
by Mr. Mat. Horseworthy as a tailor's
shop. The main ~~store~~ building was
said to be on the lines of Main &
Mason streets, but never had it that
the chimneys on the East-end of the
said house were in ^{N. 20th} the street.
I don't know whether it was so or not.

Commencing at the South East corner
of the said main building, running
in a straight line in a southerly
direction to the North East Corner of
the house occupied by a ^{William} man called
"Uncle Fitch". The lot 16 was ~~to~~ owned
by William P. Jordan, the father of
my wife. He gave it to

19 Q. State the purposes for which that

building was at the date of your earliest recollection if known to you.

Ans. The corner room on Main & Mason streets was occupied by a gentleman named Ashby, as a drug-store. The other part of the building was occupied by Mr. Jim Scott as a residence. There was a small room ~~at~~ in the rear of the room just used as a store, which opened on Mason street; but I don't know for what other room was used, as I did not have access to that.

2d Qa. State whether or not the line of the original ~~of the original~~ enclosure as known to and described by you, has been changed, and if so when the change ~~was~~ made, and what the line of enclosure now is.

Ans. It has been changed. The change has been of recent years. I don't know the date. The present enclosures have encroached on both streets right much, but I don't know how many feet. — the depth of the porch on Main.

Q1 Qa.

State whether or not - there is a porch to the front of the Hotel on lot 34, and what if anything you know from tradition or otherwise concerning the same.

Ans.

There is a porch in front of the Hotel; and from my earliest boyhood to the present time I have heard it ~~commonly~~ stated that it was put there by a special act of the legislature.

Plaintiff by his counsel excepts to the ^{& asks that it be excluded} answer, on the ground that acts of the legislature and grants contained therein can only be proven by the production of the act itself; and we call for the production of the same.

Q2 Qa.

You have just stated that there is a porch to the front of the Hotel and that it was put there by a special act of the legislature. Explain what you mean by "it ^{was} put there".

The plaintiff by his counsel objects ~~on the~~ to the question on the ground ~~it~~ stated ~~to~~ in the objection to the preceding answer.

The information I have in regard to it -

was obtained from our oldest-citizens of County and town, viz. Dr. John R. Purdie, Jas. Thomas, Jos. B. Whitehead, my guardian, and N. P. Young, Clerk of the Court; there specially being the oldest.

Whenever a controversy would arise concerning the line of the street, the fact that that porch was put in Main street by a special act of legislature, would be adverted to, and that is the way I heard it.

The plaintiffs by his counsel objects to the answer and asks that it be excluded, on the ground that it is hearsay, and therefore not proper evidence in this cause.

23^d In.

Please state whether or not Jas. Thomas and Joseph B. Whitehead are living or dead.

Ans.

Both dead.

24th In.

Please state whether or not you understood from the parties specially mentioned as well as from many others, that the whole front of the said Main Hotel building, exclusive

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after porch was placed on the line
~~of Main street~~ of the south side
 of Main street.

Ans. I have always understood from
 the parties specially mentioned
 and many others, that the front of
 the said main Hotel building in-
 clusive of the porch, was on the
 south line of Main street.

25 Q. State whether or not this has been
 a matter of general reputation
 or public notoriety from your
 youth upwards to the present
 time.

Ans. It has, and I never ~~was~~ knew it
 either way contradicted.

26 Q. State the lines of your enclos-
 ure on lot No. 8 as they existed
 at the date of your earliest re-
 collection.

Ans. They are now as they were
 from the date of my earliest
 recollection.

27 Q. State when & from whom you first
 chose that lot.

Ans. I think I bought it ~~from~~ in 1874³
 from A. P. Young, C. S. Hayden & R. S.
 Thomas Trustees for, ^{Jas.} Thomas & ^{John E.} Adams

28 Q.

State whether or not you have renewed or repaired the front-enclosure on Main Street and if so the Character and condition of the former enclosure, and whether or not the present enclosure was put-upon the line of the old.

Ans.

I have put new ~~for~~ palings in the place of the old, as near on the same lines as possible, as will be shown by the brick sidewalk which was there when I bought it and is there at the present day. The old palings which I took down were of the very best heart, and looked as if they had been there 50 or 100 years; old style with the heads cut-rasped, ~~as to~~ and had been there long enough for the plank to rot when the nails held, and had been cut-off shorter and re-nailed so as to take hold in fresh places. The ~~pal~~ palings were covered with moss that stuck to them like barnacles, as it will do to a such quality of lumber.

29 Q.

~~State~~ Describe the porch of the

said building, as it was when you bought ^{it} and the steps there.

Ans.

The porch was small, about the same depth it is now, but - nothing like so wide, along the face of the house, - say about 12 feet - wide. The ~~was~~ steps were on the same side of the porch that they are now, but - they ran directly down by the side of the house

30 Q.

That portion of the street running from Main street northerly to wards that piece of ground commonly called "the Goose Lot" is now called Pierce street. State who ~~is~~ owns the property at the end of that street.

Ans.

I ~~own~~ it.

31 Q.

State whether or not ~~an~~ enclosure or paling, until recently, ran across that street separating that street from your property, and if so, when it was removed

Ans

Yes sir, it did. It was removed a few years ago

32 Q.

State how long, as well as you can, the said enclosure had been there

I don't know how long it had been there when I was a little boy I don't reckon it was there.

33 Ques.

State ~~not~~ whether or not it has been there ever since the close of the war.

Ans.

So far as I recollect:

34 Ques.

State whether or not it was there during the war.

During the war I lived in the

Ans.

Country and don't remember

35 Ques.

Exhibit "A" is herewith handed to the plaintiff with the request that he examine the same, and state when and where he first saw it and the circumstances ~~thereof~~ connected therewith.

Ans.

Ans.

Plaintiff, by his Counsel objects to the introduction of the Exhibit "A" filed with defendant's deposition, and called the Jordan Thomas plan until it is proven to be a record of some office of record authorized by law to preserve same.

Ans.

I saw it quite a number of years ago in the Clerk's office of Isle of Wight Co. ~~As Sup~~ exhibited to me as Supervisor of said County Newport Township, by N. P. Young, Clerk of Courts of said County, to enable me as supervisor to define the end of Main

street in Pagan Creek which is a wharf claimed and owned by said County. I was given to me to help me define the width of said wharf, which was said to be the width of the street, and the reason this was that the Board of Supervisors had been authorized to rent out said wharf, which was done from year to year.

36 Q. Please state if the town of Smithfield is in Newport District, if you are still supervisor of same district, and for how many years you have been so continuously.

Ans. Smithfield is in Newport Township; I am now supervisor of said district, and have been so about 18 years consecutively, with the exception of one year.

37 Q. State whether or not, when the said plan was exhibited to you it was exhibited to you as a plan of the town of Smithfield, which was lodged in the Clerk's office of the said County.

Plaintiff objects for reasons heretofore given.

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Ans.

It was exhibited to me by the Clerk as a plan of the town

38 In.

State how long you understood that the said plan had been in the custody of the said N. P. Young a Clerk, and his predecessors.

The question is objected to on the ~~ground~~ grounds that the length of time that a public document or record has been in the Clerk's office of a Court, is a matter of record and can only be proven by the production of the record themselves or authenticated copies thereof and for the further reasons stated.

Ans.

I am now in my 58th year and the said N. P. Young has been Clerk as far back as I can remember; and the said plat ~~was~~ when it was exhibited to me, ^{it} was told me was drawn by Jordan Thomas my grand-father; and he died when my father was a boy. This I have from old Neam Willcain J. Thomas & James Thomas. It was the oldest and only plat they had of the town; how long it has been in the custody of the office I cannot say.

The plaintiff by his Counsel accepts to the answer and asks that it be excluded on the ground that all the information given in reply to the question was obtained from Mr. J. D. Young who is now living, and is therefore hearsay, and it is not proper evidence to be admitted in this cause.

39 Q. Please examine the document itself and state whether or not it appears upon its very face to be a very old and a very much handled paper.

Ans. I have it in hand, and I consider it a very old and a very much handled paper. It is one of the oldest I ever saw.

40 Q. From that paper designate by the numbers your lot, the lot of J. D. Caper, Jas. P. Andrews, V. Wrenn, J. A. Brown, the Misses Wamble, G. R. Atkinson and the Watkins lot.

Ans. My lot is no 8; J. D. Caper's lot is no. 9; Jas. P. Andrews' lot is 16; V. Wrenn's lot is 33; Jas. A. Brown's lot 34; the Misses Wamble's lot is 36,

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E. R. Atkinson's lot is 68; ~~W. R.~~

Watkins' lot is 42 or 43.

41 Ques.

With the same plat - could you go on after a little time for examination, and locate the other lots in town.

Ans.

I think I could.

42 Ques.

State whether or not - you remember the late Geo. W. Britz; and if so, state if you remember, whether or not ~~you~~ ~~recall~~ he was surveyor of streets of the said town, and if so when.

Ans.

So far as I know, I remember him after the war, it might have been before the war; but - old Men Britz was surveyor ^{of streets}, here for a good long time.

43 Ques.

State ~~if you recall~~ whether or not - you remember that A. Atkinson was mayor of the town of Smithfield after 1855; and if so, for how long.

Ans.

I remember that Mr. Atkinson was mayor of the town for a while, when and how long I do not remember.

44 Ques.

State whether or not - there was a ~~small~~ small bank in the rear of the lot - now owned by O. S. Delle, formerly known as the Britz lot; and if so de-

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verify the character of the mud found there.

Ans.

There is a deposit of mud on the southern end of said lot - resting on the little rock, which ^{is} of a yellow, rocky kind; I have seen some of it - very recently and have been trying to get some of it - for street purposes.

45 Q.

State whether or not ~~from there~~ - there ~~was~~ mud placed outside of the former ~~enclosure~~ enclosure of W. Wrenn as it existed prior to Nov. 1890, between the ~~fence~~ that you have formerly described as marking the line of the ancient enclosure to the end of the sidewalk and between the end of the street porch, and the enclosure around the front of the dwelling on Main Street.

Ans.

There has been ~~not~~ mud put there.

46 Q.

State whether the said mud corresponds in character with the mud in the aforesaid Britt place.

Ans.

It seems to be of the same quality.

47 Qa.

State whether or not - the space just described has not always been used and ~~occupied~~ recognized by the town of Smithfield as a public street, as much so as any other part of Main Street.

Ans.

48 Qa.

So far back as my memory goes ~~Ex~~ State whether or not - the said space has always been so used and recognized ever since your residence in town.

Ans.

It has.

49 Qa.

State whether or not - it has ~~or~~ been worked by the ~~Superior~~ ^{Surveyors} of Streets of said town, whenever necessary, and as much as other portions of the sidewalk elsewhere right up to the said ancient enclosure.

~~50~~

Ans.

It was recognized as part and parcel of the sidewalk of the town but when and by whom worked I ~~can~~ don't remember. I could not say that I ever saw them working in that particular spot; but they worked ~~round~~ ^{where} generally ~~at~~ over time when needed.

The taking of their depositions is ~~for~~ adjourned until Tuesday April 7 between the same hours and ~~between~~ ~~the~~ at the same place.

T. J. Barham, Notary Public

Tuesday April 7, 1891.

Present: W. L. Falk, Counsel for Plaintiff

~~R. B. B.~~ R. S. Thomas, Counsel for Defendant

50 Quest. State whether or not you know the distance in a straight line ~~from~~ ^{between} the north-west corner of the main building of the Hotel, on Main Street, and the northeast corner of the V. W. Mason building on same street.

Ans. It's about 56 feet 7 inches; I don't know whether it's exact or not.

51 Quest. State the number of posts that are ordinarily put in that distance.

Ans. about eight-

52 Quest. State the number of posts; the quantity of ground-board, top rail, ~~that~~ railing, scantling, ~~moulding~~ ^{in the same} necessary to cover the ~~same~~ ^{said} space and the cost of the same.

Ans. 8 posts @ 55¢ \$4.40; ground board 42 ft; top rail 1x3, 14 ft; railing 9 3 ft; scantling 147 ft; which is equal to 296 ft @ \$2.50 making \$7.40; 112 ft of moulding @ 60¢ per hundred would make 67¢, ~~at~~

all of which added together \$12.07,
 53 ~~Quest~~ State whether or not your lots in the
 town of Smithfield are upon the as-
 sessor's books and tax-books of the
 County assessed and taxed by their
 numbers and description as you
 have given them.

Question is objected to by the plaintiff
 if) on the ground that matters con-
 tained in the assessor's books or
 tax-books of the County cannot be
 proven by oral testimony.

Ans. I have not examined the tax-books
 or assessor's books of the County
 and do not know how they stand.

53 ~~Quest~~ State whether or not you have a
 tax bill in your possession for taxes
 upon ~~the~~ ^{your} Smithfield property, and
 if so produce it, and describe
 what it contains.

Ans. ~~What property~~ I have it in my
 hand before me, for the year 1889
 and it specifies several pieces
 of property: wharf property, part
 of lot No. 8, another no. left-blank,
 Jail lot, Grave lot, part of tax-
 yard.

54 ~~Quest~~

Cross-ex-
amination

1 Quest.

Cross examination of J. O. Thomas by
H. L. Folk counsel for plaintiff

You stated in answer to question '9' that the lower and corner room of the V. W. house which was the main room fronting on Main & Mason streets, was used as a store by Mrs. Merrill Wauble. State whether or not the said corner room was any larger than the hall or summer sitting-room, which faces entirely on Main Street.

Ans

I have never made a measurement of said rooms; and really don't know, but I ~~was~~ don't ~~know~~ think so; there can't be a great difference, because ~~the~~ it isn't a big house.

2 Quest.

You have stated in answer to one of your questions that there were two doors entering the portion ^{used} by Mrs. ^{Merrill} Wauble as a store, one from Main and one from Mason Street; State whether or not there was the third door entering the hall or summer sitting room, from Main Street, and were ^{all at} not the doors about the same size.

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Ans. There is no house shown on said plan or plat.

Q6 Quest. Please state how you are by what methods you locate the lines of the streets by the so-called plan or plat, when there are no field notes, metes and bounds, nor points of the compass, nor scale of feet, nor width of streets, nor names of same, nor boundaries of lots, mentioned on said plan.

Ans. Having lived here the major part of my life, and being thoroughly familiar with its land and water I consider it a very accurate and very good plat of this town, said plat showing the streets and cross-streets and lots, about as accurately as it could be drawn by any one here. I would not want any other way other than what information could be gained by a fine said plat.

7 Quest

Ans. Please state how and by what methods you know the aforesaid plan to be an accurate plat of the town of Smithfield.

Ans. By common sense; when you produce before me a house, I can tell

whether he is a ~~g~~ horse in good shape or not; so by a knowledge of the land and water, I can tell whether the plat ~~is~~ is a good one or not.

8 Quest.

Please state whether or not you can tell by the aforesaid Jordan Thomas plan the exact number of feet that the V. W. Neum lot fronts on Main street; and the exact number of feet that the V. W. Neum lot fronts on Mason street.

Ans.

If I was a surveyor I could find the scale of that plat; ^{some of} ~~and~~ these lots have been more or less changed and subdivided; I don't think that plat was drawn.

9 Quest.

You said that originally the corner room of the house now owned by Jos. P. Andrews was used as a drug store by a man named Ashby, and that said house was on ~~at~~ the corner of Main & Mason streets, and that the chimneys of same were in ^{Mason} the street. Please state whether or not the said house does not sit very high from the ground; and if so, how did you enter same by porch or steps?

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Ans.

I ~~don't~~ think the ^{floor of the} ~~house~~ ^{store room} was ~~on~~ about three feet from the ground. ~~she~~ ^{and} was entered by steps

10 Quest.

Please state to the best of your knowledge how far the outer edge of the bottom step was from the underpinning of the house.

Ans.

I should think about two feet.

11 Quest.

Please state whether or not the brick office on your lot at the corner of Main and Pierce streets is, - to the best of your knowledge and belief on the line of Pierce street

Ans.

I think that the west-side of my brick office is on ^{the} line of Pierce street

12 Quest.

Please state whether or not you have a porch and front enclosure to the Jail lot projecting some feet beyond the extension of the line of the face of the brick office

I have; and it is now just as I bought it, without alteration or improvement

13 Quest

State whether or not the road on the Brill lot differs from other road beds, ^{immediately} across the town of Smithfield.

Ans.

~~There~~ There are some just like it, and the majority are like it, but ~~some~~ some of them are different.

Re-direct Examination of J. O. Thomas
by R. S. Thomas counsel for defendant

1. Quest

In your sixth question on your cross-examination, you were asked how and by what method you ~~do~~ locate the lines of the streets by the so-called plan or plat, when there are no field notes, etc., mentioned in the said plan. State whether or not the streets in the said plan are few in number and exceedingly well defined.

Ans.

They are few in number and very well defined in said plat.

2. Quest

State whether or not Main Street runs down to Pagan Creek on the said plan.

Plaintiff by his counsel objects to the question on the ground that it is misleading, because there is no Main Street laid down on the said plan, and further more objects to the introduction of the said plan, until it is proven to be a properly authenticated record of some office of record, authorized by law to preserve same.

State whether or not the street that has always, so far as you have ever known or heard, ~~that~~ ^{been} called Main street, does not run down to Pagan Creek.

Ans. ~~I have always heard that it did run down there, and that the street was worked by the creek.~~

Ans. Yes it does run there.

3 Quest. Please state what is the first street that crosses it ~~as it is~~ as the street runs down to the Creek.

Ans. ~~The~~ Pierce and Meason come together in Main

4 Quest. Please state the name of the street which according to the said plat ~~that~~ goes off from Main to the right as you go on down towards the Creek after leaving Pierce and Meason.

The Plaintiff by his counsel objects to the questions on the ground that the witness was not interrogated on his cross examination as to same, for the further reason that the questions misleading, there being no possible means of identifying the streets of the town of Smithfield, with lines laid down on the said so called plat, intended to represent nobody knows what. Introduction

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of said plat- objected to on grounds
heretofore stated.

Ans.

I have always understood it as
Church street.

5 Quest.

The lots on the aforesaid Jordan
Thomas plan are numbered from
one to seventy-two, consecutively. State
whether or not you can take that
said plan and locate each of the
original lots, that remain as they
were, and have not been subdivi-
ded by subsequent sales.

Question objected to by Counsel for
plaintiffs in the ground heretofore
stated in regard to aforesaid plan.

Ans.

Yes Sir, I think I can.

6 Quest.

State whether or not the ~~V. W. Wilson~~
~~house being at the intersection of~~
~~Main & Mason Street~~, you can

V. W. Wilson

start from the corner of the said
house ~~at the said intersection~~,
and measure the exact number
of feet to the Hotel lot on Main and
the C. H. Wilson house on Mason Street.

~~The plan~~

Ans.

I could.

7 Quest.

State what was the character of the steps
to the drug-store occupied by the said
Ashby.

Ans.

They were common wood steps
and further this department each not-

J. J. Thomas

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The plaintiff hereby waives his demand for the production of any ~~deeds~~ and all deeds assessors books, ^{copies of same} tax books, ~~and~~ ~~all documents~~ in the Clerk's office of the County Court of Isle of Wight County, with the understanding that any of them may be put in at any time that ~~James Harrison~~ ~~and~~ ~~Heath~~ the counsel for the plaintiff may request the same, prior to the hearing of this cause.

C. C. Chalness having been duly sworn, deposes and saith as follows:

Direct.

1 Quest

Please state your age, residence and occupation.

Ans.

I was born the 14th of Dec. 1825 in the town of Smithfield, and have resided here all my life.

2 Quest

Please state whether or not you know the lot on which W. Wren now resides.

Ans.

I do.

3 Quest.

Please state who resided upon it at the date of your earliest recollection.

Ans.

Merritt Wamble

4 Quest.

Please state how the said lot was enclosed at the date of your earliest recollection, and describe the line

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Ans.

of the enclosure

The fence from the Hotel down to the residence, I remember. There was no enclosure then in front of the house. The lower ~~story~~ floor of the house was used as a store; the upper floor as a residence. As well as I remember the fence ran down on Mason street in ~~at~~ a line with the old house ~~and~~ which stands there now, to the Mills lot.

5th Quest.

~~Please state~~

3rd Quest.

The old house to which you have alluded, has in these depositions been spoken of as an old frame building, as ~~the~~ a store-house & also as the stable of Merritt Wamble, and later still as the stable of V. W. Wrenn. Please state whether or not you remember it as located elsewhere, and if so where.

Ans.

I have an indefinite remembrance of its standing, as I ~~suppose~~ believe, on the location of the present V. W. Wrenn building.

6th Quest.

State whether or not you remember when it was removed from that position to its present location.

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Ans.
7 Quest.

Yes I remember it.

Please state whether or not - you remember the date of the ~~present~~ erection of the ~~present~~ building.

Ans.

I think it was about - 1835 or '36.

8 Quest.

If your memory be clear, from the time when the building was erected, state how the line of the enclosure ran from that date up to the time when some changes were made in the enclosure, on Main & Mason streets.

Ans.

It ran on Main, from the Hotel corner to the houses; & on Mason from the corner of the house to the Mills lot.

9 Quest.

Then if I understand you correctly, the line of the original enclosure as you clearly remember it, ran from the corner of the hotel next to the V. Wrenn house in a line straight with the face of each building. The said V. Wrenn house, forming a part and a continuation of that line, to the corner of said house on Main and Mason streets, thence ~~it~~ down and along the line of the house

on Mason Street, and in a straight line with the face of the same on Mason Street, to the old frame building aforesaid. And along the said building, and in a straight line with the same to the aforesaid Wells lot. ~~Do~~ Do I understand you correctly?

Answer

You do.

10 Quest.

State whether or not you understood from your earliest clear recollection up to the present time that the said building of the said V. W. Wren, fronts on Main Street, on the line of Main Street, and on Mason Street on the line of ^{Mason} street.

Ans.

11 Quest.

As I remember it, it does. State when, and by whom there was a change in the enclosure of the said lot.

Ans.

I suppose it was about - 1852 or '3 or '4, that the change was made by Merritt Wadelle.

12 Quest.

State what that change was made by Merritt Wadelle.

Answer

while he kept store there he made no change; but as soon as he

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private residence
made it a ~~store~~, he put a enclos-
ure in front of the building on
Main & Mason street

13 Quest State for how many years he
kept store there.

Ans. Ten or fifteen years

14 Quest. What room of the building was
used as a store?

Ans. The room fronting on Main
and Mason streets.

15 Quest. Then if I understand you prop-
erly from the date of the erection
of the said building and its use
as a store, until he ceased to carry
on the said business, there
was no enclosure of any kind
to the front of the building on Main
& Mason streets. Do I under-
stand you properly.

Ans. You do.

16 Quest. State whether or not - the space
in front of the said building and
lot enclosure as aforesaid on
Main street, from the date of
your earliest recollection until it
was enclosed by the said Merritt
Wamble on Main street, was not -
used and occupied as a ^{part of the sidewalk} ~~street~~

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Ans.

It was

17 Quas.

State whether or not - the said space not enclosed by the said Merrill Wamble has ~~not~~ all ways within your recollection been used as a ~~part~~ part of the street and the side-walk of the same

Ans

I have according to my recollection of it

18 Deces.

State ~~not~~ whether or not you recalled - A. Atkinson as mayor of the town of Smithfield before the war, and Geo W Britt as surveyor of the streets of the said town; And if so, state ~~it~~ the number of years the one ~~was~~ was mayor and the other was surveyor.

Ans

I don't remember the date of the number of years either ~~held~~ held the office referred to; but I remember the fact of each of them holding the offices respectively alluded to.

19 Quas.

State if during the time of the said Britt was surveyor of streets as aforesaid, you remember his placing man in the sidewalks of the town, and especially the portion of the side-walk between the Hotel

and the ~~W.~~ Corner of Main & Mason streets.

Ans. I remember the fact - but don't remember the date.

20 Inst. State ~~whether or not~~^{what} you ^{may} have heard commonly reported in your early boyhood, and since, about the erection of the State porch.

Ans. I have heard that it, ^{the whole porch} was put there by an act of Legislature.

The plaintiff objects to this question and answer on the same ground heretofore noted in regard to the same subject.

21 Inst. Please explain what you mean by "it" and "there" in your last answer.

Ans. That the whole porch was ~~put~~ put in Main street - and further this dependent - such not.

C. C. Chalmers

A. R. Whitehead, being duly sworn deposes and says as follows:

1 Inst. What is your age residence and occupation?

Ans. I am forty years old, I have ^{been} living in Smithfield proper fourteen years.

and prior to that time, ^{I lived} at my father's
old farm about two ~~and~~ miles in
the country. I am ~~acting~~ sergeant
of the town of Smithfield, as well as
tax-collector, ~~and~~ Commissioner of the
revenue, surveyor ^{of} the streets, ^{town-}assessor,
& Constable of Newport-township. All of
these offices except the latter I hold by
appointment of the present town
Council.

Q. In.

Please state if you have ever
seen the plan of the town of Smith-
field called the Jordan Thomas
plan, filed with the defendant's dep-
~~of~~osition as exhibit "A", and if so
state when, where and under what
circumstances.

Plaintiff by his Counsel object
to the introduction of the aforesaid
Jordan Thomas plan heretofore
stated.

Cus.

I have seen this on two occasions
before. The first time I ever saw
it, Col. Morrison had it.

The second time, it was at the bank
at a meeting of the Counsel
about 12 months ago.

Q. In.

State whether or not you are familiar

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as with the lot now occupied by V. Wrenn designated on the said plan as lot 33.

The same objections heretofore made by the plaintiff, to the introduction of this plat, is here entered.

Ans

4 Quest.

Yes sir.

State whether or not you are familiar with the lot occupied by V. Wrenn, and if so, state to your

earliest recollection of the enclosures of that lot.

Ans.

At my earliest recollection of Smithfield Mrs. Wrenn lived there; and it was my mother's stopping place, and when I was a very small ^{boy} or 8 years old, in 1857 or '8, my ^{mother} would carry me there with her. The fence was then, on Mason Street, very nearly if not quite like it is now. On Main Street it ran down to the lower corner of the house, the corner next to the Hotel. Then the fence ran in to the corner of the house; and then the fence ran from the said corner of Mr. Wrenn's house in a line with its face down to the corner of the Hotel.

5th Qu.

Then if I understand you properly,

you do not remember a time when there was not an enclosure in front of the dwelling-house ~~on~~ on Mason street and on Main.

Ans.

No Sir, I do not.

6 Ques.

Then if I understand you correctly from the date of your earliest recollections the paving on Main street ran from the Hotel lot, and in a line with the face of the Hotel to the Warren building, straight and in a line with the face of that building.

Do I understand you correctly

Ans.

Yes Sir.

7 Ques.

Please state whether or not - you have heard from public reputation and general notoriety, ^{anything} concerning the porch of the Hotel. And if so please state it.

Ans.

Yes Sir, I have heard that the Hotel porch was put in ~~the~~ Main street by an act of the ~~legislature~~ legislature.

Plaintiff by his counsel objects to this answer, and asks that it be excluded on the grounds that acts of the legislature and grants contained therein

contained by oral testimony, but by the act itself, and he calls for the production of the act itself.

8 Qu. State whether or not that assertion, understanding, and belief has been generally current in this town from your earliest knowledge of the said town.

Ans. Yes Sir, I have heard it many a time from different parties.

9 Qu. Besides this current and general understanding, state some of the parties from whom you heard the ~~same~~ same.

Ans. I heard it first from my father and grandfather. My father's name was Algernon A. Whitehead and he died in Feb'y '64; My grand-father was named Joseph B. Whitehead and he died in Sep. 68.

10 Qu. State whether or not your grandfather named ~~the~~ one of the daughters of Thos. Smith, and if so, ^{about} when.

Ans. ~~It~~ He did so, somewhere about 1816 or '17. Her name was Lelia Elizabeth Smith.

11 Qu. State ~~not~~ whether or not the said V. Winch building fronts on the line of Main, and of Mason Streets, and of

~~Main~~ streets, and at the intersection of the same. according to ~~it~~ your understanding of the line of the same

Ans.

Yes Sir. it does

12 Q.

State when the former line of fence that stood between the Hotel and the Wrenn building on Main Street, was removed and changed, and by whom.

Ans.

It was done in Nov. last by V. Wrenn.

13 Q.

State whether prior to that time the space outside of the said enclosure ^{main} ~~road~~ ^{way} of the ~~road~~ ^{way} used from that enclosure to the street was used and recognized by the town as a street.

Ans.

It was open and used to walk on and for ~~the~~ street-purposes as a sidewalk.

14 Q.

State whether or not you as surveyor of streets, have worked up to the said former building whenever necessary, cutting down grass and weeds whenever you worked in the street of the town.

Ans.

Yes Sir. I have always done it whenever I ~~have~~ was cleaning out the streets I would cut all the grass

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unenclosed, unless I thought it was private property, or I was asked by the adjacent ^{owners} ~~occupants~~ not to do so. The grass that I would leave would be in the street - not on the sidewalks.

15th Qu.

State whether or not in this space mentioned between the said enclosure and the space aforesaid, and the porch of the Hotel, and the front enclosure immediately in the front of the house of V. Wrenn as aforesaid, there is quite a large quantity of "meat" places, and whether or not many of the pieces are large, hard and rocky; and if so describe the same.

Ans.

Yes sir, the soil is full of meat. It's rock meat, not shell meat. There are three kinds of meat, the blue shell meat, the yellow shell meat and the red rocky meat. This in question is the red rocky meat. These ^{are} pieces as big as my two hands there, and some perhaps larger. They are very difficult to dig up with a hoe. The meat there is three or four inches thick.

16th Qu.

State whether or not the soil of the side

walk thus made, differs widely and entirely from the adjacent soil of the garden.

Ans.

Yes Sir, it is different from the soil inside the paddings.

17 Q.

State whether it in assessing the property of the town, you examined the assessor's books of the county and if so whether the ^{original} numbers of the ^{land} lots are preserved in that assessor's books except where parts of those lots have been sold off, and whether or not if such parts have been sold off, the assessor's ^{land} books indicate the same

Ans.

Yes Sir, I examined the books, and the lots of the town are numbered; and when a part of the lots are ~~now~~ sold off, the assessor's ^{land}-book ~~shows~~ designates it as a part of lot —

18 Q.

State whether or not in assessing the ~~or~~ lots for town taxation the original numbers are preserved; and if not why not.

Ans.

The Corporation assessor's book does not show any numbers. The assessor is only required to get a copy of the

amount from the County land books
of each man's estate ^{in town} and that was
done accordingly.

19 Qu. Then, if I understand you properly
the lot of each man in town is
assessed ~~at~~ according to its value
as it appeared on the County land-
books. Do I understand you
properly?

Ans. Yes. You understand you prop-
erly.

And further this deponent saith not.
J. R. Whitehead

The further taking of these depositions
is adjourned until to-morrow at the
same ~~hour~~ place, and between the
same hours.

April 7, 1891.

Present: W. L. Falk, counsel for the plaintiffs

R. S. Thomas, counsel for defendant

C. J. Day, having been duly sworn, de-
poseth and saith as follows:

1 Quest. Please state your age, residence
and occupation.

Ans. I am 42 years old; I have resided
in the town of Smithfield all my

Ques. I am a farmer.

2 Ques. State whether or not you are familiar with the lot now occupied by V. Wrenn, and if so describe the ^{lines} of its enclosures at the date of your earliest recollection.

Ans.

I am familiar with the lot. The enclosure ran from the corner of the Hotel to the corner of the house ^{on Main Street} owned by Mr. Wrenn. There was an enclosure extending from that corner towards Main Street, for a distance of about 7 or 8 feet; thence along the sidewalk to the corner of Mason Street; thence along Mason Street to ^{a point opposite the} corner of the house occupied by Mr. Wrenn; thence to the corner of the house; thence from that corner of the house, to an old ^{thence} warehouse, to the property then owned by J. E. N. Wills, now occupied by C. H. Wilson.

3 Ques.

State whether or not, the front line of front enclosure on Main Street, running from the Hotel to the building occupied by V. Wrenn, was in a line straight with the face of each of the said buildings.

Ans.

It was.

4 Quest.

State the name of the street running by the said V. W. Wrenn house down to Pagan Creek.

Ans.

Main Street

5 Quest.

State the name of the first ^{cross} street running southeasterly toward the property of John Wilson, as you come into town from the South west end.

Ans.

Main Street.

6 Quest.

State the name of the next street running southeasterly as you come into to the County bridge over Cypress Creek, as you come into town from the same end.

Ans.

Church and East Church Street
Street to Judge Atkinsons and East-
Church Street thence.

7 Quest.

State whether or not you are familiar with exhibit 'A' herewith shown to you called the Jordan Thomas plan of the town of Smithfield, and designate if you can the no. of the lot now occupied by V. W. Wrenn.

Plaintiff by his counsel objects to the introduction of exhibit 'A' for reasons heretofore given.

Ans.

I am familiar with the plan

and designate lot No. 33 as the one now occupied by Mr. Warren

8 Quest. State ~~and~~ whether or not from the said plan you can easily and readily designate all the original lots and streets upon the said plan

Ans. I can.

9 Quest. State whether or not - such of those lots as have not been cut up by subsequent subdivision, still retain their original Nos., and for purposes of County taxation are still assessed and taxed by those nos.

Ans. They do, and are so designated in the tax receipts, as is herewith shown by the tax receipt filed with these depositions as exhibit "13."

10 Quest. ~~State what~~ - From the aforesaid plat designate if you can the lot known as the Hotel lot now owned and occupied by Jas. A. Brown.

The plaintiffs object to this "plan" or "plat" for the reasons heretofore stated.

Ans. Lot No. 34

11 Quest. State what you may know from tradition or otherwise ~~relative~~ relative to the situation of the Hotel building and the porch to the same.

2415

Ans.

From my earliest recollection I have been told that the face of the Hotel was on the southern line of the street, and that the porch had been put upon the sidewalk by an act of the General Assembly of Virginia.

Plaintiff by his counsel objects to the answer and asks that it be excluded, on the grounds of hearsay given.

12 Quest. State whether or not it was currently reported and generally understood throughout the Community that the said Hotel and the porch thereto were located as you have mentioned.

Ans.

It was

13 Quest.

State whether or not the aforesaid V. what was your understanding of ~~the~~ the location of the said V. Wrenn building with regard to Main and Mason streets, respectively.

Ans.

I have always been told, that the face of his house fronting on Main street, was the line of Main street, and that part fronting on Mason street was the line of Mason street.

14 Quest

State whether or not that was a like

matter of common notoriety and
 general ~~common~~ understanding

Ans.
 15 Ques.

It was

stated whether or not A. Atkinson
 was formerly mayor of the town of
 Smithfield and if so, in what years

Plaintiff by his counsel objects to
 the question, on the grounds, that the
 only proper evidence of such
 fact is the records of the town
 of Smithfield themselves, and calls
 for the production of said record

Ans.

He was mayor of the said town from
 May, 1856 to until ~~May~~ ^{July} 1860

16 Ques.

The present existing record of the
 corporation of Smithfield beginning
 in 1855 is herewith handed to the
 witness and ^{he is} asked from that record
 to answer the question aforesaid.

Plaintiff by his counsel demands
 that the records of the town of Smith-
 field be filed as an "Exhibit with these
 depositions by the defendants."

Ans.

He was mayor from May 1856 to
 July 1860.

17 Ques.

Plaintiff by his counsel objects
 to the answer and asks that it be

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excluded, on the ground that oral testimony is not admissible to prove said fact; and he calls for the production of the records and that they be filed as an exhibit with these depositions.

17th Qu. I run the said record, state who succeeded A. Atkinson as Mayor of the town of Smithfield, and from what year to what year.

Ans. C. B. Hayden succeeded A. Atkinson from the 1st day of July 1860 ~~to~~ until the 30th day of June 1862.

18th Qu. State from the said records, who succeeded him as Mayor, and for what time.

Ans. He was succeeded by John R. Purdie from July 1866 to the 15th day of March 1869.

19th Qu. State ^{from the same record} whether or not you were Mayor of the town of Smithfield, and if so from what time to what time.

Ans. I run the 1st day of July 1873 until the 1st day of July 1872.

20th Qu. State whether or not from the same record it appears that Geo. W. Brille was saragey or of the streets of Smithfield, and if so state the length of time he served as such.

Ans

From the 9th day of May ~~1856~~ 1856 until the 30th day of June 1862

Q 1 In.

State from the said record when he settled the accounts of his transactions as said surveyor of the street and who was then ~~may~~ mayor.

Ans

On the 7th of September 1866; and John R. Purdie was mayor

Q 2 In.

State whether or not whilst the said Pratt was surveyor of the streets of the town, Smithfield ^{the town} ~~meat~~ was placed upon the streets and sidewalks of the said town, and if so about when it was done, and the place from which it was obtained

Ans.

About the years 1858, '59; and the meat was obtained from ^{about} the rear of his property

Q 3 In.

State the character of the said meat

Ans.

Q

It was of a hard flinty character filled with isinglass, and much of it from five to three inches thick, in irregular blocks with with faces from 8 to about 15 inches

Q 4 In.

State whether or not any of that same meat was placed on the side-walk of Main street in front of the old

24 Q

line of the enclosure as you have described it, - and between the porch of the Hotel and the enclosure in front of the N. W. corner house, as heretofore described it.

Ans.

There is or ~~was~~ was made in the said sidewalk identical in character with that taken from the Britte beds and placed in other portions of the sidewalks, and I have always believed and have had no reason to doubt that it was placed there by the surveyor of the town, the said Geo. W. Britte.

25 Q.

State whether or not the soil of this sidewalk as you have just described it, differs entirely from the soil of the garden lying immediately adjacent to the same.

Ans.

It was. The sidewalk being composed of mud and the garden adjoining being rich black loam.

26 Q.

State whether or not the aforesaid records does in numerous places from 1856 to the present time show repeated expenditures of money for the sidewalks and street of the said town.

Ans.

It does.

279. State whether or not, from your earliest recollection down to Nov. 1890 the space that we have heretofore mentioned, lying outside the enclosure of the said W. W. Neum as it formerly stood, and between the porch of the Hotel, and the enclosure of his house as heretofore stated, has been used, and recognized by the public generally as a portion of the side-walk of the town of Smithfield.

Ans

It has been used, and ~~has been~~ ~~recognized~~ as a part of the side-walk from my earliest recollection.

28

Plaintiff by his counsel objected to the answer, on the ground that the only authority competent to recognize an unenclosed piece of land as a portion of a street must be the Council of said ~~town~~ town, and not private citizens.

28 Quest

State whether or not the aforesaid space has been worked upon by the surveyors of streets and grass and weeds in the same, cut down to the former line of the enclosure as you have heretofore described it.

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Ans. I believe it - has been
 29 In. State whether or not - you know
 a lot in the upper portion of
 the town belonging to Stanley Pret-
 low, and in 1883 occupied by
 Samuel Gallop

Ans. Yes, I am acquainted with it -
 30 In. State whether or not the council
 of the said town in August 1883
 directed that porch ^{of the house on that lot} to be taken down;
 in Sep. 1883 reconsidered the same,
 and resolved to allow no benches or
 steps on the sidewalks of the said
 town thereafter

Question is objected to on the ground
 that oral testimony is not admissible
 to prove such facts; the only proper
 evidence being the records themselves.

Ans. They did, as is shown by a copy
 of the record herewith filed as
 exhibit "14" as a part of this answer
 31 In. State whether or not - you know
 the Groce property of J. O. Thomas,
 and if so describe the location
 of the same.

Ans. I am familiar with the location
 of the said property; and it lies on
 the upper end of what was Mason

street; the said street ending on a line drawn from the Delvin Coper blacksmith shop to a brick house which was formerly the County Jail

32 Q. State whether or not - you remember the railing that, prior to the 1st day July 1884, ran from the aforesaid Delvin Coper shop, to a point some 2 or 3 or 4 feet to the rear of the aforesaid brick-house used as a jail as aforesaid

Ans. I do, remember the said railing located as described.

33 Q. Please state if the whole of the said enclosure was knocked down by the sergeant of the town of Smithfield under the order of the Council of said town, made on July 1st 1884

Ans. It was; as will appear by exhibit '15' herewith filed as a part of the answer

34 Q. Please state whether or not - you know of the farm called the "Glebe" farm in the County of Isle of Wight located about 2 miles from the town of Smithfield.

253

Question objected to as immaterial to the issues.

Ans. I do.

35 Q. State whether or not there was an old road leading to the same commonly called the Court-house road and the evidences of an old bridge, and if so describe the same.

Ans. There are evidences of an old bridge there, - a cause-way, and abutment crossing the Creek, about a half a mile below the Mill now owned by Mrs. Carrie Chapman ~~which can be so~~ The road can be easily recognized by the remains. The end toward Smithfield runs ^{through} ~~into~~ the Glebe farm and into the lands now owned by J. W. Gray.

There must have been considerable traffic over that road from the deep cuts now in it. And the lands of J. W. Gray lie on the County road now leading to Smithfield, being about a mile and a quarter from the Corporation limits of the town of Smithfield.

Further this deponent said not -

C. F. Day

E. M. Morrisons having been duly sworn, deposeth and saith as follows:

Question I. State your age residence and occupation.

Ans. Forty-nine years old; have resided in Smithfield all my life; am a school-teacher.

2 Quest. State whether or not ~~you~~ are familiar with the lot now owned by V. Wrenn; and if so, how long ~~have~~ you ^{have} known the same.

Ans. Yes; from ~~my~~ boyhood.

3 Qu. State the lines of the enclosure of the lot aforesaid, as you remember them at the date of your earliest recollection.

Ans. A fence running from the corner of the Hotel to the ^{corner of the} house on Main street. I don't recall the fence in Mason street.

4 Qu. State whether or not this fence you have just mentioned from the corner of the Hotel to the Wrenn building was in a line with the face of the ~~said~~ of both of said buildings.

Ans. It was as well as I remember

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5 Qu.

State the line of the enclosure
on the said lot, ^{on Mason Street} from the date of
your first clear recollection

Ans.

~~It was enclosed by a fence joined~~
~~to the~~

Ans.

Pretty much as it is now.

6 Qu.

State ~~whether or not you remember~~

your earliest recollection of the
use to which the ^{the room in the} ground floor part-
ing on Main & Mason Streets was
put; and who occupied the same

Ans.

A store, used as a store by Merrill
Wamble.

7 Qu.

State the doors to the said store and
whether or not there was any enclosure
to the same.

Ans.

There ^{were} two, one on Mason and one on
Main; with no enclosure.

8 Qu.

State for how long you remember
the said store and doors without
enclosures, and the date when ^{the said enclosure} they
~~were~~ put there if you remember.

Ans.

I don't remember.

9 Qu.

State whether or not as a small boy
you frequently ran into and out
of those doors, without the abstrac-
tion of any enclosure.

Ans.

I did.

10 Qn.

State the date as well as you can of your first - clear and distinct recollection of the enclosure to the house on Main and Mason street by the palings in front of the said house on the said streets.

Ans.
11 Qn.

About - 1860

State how long that enclosure remained from the date aforesaid to the change made in the same and the date of such change

to wit about - Nov. 1890

12 Qn.

State when the paling that you have described as running from the Hotel to the said Wrenn building, was changed, and by whom.

By Mr. Wrenn in Nov. 1890

13 Qn.

State the name of the street that runs from the south-west limits of the Corporation ~~to~~ to Pagan Creek as it has been known to you from your earliest recollection.

Main street

14 Ans.

State the name of the street that runs from the W. Wrenn building to the South Eastern limits ^{of} to the Corporation, to the property of the John Wilson, as it has been known to you from your earliest infancy.

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Ans.
15 Dec.

Mason Street

State the name of the street next to it as you go to Pagan Creek, as known to you at the date of your earliest recollection; and any change that may have been made ^{in its name} since then.

Ans.

It was at the date of my earliest recollection called Church street; the lower part of it beginning at Judge Atkinson's is now called East Church street.

16 Dec.

State the location of the house of the said W. Wrenn with reference to the ~~stre.~~ Main and Mason streets.

Ans.

It is at their intersection

17 Dec.

State whether or not the space outside of the first original enclosure to the lot that of you have spoken of, on Main street between the porch of the Hotel and the enclosure to the house of the said W. Wrenn had always prior to November 1890 been open to the public, and used by them as a side-walk.

Ans.

Yes, it had.

18 Dec.

State when you left Smithfield for the Military Institute at Lexington.

Ans.
19 Qu.

About - 1858

Exhibit - "A" filed with the plaintiff's bill is here shown to the witness, and he is asked to state the time and circumstances under which the same was made

Ans.

I had just returned from the country, ^{late in the afternoon} in a survey, and was asked by Mr. Wrenn to survey his plot then and there, and make a plot of the same by seven o'clock as he wished to lay it before the Town Council that night. I took the angles of the said lot and measured the distances around it with my chain, and plotted the same distances reduced to feet and gave the same to Mr. Wrenn. ~~The~~

20 Qu.

State whether or not you ran such lines as he requested you to run and made such designations upon the said plot as he requested you to make.

Ans.

I did.

21 Qu.

State whether or not the Town of Springfield by any of its officers

Read after Inset 22 on page 255

The further taking of these depositions is adjourned until April 11, ^{between} ~~at~~ the same hours and ~~at~~ ^{- at -} ~~between~~ the same place.

~~April 10, 1891~~ T. J. Brennan N. P.
~~Pro~~

April 10, 1891.

Present: W. L. Jock, counsel for plaintiffs

R. E. Boykin & R. S. Fleming, counsel for defat.

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was present to make any request at all.

Ans. I think not, Sir.

22 Quest.

Then if I understand you properly you made the said plan entirely at the request of Mr. Wrenn and just as he directed it. Do I understand you properly?²

Ans.

23 Quest.

Yes, I did. [See adjournment on this -
 sented page
 Exhibit "H." filed with the defendant's answer, is herewith shown to the witness, and he is asked to explain the line and the measurements of the same.

Ans

Commencing at the ^{North} ~~South~~ west-corner of V. Wrenn's house the black line represents the face of the house and its prolongation for 90 ft. 8 in. until it meets a red line indicating the line of the Chimneys of the Hotel. The said black line continues for 2 ft. 9 in. the width of the Chimneys to the face of the Hotel; thence continues along the face of the Hotel 46 1/2 feet to the line of Chimneys of the Hotel on the Eastern side; thence 2 ft. 8 in. to the face of an annex to the said Hotel; thence along the face of the said annex 23 ft. 10 in.

to a platform, ~~whose width is of~~ thence
 along the front of ^{the} platform 4 feet to
 a lane, thence along the front of the
 lane 12 feet, and thence to Church
 Street. On Main Street, commencing
 at the north-west corner of V. Wrenn's
 house, thence along the house 43 feet -
 2 in, to the corner of the house;
 thence 101 feet 7 in. to the ~~back~~ ^{of the front enclosure} ~~aligns~~
 of the Chalmers or C. H. Wilson lot;
 to a ^{dotted} red line indicating the line
 of the ~~back~~ of an old kitchen on the
 said Chalmers lot; ~~thence a full~~ marked
 "a"; ~~to a dotted red~~ ~~thence a dotted~~
~~blacked black~~ line 7 inches to a
 dotted black line, the line of the
~~line~~ of the face of the said old kitchen
 marked "c"; thence a dotted black line
 for 2 feet to a dotted black line
 indicating the line of the chimney of
 Chalmers house on the north side,
 marked "d"; thence 2 ft. 7 in. to a full
 black line, the line of the face of the
 end of the Chalmers house marked "b."

Description of the full red line on
 Main Street, indicating V. Wrenn's
 fence, 7 ft. 1/2 in. from the face of his
 house on Main Street, ^{at a point} ~~marked~~ where

it intersects a full red line 6 feet - 2 in. from the face of the said house on Mason Street; thence for 96 ft - 10 in. till it intersects a full red line indicating the line of the chimneys to the Hotel; thence a broken red line towards Church Street ~~on~~ ^{description of full red line on} ~~on~~ Mason Street, commencing at the aforesaid north west - corner with its intersection with ^{the said red line with a full} a red line on Main Street, thence along Mason Street for 51 feet, ~~6 ft 2 in. & 6 ft 4 in~~ to a point opposite the southwest corner of V. Wrenn's house to a full red line, thence 6 ft - 4 in ~~to~~ to the said corner of V. Wrenn's house;

The description of another red line commencing on Main Street 2 ft - 9 in. from the face of the Hotel porch, thence 7 ft. $1\frac{1}{2}$ to a full black line; thence a dotted red line across the face of chimneys on the Hotel; ~~across~~ to a full line; ~~representing a fence~~ thence ~~a full line prolonged across~~ along the face of an old Kitchen; thence prolonged along the back of an old smoke of a house; thence in straight line prolonged until it meets a dotted red line, indicating the line

of the arch of an old kitchen on the
aforesaid Chalmers lot so marked
"a" as aforesaid; thence prolonged 7
inches along a dotted red line until
it meets a dotted black line, in-
dicating the line of the face of the
old kitchen marked "c" as aforesaid.

24 Dec.

Will you please examine the said
Exhibit "H", designate and state
therefrom the line of the enclosure
of the lot off V. W. Wrenn as they existed
on ^{Main & Mason Streets} prior to the alteration, if any, made
by him some time about Nov. 1897;

Ans.

Commencing at the northwest-
corner of the main building of the
Hotel in a line with its face, thence
a black line to the corner of the
face of V. W. Wrenn's house; thence a
black line 7 ft. $1\frac{1}{2}$ in. ^{from the face of V. W. Wrenn's house} to a red
line, thence along the said red line
to in front of V. W. Wrenn's house,
and 6 ft. 2 in. further to its inter-
section with a red line in Mason
Street; thence along said red line

Mason Street 51 ft. to a point op-
posite the southwest-corner of V.
Wrenn's house; thence 6 ft. 4 in. to
the said corner; thence along

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Mason street a black line ~~to the face~~ partly full and partly dotted to the corner of the Chalmers house.

25 Q.

State the alterations if any made by the said W. Wren in the enclosure of his said lot about Nov. 1890, and in what said alteration consisted, on Main & Mason Streets.

Ans.

He pulled down the old fence ~~from~~ from the face of the Hotel to the face of his house, and replaced it by a new fence commencing at the face of the Hotel, running ~~west~~ 2 ft. 9 in. to a line of the Chimneys of the Hotel, thence out on Main Street, 7 ft. 1 1/2 in., thence along the said street to a point opposite the corner of his house 7 ft. 1 1/2 in. from it, ~~thence from that point to the corner of the house~~ and at the same time pulling down the old fence from the corner of his house to the said red line, and from that point re-built the fence indicated by a red line on Main & Mason Street to the south-west corner of his ~~lot~~ house.

26 Q.

State whether or not the dotted black line in the rear of the Kitchen of the Hotel is a prolongation from the face

after the end of the Road.

Ans.

It is so intended, and is intended to be a straight line.

27 Qu.

Cross-examination of E. M. Morrison by W. L. Falk counsel for plaintiff.

1 Quest.

In answer to question No. 1 you state that your occupation is school-teacher. Please state whether or not you hold any public office.

Ans.

Yes. I am County Surveyor.

2 Quest.

In answer to question 16 you stated that V. W. Rennie's house was at the intersection of Main & Mason streets. Please state whether or not you meant that it was at its exact point of intersection, or only used the term as it is generally used.

Ans.

I meant its general acceptance.

3 Qu.

In your answer to question "20," you stated that exhibit "A" filed with the plaintiff's bill ^{was made} ~~was made~~ by you and you ran such lines, and made such designations as he requested you to make. Please read the endorsement thereon and state whether or not at the time you made such plat, you made same ac-

According to what you believed to be ^{the} true and correct lines and designations of the said lot.

Ans. I did when I ran them.

4 Q.

State whether or not you were requested by Mr. Wrenn to survey and plat his lot - & in your official capacity as County Surveyor.

~~Ans.~~ Yes. ~~some~~

5 Q.

~~In answer to one of the defendants'~~

~~questions~~

5 Q.

Please examine exhibit 'H' filed in the defendants' answer, and state whether or not it shows a porch to the "shabby hall" house, projecting beyond the line of houses on Main street; and if not - was same left out intentionally? ~~at~~

Ans.

It does not show the said porch and was left out intentionally.

6 Q.

You were requested by the defendants to state the exact number of feet that the Hotel property or lot fronts on Main street: In your statement you did not include the 2 ft. 9 in. of land occupied by the Chimneys of said Hotel: Please state whether or not you ~~mean~~ intend to say that all of the chimneys ^{strip of 2 ft. 9 in.} ~~space occupied by~~

upon which

said chimneys, ^{are located} belongs to ~~the~~ ^{the} Wrenn lot; or whether the chimneys are on the State land and are the boundaries between the two lots

Ans.

I do not ~~know~~ ^{mean} pretend to say which lot they ~~do~~ belong to; having no personal knowledge of the subject, but only intend to explain certain lines and figures marked on exhibit "H".

7 Qu.

How long will the Wrenn ~~lot~~ lot be, exclusive of the strip of 2 ft. 9 in, as indicated by the red line on main street.

Ans.

96 ft. 10 in

9 Qu.

Please state how long the State lot will be inclusive of said strip of 2 ft. 9 in

Ans.

91 ft. 9 in

10 Qu.

Please describe the ^{enclosure} of the W. Wrenn ^{lot - on Mason Street} ~~house~~ from V. Wrenn's old stable to the Nelson or Chalmer's lot, & then on to the Nelson or Chalmer's house.

Ans.

A new unplanned ^{& unpainted} pine paling with a cap to it; to the paling on Chalmer's lot; thence ~~the~~ ^{from} a planned

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and painted paling fence with a cap to it, similar to the rest of the front enclosure around Jas. J. Chalmer's lot; until it meet the line of the house marked "b"

11 Qu

Please state whether or not at the point of intersection of the fence put there by Mr. Wrenn and the fence around Cape Chalmer's lot - ~~the~~ the fence of the said Chalmer's lot - does not cross the said Wrenn's fence

Question excepted to because it is leading.

Ans.

It crosses it and projects over for about 6 inches in the line indicated by a dotted red line on the plat.

12 Qu

Please state the distance from ~~this cross place~~ the intersection of the two fences above referred to, to the red line which indicates V. Wrenn's front fence on Main Street.

Ans

151 feet - $10\frac{1}{2}$ in
Re-direct - Examination by R. S. Thomas
Counsel for defendant -

1 Qu

In the 4th question upon your cross-examination, you are asked

to state whether or not you were requested by Mr. Waum to survey and plat his lot; in your official capacity as County Surveyor, and you replied yes. State what you meant by this.

Ans. That he told me that he wanted me to make an accurate and correct survey and plat of his lot; and sign it in my official capacity as County Surveyor; that he might lay it before a meeting of the Council of the town of Smithfield to be held that night; but I did not nor could pretend to define the lines as those indicated as the true lines of the said lot.

2 Qu. State whether or not you were acting under any order of Council to make the said survey,

Ans. I was not

3 Qu. State whether or not you were acting under any orders of the Council of the town of Smithfield to make the said survey,

Ans. I was not

4 Qu. State whether or not there was any joint request, by the

said Council and the said J.

Wrenn to make the said survey.

Ans.
5 Q.

There was not -

State whether or not - any witnesses in behalf of the said Council were present to aid you in defining any line on the said plat.

Ans.
6 Q.

There was not -

State whether or not - you were acting in your individual capacity as a surveyor or in your official capacity under any legal orders from ~~any~~ any quarter.

I was acting in my individual capacity, & without any legal orders from any quarter.

7 Q.

In your answer to the 5th question you have said that the porch to "Shabby Hall" was left out intentionally: State whether or not - there was any order given you by the defendants' Council to put it there.

Ans.
8 Q.

There was none.

In the 10th question ~~and~~ on the cross-examination, you were asked to describe the enclosure on the V. Wrenn lot⁽¹⁾ from the old stable to the

Wilson or Chalmer lot ⁽²⁾ and, thence to the houses, and you have spoken of a new unplanned and unpainted ~~fence~~ paling with a cap to it, to the ^{paling over} Chalmer lot; thence a planned and painted paling fence with a cap to it, similar to the rest of the enclosure around the J. J. Chalmer lot, until it meets the line of the house marked "b". Please state whether or not - you know who put the unplanned and unpainted line of paling as it now is, and when.

Ans. Mr. W. W. Wren, ~~some time~~ a few months ago

Q 2u. ~~Do~~ State whether or not it is the same kind of paling as that which preceded, and is put on the same line or not.

Ans. It is put on the same line as the old fence I think, but I do not recall the ~~old~~ character of the old fence.

10 Qu. State whether or not you know who built the old fence and when.

Ans. I do not know

11 Qu. State whether or not you remember how that old fence ran prior to 1860

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Question is objected to on the ground that the witness was not-interrogated as to same in his cross-examination.

Ans. I do not-

12 In. State whether or not - you remember how it ran since 1860

Ans. As it now runs I think.

13 In. State whether or not - you know who, ^{built} ~~and when~~ the second, ^{or painted} ~~building~~ was ~~run~~ and when

Ans. I do not-know when, but it was built by Capt. Jas. F. Chalmers, I think.

14 In. State who occupied the Wrenn lot - when the said Jas. F. Chalmers built the said painted fence.

Ans. I don't-know.

15 In. State who owned the said lot before it - was purchased by the said J. Wrenn

I don't-know.

16 In. State whether or not - it was occupied ~~by~~ after the ~~lot~~ war it ~~was~~ ~~occupied~~ by Edwin Morrison and wife, who was formerly Mrs. Wrenn.

Question objected to because the witness was interrogated on the cross-examination as to this matter.

Ans.
17 Qu.

It is
state whether or not the said
Edwin Morrison ~~was~~^{is} dead, if so
the date of his death; and whether
or not ~~the said~~ his wife Susan
Morrison survived him.

Ans. Edwin Morrison died about
1875; and his widow survived
several years.

And further this Dependent said
not.

E. M. Morrison

The further taking of these depo-
sitions is adjourned until to-
morrow morning between the
same hours at the same place

T. J. Bashaw, Notary Public

April 11, 1890.

Present: V. Wrenn, plaintiff
R. E. Baykin, Counsel for deft.

N. P. Young having been duly sworn deposes and saith as follows:

1. Quest. State your age, residence and occupation.

Ans. I ~~was~~ am 45 years 10 months and 11 days old; & I have resided in Isle of Wight County, all of my life; Clerk of County and Circuit Courts of said County.

2. Qu. State how long you have been Clerk of the County and Court of the County aforesaid.

Ans. Since September Court-day 1841 to the present time, except from ^{about} the 18th day of July '69 to ^{about} June '70, being the time during which I was removed by military rule; and I had charge of the affairs then.

3. Qu. State whether or not prior to the time you were Clerk of said Court, whether or not you were a deputy for your father the late Mr. Nathaniel Young.

Ans. I was ^{appointed} deputy for my father

who was clerk of courts of the County aforesaid, ~~from~~ ~~from~~ on the 1st day of July 1836, and from that day to this have had charge of this office either as deputy or as clerk.

4 Qu.

Will you please examine the paper ^{now} ~~handed you~~ ~~filed with the depositions~~ enclosed a plan of the town of Smithfield, in Isle of Wight County, laid off by Jordan Thomas, late surveyor of the said County, and state whether or not you have ever seen the same heretofore, your knowledge and familiarity therewith; whether or not it is a paper belonging to your office, if seen heretofore, when first seen, and all of your information, if any, in reference thereto.

Question objected to by the plaintiff for the reasons heretofore given, and for other reasons.

Ans.

The paper referred to in the question is, I ~~think~~, to the best of my knowledge and belief ~~it is~~ the paper that was in ^{the clerk's} ~~my~~ office when I came

here in 1836, as deputy, and has been considered as a paper belonging in the Clerk's office. When it was placed here, why it was placed here, or any information as to its ~~be~~ origin, or being filed in said office, I know nothing. I have frequently seen the paper, ^{and examined it} I suppose forty times, it is a paper that has been looked at a good deal. I have had occasion frequently to search for the authentication of this paper, but ~~have~~ I have never found a line on the subject.

J. Qu.

Have you any doubt whatsoever that the paper presented to you is the same paper ~~from~~ which was in the Clerk's office when you first became deputy?

Please examine the same for that purpose, and are there not peculiar circumstances or indications upon the face of the paper to enable you to identify it?

Plaintiff objects to the question and to all questions which seek to identify the so-called Jordan Thomas plan

as a plan of the town of Smithfield, and to all questions whatsoever relating to the so-called Jordan James plan until it has been shown to be an ^{authenticated} copy from some surveyor's book or other book of record in some office of record, and for other reasons. And it is agreed between the counsel for the defendant and the plaintiff that these objections shall refer to all similar questions.

Ans.

I have not the least doubt that it is the same paper, which was found in the office when I came into it as deputy; and which has recently been loaned to the Mayor of the town of Smithfield to be returned as soon as the Corporation get the desired information therefrom; and which ~~has~~ by my consent has been used by R. E. Boykin, and is now returned.

The paper has every indication of the original paper which I delivered to the Mayor of the town, and I believe it is the same.

6 Qu.

Will you please examine the diagram or plan filed with the defendant's answer marked exhibit "X", compare the same and state whether or not it appears to be a true copy of the plan heretofore alluded to as the Jordan Thomas plan.

The plaintiff objects to the question on the ground that exhibit "X" filed with the defendant's answer seeks to establish the said exhibit "X" or the so-called Jordan Thomas plan as a copy of which it purports to be a copy, to be the plan of a survey of the town of Smithfield alluded to in the plaintiff's bill, which the plaintiff denies, and for other reasons.

Ans.

I have examined the paper exhibited to me, marked "X" purporting to be a copy of the Jordan Thomas plan alluded to; made by E. M. Morrison, Surveyor of the County, and from and which accompanied the paper lodged as the answer of the defendant in this cause, and so far as I am able to discern

7 Qu.

it appears to be a copy of the said Jordan Thomas plan State, if you know, whether or not the lots in the town of Smithfield beginning ^{at lot no. 1} ~~at the corner of~~ ^{any additions to the said town} ~~near the store of Mr. J. Langhorne~~ are numbered in accordance with the numbers of the lots as designated in the Jordan Thomas plan.

Ans.

~~I cannot~~ There are numerous deeds in this office that refer to lots number such a one, according to the plat of the town of Smithfield, but I don't remember ever seeing one refer ^{ing specifically} to a number on the Jordan Thomas plan or plat.

8 Qu.

Will you please state whether or not there is any paper in your office other than the Jordan Thomas plan, purporting to be a plan of the town of Smithfield.

Ans.

I have never seen any other in my office nor heard of any other in my office.

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9 Q.

state whether or not you have had occasion to trace the title of any lots in the town of Smithfield from their then owners to Conveyances made by Archer Smith or Thomas Smith; if so, state whether the numbers designated in the conveyance of either of the said Smiths corresponded with the numbers of said lots now designated on the Jordan Thomas plan.

The ~~defendant~~ Plaintiff, to save time, admits that the numbers of the ~~lots~~ ~~present numbers of the~~ lots in the portion of the town of Smithfield alluded to in the above question are numbered as they appear to be numbered on & what purports to be the Jordan Thomas plan of the town of Smithfield, without in any manner admitting the said plan to be evidence in this cause, or in any manner acknowledging same to be a plan of the town of Smithfield, or any portion thereof, but expressly denying the same, or that it is, evidence for any purpose in this cause.

The Plaintiff further admits that the lots in the town of Smithfield as they stand in the land-book of 1890 ^{& ~~from 1820 to 1830~~ from between 1820 & 1830} for the town of Smithfield for the County of Dale of Wight appear generally to correspond in numbers with the numbers as designated upon the said ^{so-called} Jordan Thomas plan, but without admitting said Jordan Thomas plan to be evidence in this cause for any ^{purpose} ~~cause~~ whatsoever, but denying the same in the words and language heretofore used.

10 Dec.

Will you please state whether or not you have any knowledge or information by ^{ancient reputation} tradition or otherwise as to the porch of the Hotel and whether or not the said porch projects into Main Street or the side-walk of the said street.

~~Question is objected to~~ I so state it.

Question objected to by the Plaintiff on the ground that it has not been shown that the line of Main Street or the side-walk thereof has & ever been legally established; and for other reasons.

Ans.

I have ~~no knowledge of the~~
~~street~~ known Smithfield since
 1822, when I was only six years
 old. ~~My first~~ I have heard that
 the porch was built by an act
 of the legislature of Virginia.

I heard this in a ^{something about shooting a dog.} quarrel between
~~Dr. Butler~~ Dr. Robt. Butler and Mr.
 Wilson, ^{Davis} about 1824 or '3. They were very
 violent in their ~~own~~ language.
 Dr. Butler said he would have
 Mr. Davis' old porch torn down
 for it was in the street. Mr. Davis
 replied that he ~~would~~ ^{could} not - for it
 was put there by an act of the As-
 sembly. Mr. Davis was then living
 at and keeping the tavern which
 is the same hotel now occupied
 and kept by Jas. A. Brown.
 This was the only time that I
 recall of that I ever heard any
 one say ~~or~~ that this porch was
 so placed; ^{there} This statement was
 made by Mr. Davis, ~~not~~ and was
 not denied by Dr. Butler, that I
 recall. This impression has never
 been removed from my mind.

Answer objected to by the plaintiff who prays that it may be excluded on the ground that acts of the Legislature can only be proven by the acts themselves, and the plaintiff calls for the production of the same. On the further ground that it does not appear from the witness that the said allegation ever became the subject of legal proceedings; and for other reasons.

11 Q.

Will you please state whether or not General reputation did not ascribe the Hotel porch subsequent to the above conversation and to about Nov. 1890, to be in Main street.

Plaintiff objects to the question on the ground that no evidence has been taken to show that the line of Main street has been ever defined.

This objection the plaintiff asks may be a general objection to all questions relating to projections of the lot into Main street. And for other reasons.

Ans.

I can't say, as there was no general talk on the subject. I don't remember hearing any talk on the subject since the * altercation between Wilson Davis and Dr. Robt. Butler, until recently within the last year. But the impression has always been upon my mind since the altercation.

12 Qu.

Will you please state whether or not the face of the Hotel build-
ing was, and has been, ^{generally} considered
+ reputed to be located on the line of Main
Street.

Ans.

My ^{general} impression is that the face of the Hotel is on the line of Main Street; because "Shabby Hall" and Jas. P. Andrews' house ^{and other original houses} ^{reputed to be} were on the line of the said street, and if ^{as I think} the Hotel is on the line of ~~the~~ these houses, it is, ^{I should think} it is, on the line of the street. And I think this was the general ~~at~~ impression.

13 Qu.

Will you please state whether or not "Shabby Hall" was reputed to be on the line of Main Street. I mean the house.

Ans.

It has always been my impression that it was on the line of Main Street.

Cross-examination of Mr.
N. P. Young by Mr. V. Wren.

Cross-
Examination
1 Q.

Be kind enough to state if Exhibit
"X" filed with the defendants'
depositions and called in the
same, and referred to as the Jordan
Thomas plan of the town of Smith-
field, in Isaac Wright Co. is a
copy of any plan, plat, or sur-
vey taken from any book of records
in your office

Ans.

Certainly not.

2 Q.

Please state if your office contains
any field notes, explanatory of the
same.

Ans.

None that I have ever seen.

3 Q.

Please state whether ~~it is~~ or not -
it is officially filed in your office
or merely lodged there.

When I came into the office as
deputy, I found it here, but how
it ^{came} ^{or when} ~~here~~ I don't know. I have searched
for information on this subject over
and over ^{again}, but have not been able
to find a scrip on the subject.

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4 Qu.

Please state if the said ~~the~~ so-called plan of the town of Smithfield has ~~or there is~~ or has not the marks of a true and legal survey, plat or plan. And if not state in what it is deficient.

Ans.

~~It~~ There is nothing in it to show that it is done by legal authority. and there is no Meridian line or scale, or directions or ~~the~~ miles and bounds. But I don't profess

5 Qu.

~~Please state~~ to be an expert surveyor.

5 Qu.

Please state what, if any, are the landmarks indicated upon the said so-called plan.

Ans.

The only ~~mark~~ is landmark is Pagan Creek ~~any changes have in~~

6 Qu.

~~Please state whether, Pagan Creek any changes have been made or have come naturally in the shores of Pagan Creek at the town of Smithfield~~

6 Qu.

In answer to question 12 You ~~stated~~ stated that your general impression ~~is~~ ^{was} that the face of the State is on the line of Main Street, because 'shabby Hale' Jas P. Andrews' house, and other original

houses were reputed to be on the line of said street; and if the Hotel is on the line of these houses as I think it is, ^{it is} I should think on the line of the street; and I think this is the general impression.

Please state whether these were also porches to the "Shabby Hall" and J.P. Andrews lot, or either of them.

Question excepted to because the plaintiff seeks to examine into matter which was not introduced upon the examination in Chief, save as to "Shabby Hall."

Ans. As far back as I can recollect - I think there were porches to both.

7 Qn. Please state whether or not it was the common reputation and impression that the said porches were also projections into the street as well as the porch of the Hotel.

Ans. My impression is that ~~the faces~~ it was the general impression that the faces of these houses were on the line of Main street; and that the porches were projections into ~~the~~ Main street.

8 Qu.

Please state what ~~was~~ the original houses between the present site of the Hotel and the present site of the M. J. Laughherne store.

The defendant by counsel excepts to the foregoing question because the plaintiff has a right to cross examine the witness only as to such matters as to which he was examined in chief; and the said witness has only been examined as to the Hotel and "Shabby Hall" lots. And has not been examined as to the original houses between the present site of the Hotel and the present site of the M. J. Laughherne store.

The plaintiff replies that it is competent to show the location of the original houses alluded to by the witness for the purpose of defining or trying to define the line of the street. But because of the objection made by the defendant the plaintiff withdraws the same. And further this deponent saith not.

A. C. Young

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The further taking of these depositions is adjourned until April 13 ¹⁸⁹¹ ~~1890~~ at the same place and between the same parties.

T. J. Baughman, Notary Public

April 13, 1891.

Present: W. L. Falk Counsel for plaintiff

R. D. Thomas Counsel for defendant.

J. P. Andrews, having been duly sworn, deposes and says as follows:

Q1

1. Qu.

Please state your age, residence and occupation

Ans.

I am 48 years of age; and have resided here since 1860, with the exception of the time of the late war; I am a merchant

2 Qu.

State whether or ~~not~~ not you are a member of the present Council of the town of Smithfield, and if so, what position you hold in the same.

Ans.

I am a member of the Council, and am Secretary and Treasurer

3 Qu.

State whether or not you have extracts from the official records of the Council, relating to the Mayor-

ally of A. Atkinson, C.B. Hayden, John R. Purdie and to Geo. Pitt surveyor of the streets of Smithfield, etc. and if so be kind enough to produce them.

Ans.

I have them, and they are herewith filed with these depositions marked Exhibit 16

And further this deponent saith not.

Jas P. Andrews

Dr. John R. Purdie, having been duly sworn, deposes and saith as follows:

1. Qu.

Will you please state who owned what is now called the "Storer lot" and the "W. W. Wrenn lot;" at the date of your ^{earliest} recollection.

Ans.

At my earliest recollection in 1816, my uncle Thomas Purdie owned both those lots, and sold them to Wilson Davis during that year.

2 Qu.

~~He~~ Please state if Wilson Davis continued to own the said lots until his death.

Ans.

To the best of my knowledge and belief he did own them until his death; and ~~that~~ they were dis-

posed af by his representative,
I think

3 Qu.

Will you please state, whether or
not during the period, the said
Wilson & Davis owned the said
Hotel lot and the said W. W. W. lot,
he also purchased the Chal-
mese lot, which is sometimes called
the C. H. Wilson lot; and if so about
when he purchased the same.

Ans.

I think he owned it in 1821, and
I think for several years previous.
I was at ~~the~~ school in that house
in 1821 & 22. I think he owned
it then. He certainly owned it
^{during} ~~at~~ some part of the time he owned
the other two.

4 Qu.

Will you please state whether or
not you recall the Kitchen upon
the said Chalmese lot; if so, do
you know by whom, and when it
was built, if ~~it~~ ^{and} state your knowl-
edge thereof, if any.

Ans.

I remember ^{the Kitchen.}
~~for~~ ^{one} of the years in which
I was at school there, - in 1821 or 22
a new Kitchen was built in the
rear of the dwelling, and fifteen or
twenty-feet from it.

and further this deponent saith that
 Mark R. Dunning

E. M. Morrison having been duly sworn, deposes and saith as follows:

1. Qu.

Please examine the plan filed with the defendants' answer marked exhibit "X", and state whether or not it is a true copy of the said plan filed with these depositions called exhibit — and endorsed "a plan of the town of Smithfield in Isle of Wight Co. laid off by Jordan Thomas," ^{of which} by whom said copy was made and when.

Plaintiff objects to the introduction of the above mentioned plan, for reasons hereafter mentioned. ~~and for other~~

Ans.

It is with one exception, my attention has called to the fact that the line of the lot No. 16 on Main Street, by a slip of the pen, certainly unintentionally on my part, has been made a little larger than the others; in all other respects I believe it to be a true copy

It was made by me as County Surveyor on the 18th day of December 1890

I have also made two other copies prior to the ~~at~~ above mentioned date, one for the Board of Supervisors of the County of Isle of Wight, and one for the Corporate Authorities in the town of Smithfield, a year or more ago.

At the suggestion of Mr. N. P. Young in whose hands I happen to see the old plat, the Board of Supervisors paid me for one copy, and the Corporate Authorities of the town of Smithfield paid me for the other.

2 Lu.

State whether or not - the copy marked Exhibit "X" was made by you as County Surveyor at the request - of the defendant - or its Counsel after the institution of filing of the Plaintiff's Bill in this cause. And were you requested to make the same as County Surveyor?

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Ans.

I did make it - as County Surveyor after the filing of the said bill. I was requested to make it as ~~attorney~~ County Surveyor, by the Counsel for the defendant.

Q.

Cross examination by W.L. Folk Counsel for plaintiff.

1 Qu.

You have stated in answer to the defendant's question that you made the copy called exhibit "X". Please state whether or not - you were acting under the order of the Court?

Ans.

I was not -

2 Qu.

Please state whether or not - there was a joint request of plaintiff and defendant to make said copy.

Ans.

There was not -

3 Qu.

State whether or not - you made said copy from the original paper called the Jordan Thomas plan, or from a copy of it.

Ans.

From a copy, ^{of the Jordan Thomas plan} I retained when I made the copies for the ~~Board~~ Board of Supervisors and for

the corporate authorities of the
town of Smithfield.

~~Question and answer~~

~~# In Notwithstanding your answers
to questions on cross examination~~

1 In. I understand that though the
copy "X" was made as you
have stated, ^{yet it} is a true copy
of the said Jordan Thomas
plan with the exception
you noted. Am I correct?

Ans.

Yes, if it is.

2 In.

In the present condition
of the Jordan Thomas plan would
it not be very difficult now
to make an accurate copy
thereof?

Ans.

Yes it would be right diffi-
cult.

~~and further this deponent saith
not.~~

~~E. M. Morrison~~

3 In.

and further this deponent saith
not.

E. M. Morrison

State of Virginia, County of Isle of Wight to-wit:

I, T. J. Barham, a notary public for the County of Isle of Wight, State of Virginia, do hereby certify that the foregoing depositions of John R. Purdie, Geo. R. Atkinson, W. H. Thomas, John B. Womble, J. O. Thomas, C. C. Chalness, E. M. Morrison ~~and~~ R. P. Young ^{& J. P. Andrews} were duly taken, sworn to and subscribed before me at the place and time mentioned therein and in the caption thereof, pursuant to the annexed notice. In witness whereof, I have hereto set my hand on this 13th day of April, 1891, in the County of Isle of Wight aforesaid.

T. J. Barham, Notary Public.

Time employed in taking these depositions ~~408~~¹¹⁷ hours.

T. J. Barham N. P.

Attendance John R. Purdie

7 days

Wrenn
vs.
Town of Smithfield

Depositions

Clerks office of the Circuit
Court of Isle of Wight County,
April 14th 1898.

These Depositions were
taken under seal and
were filed.

Teste, A. O. Young clk.

Wrenn v. Dehos.
as 3rd day.

Down of Smithfield

July 27th 1891.

caused to be read
under seal and
filed.

CLERK OF THE COUNTY COURT OF ISLE OF WIGHT COUNTY,

ISLE OF WIGHT C. H.

V A.

Teste
J. P. Young clk

V.W.#3

14 Q. These statements then are made upon the authority of Mr. I.
D. Cofer? A. They are.

15 Q. And they are hearsay are they not? A. I heard him say
so.

16 Q. Don't you know hearsay ought not to be given? A. I know
I am only trying to get at the truth, the whole truth, and
nothing but the truth.

End of examination.

Signature of witness waived.

Fee for these depositions \$60.00.

V.W.#2

it was wider than the porch there now, and we located it the best we could where it is now. The green line across Pierce Street at the J.O.Thomas side is measured from a sill that remains on the ground now that used to be under a carriage gate which was on that line, so I know that it is correct; the others have been answered in the testimony.

End of direct examination.

Cross examination.

By Mr.Thomas;

5 Q. Where is the said sill located? A. Exactly as it is located on that plot.

6 Q. Where is it located on the ground? A. Where it used to be, under the gate.

7 Q. What gate? A. Carriage gate that went through that enclosure.

8 Q. Where was the gate? A. At the end of the enclosure next to the J.O.Thomas line.

9 Q. When was that sill placed there? A. I don't know.

10 Q. Who placed it there? A. I don't know.

11 Q. When was the gate removed? A. I don't know.

12 Q. By whom was it removed? A. I don't know, but I think it was removed by order of the town Council.

13 Q. Do you remember the said sill there at the time the gate was there? A. Mr.I.D.Cofer told me - -

(Mr.Thomas objects to the answer because hearsay only) --

Mr.I.D.Cofer located the line for Colonel Morrison and myself, and told us where it struck the house and carried us a showed us the sill now remaining, which was under the carriage gate, which was a part of this enclosure.

(110)

E.V.W.#I

Virginus Wrenn the plaintiff in this cause being recalled deposed as follows;

By Judge Kendall;

- 1 Q. Please state whether or not you aided Colonel Morrison in making the plat marked exhibit M? A. I aided him throughout and will swear to the accuracy of the plot to the best of my knowledge and belief.
- 2 Q. State whether or not in all things which you did in helping him to make said plat, you acted fairly and honestly, and that all measurements made by you were properly reported to him, and state all that you did in helping him to make the said survey? A. Generally speaking he carried one end and I carried the other end of the line; some times he had one of his sons to carry one end and he carried the other: I put down the measurements as he read them out to me, and I will swear to the accuracy of these measurements as he gave them to me.
- 3 Q. Now then please state anything further that you know with reference to the green lines made, by him? A The green line in front of Andrews porch is the extension of the line of Bott's porch which Mr. Folk told me was about where the porch he removed was taken from; that's the way the information was gotten; I asked Mr. Folk to tell me where the line came out,-- (Answer objected to because hearsay entirely) -- I will prove it by Mr. Folk; get him again if necessary.

By Judge Heath;

- 4 Q. Do you know anything about the green line that you have not stated? A. I remember the porch perfectly; while I think

E.M.M.#27

203 Q. I so understood you? A. I have not said it.

204 Q. I understand you then to say that you do not recollect
the existence of a porch as far as the green line indicates?

A. Yes, I cannot recall where that porch exactly reached.

205 Q. Do you recall a porch that reached as far as that green
line? A. I don't recall whether it extended out as far as
that.

Further this deponent saith not.

Signature of witness waived.

it as I stated.

194 Q. At what time did such a porch exist? A. Way back as far as '57 or '8.

Re-cross examination.

by Mr. Thomas;

195 Q. Do I understand you to say that in 1857 and 58 there was any porch at said Andrews lot that extended out as far as the green line? A. There was a porch in front of said lot that extended out I think to a line that would be fairly represented by that green line.

196 Q. Do you remember that porch? A. Not much, except as a porch.

197 Q. Do you remember it as a porch? A. I do I think.

198 Q. When did it cease to exist there? A. Concerning that my recollection is not clear.

199 Q. When did you last see it? A. I cannot recall, but I remember as a boy a porch about that place.

200 Q. Do you remember as a boy that the porch alluded to extended further into the street than the porch now existing?

A. I do not.

201 Q. Have you any recollection of any porch extending into the street further than the porch now existing? A. I cannot say of my own recollection that the porch did extend further than the porch now existing.

202 Q. Upon what authority then did you say one did exist?

(Question objected to because the witness has not said what that question undertakes to make him say) A. Did I say it existed beyond the present porch?

to the face of the house on the opposite side of the street known as the Todd building? (Question objected to as not new matter) A. 69 feet 3 inches.

- 189 Q. State the distance between the face of E.W.Wilson's house and the face of the house on the other side of the street? (Question objected to for the reasons before stated) A. 70 feet 6 inches.

- 190 Q. State the distance between the face of V.C.Baten's house and the face of Shabby Hall on the opposite side of the street? A. About 70 feet 3 inches.

- 191 Q. State the distance between the face of the house of T.H. Southall and the face of the house belonging to M.F.Langhorne on the opposite side of the street? (Question objected to for reasons before stated) A. 64 feet 5 inches.

- 192 Q. You have stated on your cross examination that the lines of the map filed as exhibit M are such as you and Mr.Wrenn defined them to be; now what I want to know is whether in making this plat you followed existing lines of enclosures as they now exist and that such plot was made with reference to such enclosures,without any attempt at defining any lines of streets? (Question objected to for reasons before stated) A. I did.

- 193 Q. You have testified on cross examination in reference to a green line indicating some structure in front of the porch of J.P.Andrews; after refreshing your memory upon the matter, state what that green line does refer to? (Question objected to because not new matter) A. It is very clear to my mind now that it was only a porch there,without an enclosure around

plot filed as exhibit M with these depositions you took only such measurements as Mr.Wrenn requested you to make. Did or not Mr.Wrenn request you to make a survey of all the houses, porches and yard enclosures represented by the said map?

(Question objected to as leading, and suggestive of the answer desired)

A. I think I stated I took said measurements as Mr.Wrenn directed me to take, and also such other lines as I thought necessary to enable me to make an accurate plot, namely in the location of base lines to which to refer other measurements.

182 Q. You have referred to T.H.Southall's old store, and have since stated that it was a dwelling house of the said T.H. Southall to which you referred? A. The house and store come together.

183 Q. Is there a store there now? A. (By Mr.Wrenn) Yes sir, a wooden store, the store and dwelling come together.

A. (By Mr.Morrison) I think as near as possible I measured from their intersection. I was misled by the store being now wood, and the house being in the old brick store.

184 Q. Colonel please state again the width of J.O.Thomas' porch? (Question objected to as not new matter) A. 7 feet.

185 Q. State the width from the face of J.O.Thomas' house to his yardenclosure? A. 14 feet 2 inches.

186 Q. State the width from the face of J.O.Thomas' house to V.Wrenn's fence on Main Street? (Question objected to for the reasons before stated) A. Very near 65 feet.

187 Q. To what scale is this map made? A. 10 feet to the inch.

188 Q. State the distance from the face of J.T.Purvis' house

to say that you did not undertake to determine by that survey where the lines of the street originally stood?

(Question objected to as leading.)

A. That's about what I meant.

177 Q. When you used the word "originally stood" did you mean, or not, as the town was first plotted or laid out? A. Yes, when first laid out.

178 Q. Could you or not now from the said field notes of the 1874 survey reproduce Main Street as shown on said survey? (Question objected to as not new matter, and answered in examination in chief).

A. Except defining the width of Main Street, which I do not find on the field notes, and therefore could not undertake to plot it accurately.

179 Q. Could you do that thing by landmarks about the town which are shown on those field notes? A. Question objected to because not new matter) A. I could make a plot giving the relative connections between the different enclosures, their length, their depth back, and would have to leave to wiser heads than mine what the width of the street was, speaking from these old field notes.

180 Q. You have stated that you thought you did not undertake to define the width of Main Street on the survey of 1874; do you mean any more than that you did not undertake to ascertain the limits of that street as originally laid out? (Question objected to as not new matter, and because it is leading) A. Yes that's what I mean.

181 Q. On your cross examination you stated that in making the

- 171 Q. Was Joe Thomas present when that line was indicated, or did he have any knowledge of it? A. He was not.
- 172 Q. Re-examine the aforesaid field notes, and from them state the width of Mason Street? A. I find upon re-examination that its width is 45 feet.
- End of cross examination.
- Re-examination,
- By Judge Kendall;
- 173 Q. You have stated that the green lines representing old Landmarks were placed where you believed old land-marks to stand from your own knowledge and the best information you could derive from others; please state how you obtained your information for marking the red and black lines? A. ~~From~~ my own knowledge.
- 174 Q. How did you gain that own knowledge? A. I intended for the red lines to represent enclosures and black to represent houses and porches.
- 175 Q. Was it done by measurement? A. Yes Sir. I desire to state that the red and black lines on that plot I consider as nearly correct as they can be plotted. Of course, with the dividers especially, in these distances that I am giving you — to the distance of 2 or 3 inches may not correspond, but when plotted from the field notes, and plotted by the red and black lines, was as near correct as I could make them; the green lines I don't so much vouch for their accuracy.
- 176 Q. You have stated on cross examination that for all purposes of defining the lines of the streets you considered the survey of 1874 as unreliable; did you or not mean anything more than
- (103)

- 164 Q. Yes; what are the differences between the measurements etc.as you have them down there and the lines,measurements etc. as on the plan of 1874? A. The old plot I dont remember very well, but am pretty sure of only indicating thereon lines representing the lines of lots and possibly streets and cross streets,with the fronts of no houses or porches, and made on a scale much smaller than this. The base line which I ran,to which I referred other lines was taken on and near on,I think, the North side of Main Street, which constitutes all the differences between the two surveys.
- 165 Q. Were any measurements upon that old survey given to show the width of Main Street in any of its parts? A. ⁺
I of my own knowledge do not recall, but I suppose it is of record on the books of the Council of the town of Smithfield with the original field notes. I dont know whether it is mentioned therein or not.
- 166 Q. Take those same field notes to which you have referred,and answer from them? A. I dont think I attempted to define the width of Main Street.
- 167 Q. From those notes what is the width of Pierce Street?
A. Width 48 feet.
- 168 Q. What's the width of Mason Street? A. That's not on the field notes I dont think.
- 169 Q. At the end of Pierce Street there is a green line marked "line of fence now moved". What does that green line indicate
- 170 AQ From information furnished me by ~~JxQxThomax~~ I.D.Cofer it indicates the line of an old fence that formerly joined his lot to that of Joe Thomas on Pierce Street.

- 154 Q. While you lived on lot 34 have you any recollection at all of any old fence at the point designated? A. None at all; I cannot recall that I have, that portion of one.
- 155 Q. And when did you leave the said lot 34 to go off to school? A. 1858.
- 156 Q. Your father was owner of the said lot 34 down to what date? A. I dont remember, sir.
- 157 Q. State as near as you can? A. '68 say.
- 158 Q. The red line dividing the enclosure of J.D.Thomas from R.S.Thomas; does the present enclosure run as indicated by that line? A. It was not measured back; it was supposed to be run perpendicularly from the corner of the street, which is properly located.
- 159 Q. The inquiry is not as to how it runs back, but it is as to the location of the line on Main Street; is the line on Main Street exactly as shown on this diagram? A. It is, to the best of my knowledge and belief.
- 160 Q. In making the measurements of lots etc. according to this exhibit M did you call upon the owners of the respective lots to aid and assist you? A. I did not.
- 161 Q. Was any information furnished to you by the Council in this effort? A. None at all sir.
- 162 Q. Then the lines upon that map are exactly such as you and Mr.Wrenn defined them to be? A. And as near as we could, and found them to be.
- 163 Q. Point out the differences or discrepancies between these lines as they are on exhibit M and on the said plan and survey which you have spoken of of 1874? A. Of the old plot?

green line on which is written "old front", what does that old front indicate? A. Of the old porch.

143 Q. And of an old porch only? A. An old porch only.

144 Q. Which has recently been removed and another one substituted? A. Yes sir.

145 Q. What's the distance at lot 36 from the black mark at which there is an intersection with a red mark, from the point of intersection to a line in front of it called the base line? A. 8 feet.

146 Q. If you were to extend the black line indicating the sidewalk in front of the hotel porch down to Church Street, what additional amount of that street would be taken in by the said sidewalk? A. Only 4 feet more.

147 Q. What's the distance from the porch of J.O.Thomas to the front of the house of V.Wrenn? A. 65 feet.

148 Q. What's the width of the porch? A. 7 feet.

149 Q. On Mason Street at the rear of the lot of V.Wrenn there is a green line on which is written "old fence now moved", when did the said fence exist there? A. I don't know.

150 Q. Have you no recollection at all of any old fence ever existing there? A. I cannot recall that I have.

151 Q. By whose direction were those words put there "old fence now moved"? A. Mr.Wrenn informed me that he had been informed that there was an old fence there.

152 Q. And where these words put there at the direction of Mr. Wrenn? A. They were.

153 Q. And not upon your knowledge at all? A. Not upon my knowledge at all.

- 134 Q. Now that your mind has been directed to this ~~XXXXX~~ office, state as well as you can remember the character of the enclosure, and the distance of that enclosure from the front of the office; in other words did that enclosure extend out as far as indicated by these green lines? A. I desire to state just here with regard to these green lines, as located on the plot, that I will not vouch for the accuracy absolutely, but only relatively; as nearly as I ~~xxx~~ could from the parties who furnished the information to me.
- 135 Q. Who furnished the information as to the distance of this enclosure about which we are inquiring? A. I think I myself remember it as coming out as far as now represented, but upon consideration, I think probably it didn't come as far out.
- 136 Q. How far did that old enclosure fall within the line of the hotel porch? A. I don't recollect positively.
- 137 Q. State as well as you can? A. I should say about a foot probably.
- 138 Q. Within? A. Yes sir.
- 139 Q. About a foot nearer? A. Yes Sir.
- 140 Q. Are these lines as at present drawn, that green line, put ~~about~~ according to your recollection, or according to the direction of another, and if so, by whom? A. I have just stated partly by my own recollection, and at the information furnished by parties with whom I spoke relative to it.
- 141 Q. Who were the parties? A. F.A.B Watson, V. Wrenn and other citizens, names not remembered.
- 142 Q. In front of the next lot, to-wit Shabby Hall, there is a

I N D E X
to
T E S T I M O N Y.

W. D. Folk's,	pages 2 to 51 inclusive.
E. M. Todd's,	pages 52 to 55 "
A. E. Jordan's,	pages 56 to 65 "
Virginus Wrenn's,	pages 66 to 78 "
F. A. B. Watson's	pages 79 to 81 "
E. M. Morrison's	pages 82 to 108 "
Virginus Wrenn's,	pages 109 to 111 "

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IN THE CIRCUIT COURT

FOR ISLE OF WIGHT COUNTY, VIRGINIA,

Virginus Wrenn,

vs

The Town of Smithfield, and W.D. Folk, Mayor,

In Equity.

Testimony of witnesses in the above cause, taken at the office
of Messrs. Harmanson & Heath, #57 Main Street, Norfolk, Virginia,
on Wednesday, June 24th, ^{25th + 26th} 1891, in accordance with the attached
notice.

Messrs. Harmanson & Heath, Kendall and W.L. Folk appearing for
the plaintiff,

Messrs. R.S. Thomas and R.E. Boykin appearing for the defendants,
Henry H. Little, Stenographer.

Testimony of W.D.Folk,a witness for the plaintiff,who
being called and sworn deposed as follows;

By Judge Kendall;

1 Q. What is your name? A. W.D.Folk.

2 Q. Mr.Folk please state your age, residence and place of
birth? A. I am 52 years old, born in Smithfield and lived
there ever since.

3 Q. State whether or not you are at present Mayor of the
Town of Smithfield,and how long you have been. A. I am Mayor
at present. I have been Mayor of Smithfield for 5 years,I
think,this present term, I am not positive exactly as to the
length of time,I think about 5 years. I have been Mayor of
Smithfield at different times I suppose as much as ten or
twelve years since the war. I held the office I think 2 or
3 terms.

4 Q. Are you acquainted with the lot of V.Wrenn,at the inter-
section of Main and Mason Streets, Smithfield? A. Yes.

5 Q. State if you know the position of the fence built by Mr.
Wrenn in front of said house and lot? A. Yes Sir.

6 Q. You know,you say? A. Yes Sir.

7 Q. Now state,please sir, whether or not this fence as con-
structed by him can in any way interfere with public or pri-
vate rights,or the convenient use of the street and sidewalk?
(Question excepted to because it involves the opinion of the
witness upon questions both of law and fact). A. I do not
see how it can interfere with the use that the public makes
of the street or sidewalk,because it is only in the line with
like obstructions both above and below that point. As to
what the rights,either public or private,are,I dont know; I

dont know where the line of the street is.

8 Q. When you use the word obstruction above and below do you mean to say the houses, fences and porches on a line with the fence of Mr.Wrenn really project into what is called the street, or not? (question excepted to as leading). A. I mean this; that up ~~xxxxx~~ the street above where Mr.Wrenn has constructed this fence there are fences, porches and houses on the same line, and beyond that line, further out in the street, either on it or beyond it, and that there are porches below that are out beyond.

9 Q. State whether or not the space enclosed by the fence of Mr.Wrenn encloses anything more than the land of Mr.Wrenn, or encroaches upon the street property, and your reason for your opinion? (question excepted to as leading). A. I think Mr.Wrenn has only enclosed what property belonged to him. I have always considered that the property which he enclosed belonged to him, and my reason for thinking so, was that the owners of every piece of property from Mr.Wrenn's to the other end of town, which is four fifths of the street, claim to that line and that some of the owners below have claimed to that line, and suppose they claim to it from the fact that they have put these obstructions on it, and in every instance not only have they put their porches on it, but in the case of the hotel the roof of the house runs out over the line. (Answer excepted to because it gives the thoughts and impressions of the witness, and is not based upon any material facts bearing thereon).

10 Q. State whether or not the line of the lots, as enclosed and claimed as property by the respective owners, down from the

✓ south-western boundary of the town, to beyond the hotel lot, conform with tolerable accuracy to the outer enclosures of Mr. Wrenn on Main Street? (Question excepted to because it assumes that the owners of the lots claim that their enclosures are part of their property). A. They do so. Mr. Wrenn's fence is on a line with the others, well with very nearly an accurate line with him, there are more outside of him than inside of him.

II Q. Please state whether or not any public or private rights have grown up with reference to any possible use (if there has been any use) of the space in front of V. Wrenn's house, existing before the fence was put there, either by Mr. Wrenn in 1890, or by Mr. Womble in 1852? (Question excepted to because the witness is asked his opinion upon a legal ~~opinion~~ question)

✓ A. You want to know whether anything has been done prior to the time Mr. Wrenn or Mr. Womble put the fence there that would not have been done had the fence been there all the time? Is that about the substance of it?

12 Q. Yes Sir? A. Nothing that I can see.

13 Q. Has the fence built by Mr. Womble in 1852, or that built by Mr. Wrenn in 1890 in any way inconvenienced any public or private interests? (Question excepted to, as it calls for legal opinion). A. None that I know of.

✓ 14 Q. Does or not the fence of Mr. Wrenn on Main Street or Mason Street enclose any land generally used prior to the building of the same, as a part of the side walk property, and which was treated by the town authorities as a side walk? (Question objected to because it calls for the opinion of the witness upon methods which are determined by the facts in the case)

and assumes that the land has not been used by the public in the town of Smithfield) A. It does not enclose any land that was treated by the town authorities as a side walk, as far as I know.

15 Q. Is or not the plank ^{side}walk considered by the town, prior to the building of Mr. Wrenn's fence ^{along} the street line?

A. Practically it is along by Mr. Wrenn's.

16 Q. State whether or not, as considered, it was in front of the strip of land since enclosed by Mr. Wrenn? A. Yes it was.

17 Q. State whether or not the streets, Main and Mason Streets, and the side walks to the same in front of Mr. Wrenn's house, and along that part of the town, are of amply sufficient width for all wants or requirements of the town, or of any private property therein, not regarding the space enclosed by Mr.

Wrenn as part of the side walk? (Question excepted to as irrelevant to the issue). A. I think they are; I do not see any good that the place enclosed by Wrenn would be to the public, because the obstructions, (as I said above) are above and below. A man would have to turn around a corner to get in on it, and turn around another corner to get out. I mean when I saw "obstructions" the houses, fences and porches.

18 Q. When you use the word "obstruction" do you mean to say that these porches, houses and fences are actually in the streets of the town? A. No I don't, I believe they are on private property.

It is agreed by counsel that the questions or answers involving the belief or opinion of the witness, heretofore or hereafter asked or answered, shall be regarded as excepted to, without further exception).

- 19 Q. State whether or not from your earliest recollection the true line of Main Street as treated by the citizens and town authorities, did or not, extend to the space now enclosed by V. Wrenn's fence? A. Yes it did. It came up to that line nearly the whole way; they have built houses on it, they have built fences on it, built porches on it, on the same line and no objection has ever been made to citizens building upon that line until Mr. Wrenn built that fence on it.
- 19 Q. State whether or not the town authorities have worked upon or exercised any authority or ownership over the space embraced within the space of V. Wrenn's fence on Main or Mason Streets within your recollection? A. I have never known the town authorities to do anything upon this piece of land except possibly to cut down some weeds on it, and that we did all along the street, regardless of lines, where it was unenclosed. Wherever we found a space like that unenclosed we would cut down the weeds and grass as a sanitary matter, simply to move the vegetable matter; I don't know whether they ever cut down any on this space or not; the town authorities did cut down on like spaces.
- 20 Q. Do you or not mean to say that it was the practice of the town authorities to cut down any weeds upon lots open to the street, whether claimed by the town or not? (Question excepted to for the reason that the contention in this cause is solely to the premises of V. Wrenn). A. I mean this, that the street surveyor in cleaning up the streets since I have been Mayor (and prior to that time I was a member of the street committee) would ask me some times if he must cut the weeds off of those unenclosed spaces; I told him that it was too

small a matter, and as he went along I thought it would be better to clean it off, because it would grow up and fall down and die, and it would look bad to have these little spaces along the streets growing up in weeds. There are several little nooks on the streets in the town similar to the one Mr. Wrenn ~~found~~ enclosed, and we treated them all alike.

21 Q. In your instructions to the street surveyor, were they given because of any claim to the property by the town?

A. I didnt suppose the town claimed them.

22 Q. It was not then, as I understand you, the assertion of right, or claim of the town upon the property on which it was cut; do I understand you correctly? A. It was not ~~the~~ an ^{claimed} assertion of a claim; no, I didnt suppose the town ~~owned~~ it, but I thought it ought to be removed as any other disagreeable matter near the street that was not looked after by the owners.

23 Q. Do you know whether or not marl has ever been placed upon this land so enclosed by Mr. Wrenn, and if so by whom was it put there? A. There has never been any marl put upon the street side walks of the town of Smithfield at the public expense. Prior to 1874 or 5 it was the habit of the citizens of the town to keep up the side walk in front of their property, if they had any side walk at all, and they did it at their own expense. The majority of the town had no good side walk, in some places a man would improve the space in front of his property, and another would not. The citizens were in the habit of hauling marl and making side walks in front of their property. I dont believe the town has ever put any marl there.

24 Q. State whether or not this was the practice of citizens

with reference to unenclosed spaces in front of their property, whether such spaces were used for side walks or not? A. Well they generally filled up to their fences and out to the other edge of the side walk where they did it at all.

25 Q. Do you know who put this marl on this space in front of Mr. Wrenn's house? A. I cant say positively who did so;

I think it was done either by Mr. Morrison or Mr. Womble who owned the property. Mr. Morrison never owned the property; he lived there.

26 Q. Please read the questions and answers of the deposition of Mr. John R. Purdy taken by the defendants in this cause, from number 66 to number 69 inclusive, and state whether or not you are well acquainted with the lot owned and occupied by F. A. B. Watson, and designated in said deposition as lot number 14?

A. I am.

27 Q. Dr. Purdy in his deposition, in his answer to question 69 states that the enlargement to the old storehouse which existed on said lot at his earliest recollection, as made by Mr. Watson, was to the rear of the house, and that the front of said storehouse remains now as it originally stood. State whether or not Dr. Purdy is correct in his recollection? A. Dr. Purdy is wrong. The old store house that stood upon that lot when Mr. Watson bought it stood out on a line with Mr. Wrenn's present fence, and with Mr. Langhorne's store which is above it, and with another store house on another lot which adjoins his below it. All of these stores were on a line with the present fences and porches. Mr. Watson never enlarged the old store house at all; he pulled it down foundation and all, and built a new house and set the new house back in a line with his dwelling, which was some ten feet back, I suppose.

28 Q. State whether or not you are familiar with the lot on Main Street in said town commonly referred to as the Bott lot, and mentioned in the deposition of Dr. Purdy as lot number 15?
A. Yes Sir I am acquainted with it.

29 Q. State whether or not at your earliest recollection there stood upon said lot an old store in the line, or nearly in the line of V. Wrenn's fence. A. Yes, there did.

30 Q. State all you know in reference to that house from your earliest recollection? A. Well an old store house stood over there; it was ^{an} old delapidated building when I first remember it. Some year or two ago it was torn down because it was unfit for occupancy and a fence put on the line of the front of it. I think the remains of the old foundation are still there; some signs of it.

31 Q. Do you or not know they stood there a year or two ago?

A. Yes the bottom of the old brick wall is still there.

32 Q. State whether or not a survey of the said town was ordered by the Council of said town during the year 1874 or thereabout

A. Yes there was a survey ordered and made.

It is agreed by counsel that all questions and answers in relation to the survey above mentioned shall be regarded as excepted to.

A paper marked "P. O. S." is here offered by the plaintiff in this cause as being extracts from the record of the town Council of the town of Smithfield, which is admitted by counsel for the defense to be copies of said abstracts, and subject to all legal exceptions which may be if desired hereafter especially stated.

33 Q. Please look at this paper and state whether the survey made by the order of said council entered on the 7th day of

✓ July, 1874 to be executed, has in fact ever been made and executed by General E.M. Morrison as therein required? A. A Survey was made by Colonel (or General as is the style there). I saw him while he was making the survey; I saw the plot after it was made. The fact of the survey being made is a matter of record, and the field notes are recorded.

34 Q. Please state whether or not the survey is now in existence and whether or not it is within the possession of the town authorities of the town of Smithfield.? A. The plot is not in possession of the town council of the town of Smithfield.

35 Q. Do you know what disposition was made of said plot?
A. I do not.

36 Q. State whether or not as Mayor of said town you have ever made diligent search for ~~ix~~ said plot? A. I have searched every hole and corner for such plot, and inquired of everybody that I thought could possibly have possession of it. The record stated that it had been sent to the Clerk of the County Court of Isle of Wight.

37 Q. Mr. Folk please state whether or not any effort to have a survey was made in 1889, and if so why a survey should have been made after one was made in 1874, and why the effort in 1889 was not successful in having the survey? State all you know in reference to any movement on the part of the citizens of Smithfield or of the town council, or of any other persons to have such survey in 1889, and why it was not made?

✓ A. The town council consists of a Mayor and four aldermen (I simply mention that explanatorily). In 1889, as Mayor, I called the attention of the Council to the fact that there was no survey of the town in existence, and that the Statute required that every town should have a survey and plan made

and recorded. A survey was ordered to be made by the Council
 a surveyor was employed, and the work commenced; it had made
 some little progress when I was requested to call a meeting
 of the Council, which I did, and Mr. R. S. Thomas, Mr. R. E. Boykin
 (the counsel in this cause), C. F. Day and possibly some other
 gentlemen came before the Council and at first said there
 want any law to require it. I don't think they held up to
 that opinion, but they succeeded in getting a majority of the
 Council to reconsider, or to rescind their action. The matter
 was dropped there. My reasons for wanting the survey made
 were that the town ordinances referred to offences committed
 in the streets, and I wanted to know where the street lines
 were located; as the matter stood, nobody seemed to know def-
 initely where the lines were, and I thought they ought to be
 determined. That's all about this effort to make a survey.

38 Q. Did you at ^{that} ~~any~~ time know of the survey of 1874, or that
 it had been made? A. I knew it had been made, and I knew it
 had been lost. After the survey was abandoned the Council
 passed an order that the fences and houses as they then stood
 should be regarded as street lines, and I said to them, - Then
 gentlemen I am to understand from you that everything that is
 enclosed is to be considered as private property, and every-
 thing that is unenclosed is to be considered public property?
 Mr. P. D. Gwaltney, who seemed to be a leader of the opposition
 to the survey, assented to that opinion. The matter was
 not recorded at that time, and after Mr. Wrenn put his fence
 up Mr. Gwaltney came to me and asked me if he was not violating
 the town ordinances. I told him I had examined the records
 of the town expecting to find this action of the Council, but
 the Clerk had failed to make any record of it, and therefore

#II

I had taken no action against Mr. Wrenn's fence. A meeting was called. A paper was introduced, in substance setting forth what had been done, and was entered on the records. In a few days they asked me to call another meeting, said that the records did not agree with their ideas, and a second paper was introduced which rescinded this former action, and the second paper was entered on the records. Shortly after this last paper referred to was recorded, a petition was presented to the town council, signed I think by three fourths at least of the white people of the town, (or the white voters), asking the town Council to ^{have} ~~make~~ a survey made and recorded. The Council refused to take any action in the matter, and the paper was withdrawn. (Answer excepted to because the witness testifies as to record, when the records themselves are the best evidences of the facts which they recite, and for the further reason that the witness testifies in part as to facts occurring subsequent to the institution of this suit).

By Judge Heath;

39 Q. What became of that paper? A. I would know it if I saw it; Mr. Todd presented the paper, and I handed it back to him.

By Judge Kendall;

40 Q. Please state whether or not the fence of Mr. Wrenn is in any way an inconvenience to the public or a disadvantage to the town? A. I think not.

41 Q. Is the town injured or benefitted by having said fence? (Question excepted to because it involves in part the decision of a question of law, is irrelevant, and calls for the opinion of the witness). A. The street looks better with the fence there than it did before? It puts things in line. The public is not inconvenienced at all by it.

✓ 42 Q. Did, or not, the land enclosed lie in the direct line of travel
43 even before the fence were put up? A. It did not.

✓ 43 Q. After the fence of 1852 was prefted could the balance of
the space in front of the lot have been in any way used for
street purposes? A. Could not be of any value.

✓ 44 Q. State the character of the marl that was placed upon the
piece of land in question? A. Well the marl that was used
on the streets generally, had some rocks in it; these rocks
usually were thrown out on one side, and put as far back as
possible, and that seemed to be the general character of the
marl on this piece of ground. You can see it there now.

45 Q. Do I understand you as meaning to say that marl that was
unfit for street purposes was put in these places, and that
this was the character of the marl put upon this said place?
A. The lumps and rocks were usually thrown out on this said
place; this marl was rocky and rough.

direct .
End of examination.

Court now proceeds with the examination of Mr. E. M. Todd, counsel
for defendants desiring to have the testimony of W. D. Folk
in writing before cross examining him.

The testimony of W.D.Folk having been reduced to writing, on June 25th his examination is proceeded with.

Mr.W.D.Folk being recalled to the stand dēposes as follows;

Cross Examination;

By Mr.Thomas;

46 Q. Describe the line of the enclosure of the V.Wrenn lot in the town of Smithfield as it existed at the date of your earliest recollection? A. The fence ran from the corner of the hotel to the corner of the brick house occupied by Wrenn; then from the lower corner of the brick house to the lot at present occupied by C.H.Wilson.

47 Q. What do you mean by the lot occupied by C.H.Wilson?

A. I mean the lot he lives on.

48 Q. Do you mean to say that the line of the enclosure on Mason Street ran up to the house occupied by C.H.Wilson? A. No Sir; to the lot.

49 Q. At what point on Mason Street did this line of the V. Wrenn lot stop? A. It stopped, where the line of C.H.Wilson began.

50 Q. Where's that? A. You can see it there on the ground.

51 Q. Where is it? A. You see it there on the ground at the corner of the fence there on the street in front of his house.

52 Q. Was the line of the enclosure on Mason Street from the stable on Mason Street continuous and unbroken to the house occupied by C.H.Wilson? A. I didn't say it ran to the house occupied by C.H.Wilson. I said it ran to the fence. It was continuous and unbroken from the old warehouse as I call it (I suppose you refer to it as a stable) to the fence as it now stands in front of C.H.Wilson's lot; I mean that corner of the fence nearest the house.

- 53 Q. What existed at that corner of the fence nearest the house to distinguish the C.H.Wilson lot from the Wrenn lot?
- A. A fence and a chimney and a little store room, which has since been taken away by Captain Chalmers when he owned it, adjoining the chimney, and a kitchen which still stands upon that same line, and then a continuation of the fence.
- 54 Q. Is the chimney spoken of on Mason Street, on the line of the fence heretofore spoken of, running from the old stable or warehouse to the house of C.H.Wilson? A. No.
- 55 Q. I was asking only what there was in the line of the fence enclosure between the stable (or warehouse) and dwelling of C.H.Wilson to distinguish the line of separation between the V.Wrenn lot and the C.H.Wilson lot? A. ^{The} fence between the old warehouse and the C.H.Wilson house does not touch the dwelling house occupied by C.H.Wilson, but runs up to a fence.
- 56 Q. That's correct. Now I was inquiring as to the existence of that enclosure at the date of your earliest recollection?
- A. It was there at the date of my earliest recollection.
- 57 Q. What was there at the date of your earliest recollection?
- A. I stated it to you.
- 58 Q. State it again, because I didn't understand you correctly?
- A. What was where?
- 59 Q. At this intersection? You are speaking of the line of the V.Wrenn and C.H.Wilson lots; what was there to note the intersection? A. One fence ran down Mason Street, and the other ran across so (indicating a right angle), and that's where they cornered.
- 60 Q. I am speaking solely and alone of the fence that ran down Mason Street. What intersected that fence on Mason Street?
- A. A fence running from Mason Street along the line of C.H.

Wilson's lot.

61 Q. To what lot? A I think the Hotel lot line in the rear of part of it.

62 Q. Do I understand you to say that at the date of your earliest recollection there was a line of paling that ran from the V.Wrenn enclosure on Mason Street, back to the hotel lot?

A. I didn't say there was a line of paling. I said there was paling, chimneys and houses covering that line.

63 Q. So I understood you. I was asking you to distinguish what there was on Mason Street to denote the line of separation between the V.Wrenn Lot and the C.H.Wilson lot? A. Fence

64 Q. Be kind enough to state it? A. I say a fence.

65 Q. Please to state where that fence^{ran} - from what point ~~that~~ to what point? A. It ran back until it struck a chimney of the house on the C.H.Wilson lot, - or it is possible it might have run by the chimney, I think it ran by the chimney to a little store room which I think slightly projected the chimney

66 Q. From the chimney or store room just alluded to, was there any enclosure to any other object, and if so, to what object?

A. There was a porch at the rear of the main building of the house occupied by C.H.Wilson, the store room referred to was in the corner of that porch, or in the end of that porch, next to V.Wrenn's lot, then there was an ell piece attached to this porch continuing on back that ran out to the line of the store room, and which was taken down by Captain Chalmers and then there may have been a very short piece of fence running to a kitchen, (the kitchen still stands), and from the kitchen on back there is a fence.

67 Q. When was there any change made in the line of the enclosure of the said V.Wrenn lot, and by whom, and describe it?

- A. What part of the lot?
- 68 Q. Any part of it? A. Merritt Womble, I think in 1852 or about that time, put what we term a yard fence usually, around both sides of the house, on the Mason Street Side and on the Main Street side, I suppose about 6 or 7 feet from the house. I suppose it was about 7 feet wide.
- 69 Q. With that exception to line of the original enclosure remained ~~remained~~ as you have described them down to what period of time? A. The lines of the original enclosure as I have described them with the exception of the yard fence being put there remained down to what time? Until this fence was erected by Mr. Wrenn.
- 70 Q. State about the date of your earliest recollection of this lot? A. I suppose 40 years ago, possibly more. I suppose I recollect it back to 1848 or 50.
- 71 Q. From the date of your earliest recollection, as just stated, how was the building now occupied by the said V. Wrenn used and occupied down to '52? A. The lower part was occupied by Merritt Womble as a store, and the upper part as a dwelling. He had a hall way that went from the street, up.
- 72 Q. State the location of the doors to that part of it that was used as a store? A. One door was on Main Street and one on Mason Street.
- 73 Q. Was the ingress and egress to and from these doors perfectly free and ~~unobstructed~~? A. I never knew a man to put any obstructions to a store door to keep people out.
- 74 Q. Was any enclosure around this house and store placed there by Mr. Womble or anybody else until after the use of the said house as a store ceased? A. No.

75 Q. Was the space between the old enclosure, as you have described it, running between the hotel and the dwelling of V. Wrenn, open to the street from the said enclosure. A. I don't understand you.

76 Q. I mean as you have stated ^{did} the old line of enclosure as you originally remember it on Main Street run from the hotel building to the building now occupied by V. Wrenn in a straight line with the face of the two buildings so that the space between these two buildings opened on the street? A. It was not.

77 Q. Why not? A. Because it was enclosed by that fence.

78 Q. What was there between that fence and the middle of the street of Smithfield? A. Nothing.

79 Q. Did that said space remain open, free and unobstructed as you have described it until the recent enclosure was put there by the said V. Wrenn? A. Yes.

80 Q. Was there ever any obstruction to the use of the said space by any owner of that lot placed there to prohibit its free and uninterrupted use and enjoyment by the public? A. None that I know of.

81 Q. Did the public have unlimited use of the space in question as fully and as freely as they desired? A. The public used it very little.

82 Q. Who besides the public used it? A. No one.

83 Q. Then if it was not used by anyone except the public was the use of the space in question by the public in any way obstructed? A. Not that I know of.

84 Q. Does the line of fence as now placed by Mr. Wrenn on the space in question restrict the use of the public from the space in question? A. Of course it does.

- 85 Q. What obstruction is there on this same side of the street between the hotel porch and Church Street? A. There is a porch to a house owned by Mr. Brown, and there was an enclosure below the hotel porch before the war and since the war up to some few years ago, what you knew as the old bar-room which Parker moved away from there. He moved the bar away, but didn't move the fence; it stood there until it rotted down. The fence was down before the bar-room was moved.
- 86 Q. The bar-room just mentioned was a small house adjoining the main building of the hotel was it not? A. Well it was a house I should think about 25 feet front, and attached to the hotel by a little porch or platform, whichever you might term it, between the two.
- 87 Q. And the enclosure to that bar-room extended how far? A. About 25 or 30 feet.
- 88 Q. That is, in front of the whole front of this bar-room? A. Yes, and possibly a little further out. It ran up I think to where the gate came in that goes down the lane. I am not certain about its running up to the gate.
- 89 Q. How long has that enclosure been down? A. Well, I suppose it has been down 15 years, - 12 or 15 years; I couldn't say positively.
- 90 Q. Was the enclosure of the said bar-room on a line with the porch of the hotel? A. I think it was. Practically so.
- 91 Q. With that exception then, the only obstruction to the balance of the street, as mentioned, was the porch to the house we know and call "Shabby Hall"; is that correct? AL. Yes.
- 92 Q. Was the bar-room to which you have just alluded on a line with the face of the hotel, or was it somewhat in the rear of

that line? A. On a line with the face of the hotel, or practically on a line with it, it might have been a few inches one way or the other.

- 93 Q. Was the enclosure to that bar-room just alluded to on a line with the pillars of the porch of the hotel? A. I said it was on a line with the hotel porch, practically.
- 94 Q. What porches, fences, or houses are there up Main Street and towards its western terminus that extend further out into the Street than the fence of the said V. Wrenn as at present? A. To the western terminus of the town?
- 95 Q. Yes? A. I don't think there are any fences out further; there may be some fences and houses that are a few inches further out, and William Cofer's fence and the fence in front of the John A. Jordan lot are further out.
- 96 Q. Are the fences you have just enumerated in what is called the old or the new part of the town? A. They are in the extension.
- 97 Q. When was that part of the town incorporated in the town, and as a part of it? A. In 1856.
- 98 Q. Were those fences just mentioned, at the date when that portion of the town was incorporated, into it, any further out than they now exist? A. I don't know where they were when the town was incorporated.
- 99 Q. You were living in the town in 1856 were you not? A. Yes.
- 100 Q. You have been familiar with these lots from that date to this have you not? A. Well generally familiar as a man would ordinarily be, living in a town of that size.
- 101 Q. Have you no recollection that they have been carried ~~xxxx~~ to a point further out than they were when that part of the

town was incorporated? A. I stated I did'nt know, and I dont know now.

I02 Q. Have you no recollection at all of their being moved from their original position? A. I cant recollect a thing, I dont know.

I03 Q. Have you no belief or knowledge, or any reason to believe that they have been advanced from what they were originally? A. I have not.

I04 Q. Does the existence of these fences you have just enumerated taken into the town in 1856, give to V.Wrenn the right to advance the line of his enclosure to the line of the enclosure just mentioned? A. V.Wrenn has not advanced the line of his enclosure to the line of the enclosures just mentioned.

I05 Q. What is the distance between the line of enclosure of V. Wrenn to the lines in question and the true enclosure of the lots specified? A. I dont understand the question.

I06 Q. How much does he lack of having advanced the line of his enclosure to the line of the lots just mentioned? A. To the line of Cofer's lot?

~~At the intersection of the line of the fence of William Cofer's lot and the line of the fence of V. Wrenn's lot, the distance is 7 feet.~~

I07 Q. Yes. A V.Wrenn's ~~lot~~ fence is not as far out towards the centre of the street, or a line drawn down the centre of the street as the fence of William Cofer's lot is - or the lower corner of the fence of William Cofer's lot, by 7 feet I should think.

I08 Q. How much? A. By about 7 feet.

I09 Q. Extending the line of V.Wrenn's enclosure to the enclosure of W.W.Cofer, as specified, how far would that line be from the true line of the enclosure of the said Cofer? A. It

would be 7 feet inside of it when it struck Cofer's lot.

110 Q. In answer to the ninth question in your examination in said chief you ~~that~~ that the "owners of every piece of property from Mr.Wrenn's to the other end of town, which is four fifths of the street,claim to that line,and some of the owners below have claimed to that line, and suppose they have claimed to it from the fact that they have put these obstructions on it". What owners of property in the other end of the town,as mentioned,claim to the said V.Wrenn line? A. They all claim it up to the other end of the town, and Cofer's and Jordan's fence are outside of it.

111 Q. Are the lines of enclosures to the lots just mentioned beyond what they were in 1856 when the said property was received into the corporate limits? A I dont know whether these are beyong where they were in '56 or not; that's in the new part of the town.

112 Q. The enclosures of what lots in that new part of the town are ext ended and advanced into the street from where they were when the said newpart of the town was incorporated into the town? A. I just said I did'nt know.

113 Q. The enclosures of what lots in the said new part of the town,if any,extend out into the street further than the lots you have mentioned (the Cofer and Jordan lots)? A. I said that the Cofer and Jordan lots extended out further than any others.

114 Q. They extend out further than ^{what} ~~any~~ others? A. Than any others in the new part of the town.

115 Q. How much further do they extend than the balance of the lots in the new part of the town? A. I have answered that question before.

- 116 Q. Please repeat it, I don't know what it was? A. Well I stated that the lower corner of Cofer's lot extended out some 7 feet I thought, and it is less at the upper corner.
- 117 Q. Do you mean to say that the lower corner of the Cofer lot extends further out into the street than the upper corner?
- A. No I didn't say any such thing.
- 118 Q. How much further then does the lower corner of the Cofer lot extend out into the street than the upper corner of the said Cofer lot? A. Something like 3 feet.
- 119 Q. Are the lines of the enclosures of the lots above the said upper corner of the Cofer lot practically in a line? A. All except the Jordan lot which is next to the Cofer lot.
- 120 Q. How much does that differ from the Cofer lot - the lower corner of the of the Jordan lot? A. The lot extends out between 2 and 3 feet beyond the lines above it, and comes off very little where it joins Mr. Chalmers lot, which is the next lot above.
- 121 Q. Are the lines of the enclosures from the said Chalmers lot to the upper extension of the town practically in a line?
- A. They are practically, I think.
- 122 Q. How much do they differ, and where is the difference?
- A. I said they were practically in a line.
- 123 Q. I misunderstood you. Striking a line from the Chalmers property then, and running it on down to the hotel, would that be in a line with the V. Wrenn enclosure? A. Striking a line from the upper part of the town, from the lots that are above Chalmers, and continuing that line down along Chalmers line until you get to V. Wrenn's lot would practically be the same line.

- 124 Q. What is the difference between the line of the enclosure of the Chalmer's lot and the line of the enclosure of the Cofer lot? A. I have stated that in my answer before, that the Cofer lot was outside of the Chalmers line, the upper end of it about 3 feet and the lower end about 7 feet, practically, I dont mean that I am going by inches.
- 125 Q. Then these lines in the upper part of the town, as they exist, have, so far as you know, continued to exist since 1856; am I right? A. So far as I know.
- 126 Q. Was the store at present occupied by M.F. Langhorne built in your recollection? A. It was not.
- 127 Q. Was the store formerly upon the Bott lot built in your recollection? A. It was not.
- 128 Q. Did the store upon the Bott lot continue in use many years after your recollection? A. It did several years.
- 129 Q. Did it continue in use after the war many years? A. Yes several years after the war.
- 130 Q. When did it cease to be used? A. Well I dont know exactly.
- 131 Q. As near as you can? A. I dont know anyone who occupied the store in there since Mitchell occupied it in 1872; I think he was the last man who occupied the store in there. It may have been that Bott was the last man. I suppose it has not been used much for 8 or 10 years. I reckon Bott occupied it - yes, he was the last man.
- 132 Q. Did the town of Smithfield use without obstruction, as far as it sought and had occasion to do so, the unenclosed portion of the V. Wrenn lot as it existed prior to 1890? A. What do you mean by the town.
- 133 Q. I mean what you know ~~xx~~ by the corporation of Smithfield?

A. As a corporation it did not.

134 Q. Did the citizens of the town use the property in the manner that has been implied by the question? A. Yes Sir.

135 Q. When was the plank walks in the said town placed in the streets of the said town? A. Well that's a matter of record, I dont remember.

136 Q. Well as well as you can remember? A. Well 3 or 4 years ago; about 4 years ago. This plank walk in front of V.Wrenn's house was put there 3 or 4 years ago.

137 Q. Do I understand you to say that this plank walk between the hotel and the property of V.Wrenn was put there some 3 or 4 years ago? A. Yes.

138 Q. When did the town of Smithfield begin to put plank walks down on its streets? A. About 4 years ago; 3 or 4 years ago.

139 Q. And has it from that time up to the present been putting it down in the town of Smithfield as its finances justified? A. Yes.

140 Q. And was this plank walk between the hotel and the residence of V.Wrenn some of the first that was put down? A. Yes.

141 Q. What was the width of the plank walk as originally put down? A. That plank walk?

142 Q. Well there has been a difference in the width? A. It has varied from 4 to 5 feet 4 inches.

143 Q. What's the width of this plank walk that's between the hotel and the V.Wrenn property? A. It is 5 feet; maybe an inch or two more.

144 Q. Does the plank walk as put down in the town of Smithfield run up to the palings enclosing the lots in the town of Smithfield? A. In some places it does and some places it does not.

145 Q. In those places in which it does not, have the spaces between the plank walk and the enclosure been given to the respective proprietors along which the said plank walk runs?

A There has been no action of that kind.

146 Q. By the town? A. No.

147 Q. I understood you to say there has been no action of any kind, expressed or implied, by which these vacant spaces have been given by the town? A. The spaces between the plank walk as laid down approach within about a foot of the general line of enclosure; in some instances the plank walk has been run from this street line. Some of the citizens wanted the street committee to run the plank walk up to their enclosures or porches or stores. The council refused to run it beyond the street line, but in some instances they did run it up to these stores, where they stood inside ~~these~~ of this line of Mr. Wrenns fence, and required the owners of the property to pay for it. They did it for them as a matter of convenience, they paying the bills.

148 Q. In other places where there were no stores, and where there are vacant spaces between the plank walk and the line of enclosure spoken of by you, has the town of Smithfield abandoned her claim to the said vacant spaces? (Question objected to because it assumes that these vacant spaces belong to the town of Smithfield, and because it further assumes that the town of Smithfield has a right to give away the public property) A. As a citizen and as a member of the town, I do not think the vacant spaces ever belonged to the town. I am a member of the town council, and I have never regarded these vacant spaces as being public property.

- 149 Q. The question is repeated, and the witness is asked if the town of Smithfield has abandoned her claim to these vacant spaces? (Question objected to as it assumes that the town of Smithfield has made a claim to these vacant spaces, and there is no evidence to show that the town ~~of~~ Smithfield ever claimed these vacant spaces). A. I am not aware that the town of Smithfield ever set up any claim to these vacant spaces, or that anybody else set up any claim to their ~~claim~~ belonging to the town, until the occasion referred to yesterday when Mr. Thomas with some other gentlemen came before the council and set up such a claim.
- 150 Q. Are you aware of any fact that would lead you to think that the town of Smithfield had ever abandoned any claim to these vacant spaces? A. I am not aware that the town had any claim to abandon.
- 151 Q. Then you are not aware of the assertion of the town of this claim, or an abandonment of this claim? A. I never heard of the town setting up any claim to these spaces until the action referred to in my answer above, and until the action which was adopted by a majority of the Council at the instigation of those gentlemen, which is on record in the journal; or I should say, which grew out of the interview which they had.
- 152 Q. When the surveyor of the streets of the town has been at work upon the streets of the town, has he usually worked up to the very line of the enclosures to which you have reference? A. Which enclosures?
- 153 Q. The enclosures of the lines of the lots? A. What do you mean by worked upon the town? The surveyor has not worked upon the streets since they were laid with plank.

- 154 Q. Well prior to that time? A. There has been very little done on the side walks ~~by~~ the town up to the time they began to lay these plank walks. When we would find a very bad place in the side walks, and the owner of the property neglected it, the Council ~~would~~ have it fixed in some cheap way; they would usually fill it up with shells or coal ashes, or something of that kind, and several years ago they used some marl. With that exception the surveyor of the streets has only gone along and cleaned out gutters and chopped down weeds at the same time, and he would generally cut the weeds up to the fences.
- 155 Q. When was the first use of marl upon the side walks of the town so far as you remember? A. Well by whom?
- 156 Q. By the town? A. It was either in 1874 or 75 was the first time I ever knew the town to put any marl on the side walks; I think there had been some put upon the holes in the streets where they washed, prior to that time.
- 157 Q. Were you living in the town of Smithfield between the time of 1855 and '60? A. Yes.
- 158 Q. Do you remember the time when *Geo. R* Atkinson was Mayor and George W. Britt was surveyor of the Streets? A. Yes.
- 159 Q. Do you remember any marl being put upon the side walks of the said town while the said Atkinson was Mayor of the town, and the said George W. Britt was surveyor of the streets? A. I do not.
- 160 Q. Do I understand you to say that there was any marl put upon the side walks of the streets ~~by~~ while the said George W. Britt was surveyor and Atkinson was Mayor? A. I don't believe there was. None to my knowledge.
- 161 Q. Do you deny the statement heretofore made in these depo-

sitions by W.H.Thomas and others that said marl was placed upon the streets by the said parties at the said time?

A. I do not know that any such statement was made by them.

162 Q. Do you remember that Mr.Morrison or Mr.Womble ever placed marl upon the spaces between the house of V.Wrenn and the hotel? A. I didn't say that I did,sir. I said I was under the impression they put marl there,and I still believe they put it there,because it was the general habit of the people to do so.

163 Q. Is your impression and belief that they put it there derived from your impression and belief as to the case of others? A. Partly,as to the general habits of the people to do so, and I think I have some indistinct recollection of these gentlemen having done the same thing. I know Mr.Womble laid a brick walk part of the way in front of this property in question.

164 Q. The brick walk is where,and extends how far? A. It is from the corner of Mason Street down to the corner of his house,and did up to the time he put the enclosure^{out} there extend up to the house.

165 Q. The said brick pavement then was only on the front of the house? A. Yes the front of his house.

166 Q. You have stated in your examination in chief that the Council of the said town during the year 1874 ordered a survey of the said town? A. Yes.

167 Q. Were you a member of the Council at that time this survey was ordered? A. I was not a member of the Council that ordered the said survey, but I was a member of the Council that succeeded them. I was a member of the Council that paid the bill for making the survey.

- 168 Q. What became of that survey? A. I stated that I didnt know.
- 169 Q. Was it not in the possession of the Council, of which you were a member? A. I do not know whether it was or not. I was not the Mayor of the town.
- 170 Q. Who was the Mayor at that time? A. C.F.Day. I am rather under the impression that a copy of that survey was in the possession of that Council. The records stated that a copy of it had been sent to the Clerk's Office and filed there, and I am under the impression that a copy of it was also turned over to that Council.
- 171 Q. You have stated that C.F.Day was Mayor at that time, and you a member of the Council; was not the said survey thrown aside by the said Council as a perfectly useless piece of property? A. No Sir, I have no recollection of any such action.
- 172 Q. Have you no recollection that you as a member of the Council, as well as other members of the Council regarded that as an incomplete and useless and invalid survey? A. I have no recollection.
- 173 Q. Have you not stated ^{to} ~~that~~ P.D.Gwaltney, John J.Womble, C.F. Day and others, or either of them, that the said survey was useless and invalid? A. I do not remember. I didn't regard the survey as being well executed and being such a survey as the town ought to have. I remember that.
- 174 Q. Do you not remember to have expressed that opinion to the gentlemen in question on one occasion? A. I dont remember. I may have done so. I have no recollection of it.
- 175 Q. Are you not aware of the fact that the line of the street

on Main Street was only run on the North side of that street?

A. I dont know how the line was run. There is no record but of the North side.

176 Q. Did not that survey omit to state in various places the width of the streets and the size of the lots? A. ~~I know~~
Only one place that I know of, and that was the width of Main Street; I remember that defect in it.

177 Q. Did not that survey also include in it portions of the town which have never been incorporated into the town? A.
A None that I know of.

178 Q. Did not that survey adopt lanes as parts of the streets of the town, which had been private property, without paying the owners for the said property? (Question objected to on the ground that if the purpose is to contradict the witness, it is the duty of the examination to point out what lanes were especially so opened up, if any) A. I dont know whether it did or not; there were some lanes, one or two lanes in the upper part of the town about which I have understood there was some question, as to whether they were public or private property. I dont know that the Council ever condemned any property of that character.

179 Q Be kind enough to specify the lanes in question? A. Well the lane known as Cox's lane on that survey, and the one that runs down between the property of ^{Goodridge} and Drummond, I dont remember the name. They were both in the new part of the town and were open and used by the public long before the extension of the corporate limits of the town, and the use was not questioned or prohibited in my recollection, and there have been houses built up on these lanes and sold on them.

Mr. Thomas sold some of them himself.

180 Q. Is that true of the Drummond and Goodridge lanes, just mentioned? A. Mr. built some houses down there. I don't know that anything has been sold off.

181 Q. When was it that the public ever used the said and Drummond lane? A. Ever since my recollection. I have been over it a good many times when I was a boy, and nobody ever questioned my right to pass over it.

182 Q. While you had been over it many times when a boy, had that not been recognized as a private lane left open only for the use of the owners of the adjacent property? (The question, and all questions asked the witness, tending or suggesting to show that the Council had repudiated the survey of 1874 are hereby objected to as contradicting the records of the Council itself, which expressly adopt and accept that survey in full) A. I said I didn't know.

183 Q. When did the public ever do any work upon that said lane? A. None that I know of. I have been applied to by Mrs. Drummond to have some work done there since I have been Mayor.

184 Q. Have you while you have been Mayor been applied to by O. C. Goodridge, the owner of the property on the other side of that lane to do work on that lane? A. I don't think that I have.

185 Q. The paper marked P. O. S. on yesterday and introduced into these depositions through you as witness alludes to the afore said plan and survey of 1874, and there was also some field notes alluded to in the said paper. That paper was not examined by you prior to its introduction by you was it? A. I have not introduced any paper, nor have I examined it. The paper to which you refer I understand was put by consent of parties.

The defendants in this cause consented only to the introduction of the paper, and reserved ~~thexxright~~ every right of exception to the same.

The plaintiff replies that it is understood that said paper was admitted as a proper copy of the record of the town Council of Smithfield.

186 Q. As the aforesaid paper was introduced while you were a witness upon the stand, and as you are now Mayor, I will ask you to state the date of the meeting held by the Council of the said town after the 1st day of June, 1875? A I dont know when it was; Idont know when that meeting was held.

I did not introduce any paper; I have not examined the paper, and dont know what it contains, and refuse to certify it as a copy, and you gentlemen agreed to accept it as a copy without its being certified by me.

187 Q. That is correct and I understand you perfectly. I understand that you have not examined the paper and had not compared it with the records of the town Council and therefore you couldnt certify to the correctness of the said paper without a proper comparison of the said paper with the records of the town. Now this being so, be kind enough to examine the said paper now handed to you and tell me from it what is the date of the meeting of the Council subsequent to the 1st of June, 1875? A. I decline to answer any question which is a matter of record: I wont put my memory against anything that is on paper.

188 Q. I said on that paper? A. You will have to go to the record. I am not going to answer any question that is a matter of record; recorded evidence is better than any verbal

evidence based upon my recollection of the matter.

189 Q. Then I understand you that with this record in your hand, that was introduced yesterday while you were upon the stand, you decline to state from it the date of the Council meeting succeeding that of June 1st, 1875? A. The record is evidence of that.

190 Q. Am I correct? A. The record is evidence of that fact, and I decline to make any verbal statement about it.

191 Q. You were not asked to state from memory the date of that meeting, you were asked to state from that record? A. I will read you what the book says was the date of that meeting. I decline to make ~~you~~ any statement from the paper at all. If you will give me the book I will read it out. I decline to make any statement from that paper because I don't know whether it is certified or not.

192 Q. The witness having declined to recognize the correctness of a paper which was introduced into this record yesterday by the plaintiff himself, the record of the town Council is shown to the witness and he is asked to state from it the date of the meeting succeeding the meeting as aforesaid?

A. The date given here on this record is June 28th, 1875.

193 Q. The aforesaid paper marked P. O. S. is again exhibited to the witness, and he is asked to state from the said paper if the aforesaid meeting purported to have been held upon the 28th day of June, 1875 is signed by the Mayor of the Town of Smithfield? A. I won't answer any question from that paper. I will answer it from the record itself.

The question is excepted to on the ground that it is an agreed fact between counsel that the said paper is a correct copy

of the records of the Council of Smithfield, and if a record, the fact that it is not signed, cannot now be raised.

The counsel for the defendants replies that the paper was admitted as a copy, subject to legal exceptions, and if the minutes of that Council are not signed by the Mayor of that town, the proceedings are illegal and void, and the defendants in this cause have not waived and do not mean to waive any legal right that they have.

- 194 Q. The witness upon the stand having for the second time discredited the record introduced on yesterday, the record of the town Council of Smithfield is introduced, and he is asked to speak from it, and say whether or not the aforesaid meeting held upon June 28th, 1875 is signed by the Mayor of the said town? A. Question objected to, because the witness has at no time discredited, as I understand, the record agreed upon on yesterday, but not having himself compared the ~~record with the~~ copy of the record introduced with the original record, he states that he will read from the original record and not from the copy.) A. From the record of the minutes of the town on page 197, it appears it is ~~not~~ signed by the Secretary but not by the Mayor.

- 195 Q. It appears from the proceedings of the Council held upon the 6th day of April, 1875, that the committee appointed to examine the aforesaid plan submitted a report with the following resolutions, which were adopted; "That the Treasurer pay to Colonel E.M. Morrison the sum of \$75. out of any money in the Treasury not otherwise appropriated. That the Secretary give public notice by public advertisement in three or more places in the corporation, that the survey and plan of

"the town, with the field notes this day accepted and adopted
"will be on file for exception until the 5th day of June,
"1875, that is, sixty days.

"3rd. That after the 5th day of June, 1875 a copy of the re-
"port in the accompanying paper marked A, also of the survey
"and plan with the field notes, be delivered to the Clerk of
"the County Court of Isle of Wight County, to be submitted to
"his court for consideration and record, if approved.

"4th. That after the 5th day of June and approval of the same
"by the Judge of the County Court of Isle of Wight County, and
"an order by the Court for it to be recorded, this report and
"table A, and field notes, be entered on the journal of the
"Council, and the survey and plan of the town be safely kept
"by the Secretary in the archives of this corporation".

Was the public notice given by the advertisement as required
in the second resolution, just quoted to you? (Question ob-
jected to) A. I don't know anything about it.

196 Q. Was the copy of the report and the accompanying table and
survey and plan, with the field notes, delivered to the County
Court of Isle of Wight County, to be submitted to his Court
for consideration and approval? (Question objected to)

A. I don't know anything about it; it is a matter of record.

197 Q. Was the said report, and table, and survey, and plan and
field notes approved by the Judge of the Court of Isle of
Wight County, and recorded in accordance with the 4th resolu-
tion of the said Council? (Question objected to) A. I don't
know anything about it.

198 Q. Have you not made personal inquiry at the Clerk's Office
of the County Court aforesaid, to know whether or not, these

conditions of the Council we complied with? (Question objected to) A. I have not.

199 Q. Has not your son who is one of the council in this cause made the said inquiry of the said Clerk? (Question objected to) A. I dont know sir; I dont know what my son has done.

200 Q. Has not V.Wrenn, the plaintiff in this case, made the said inquiry of the said Clerk? (Question objected to) A. I dont know.

201 Q. Do I understand you to say that he has never communicated to you the fact, whether or not he has ever made such inquiry? (Question objected to) A. I dont ~~know~~ remember that he ever has told me that he has. I dont know whether he did or did not. I think he has made the inquiry, though I dont know. Adjourned here, at 3.30 P.M. until 5 o'clock.

Court met at 5 o'clock, Mr. W.D. Folk continuing his testimony.
By Mr. Thomas;

202 Q. Did the aforesaid plan of the town of Smithfield as made by the said E.M. Morrison in 1874 show distinctly ~~which~~ each lot, street and public alley therein, the size and shape of the lots and the width of the streets and alleys in the said town? A. The record says it did.

203 Q. Was the said plan ever entered upon the books of the Council? (Question objected to) A. What do you mean by "Plan?" do you mean the map?

204 Q. I am using the exact word of the statute, Mr. Folk? A. You could'nt enter the plot upon the books of the Council. A record of it was made, and according to my understanding of entering it upon the books of the Council, it was done; there

is a record on the books of the Council that the survey was made, and the size and dimensions of the lots are given and the numbers, on the books of the Council, and the streets and the direction in which these streets run is recorded, and the width of the streets, I think with the exception of Main Street; the width of Main Street I don't think is given.

205 Q. I understand you to say that there is no drawing showing the location of the streets of the town spread upon the books

206 of the Council? A. No there is no drawing.

206 Q. There is only then such description as is given in the manner you describe? A. Yes sir.

207 Q. Is not the street we are in the habit of speaking of as Mason Street, in different places on that street, of different width as specified in the said notes? A. I think in some places it is about as wide as these notes would indicate; in others it is not.

208 Q. That portion of Mason Street that runs, from the corner of G.O. Thomas to the Grove lot is now in the ordinances of the town called Pierce Street? A. Yes.

209 Q. That portion of the street running from the V. Wrenn corner to the property of John Wilson is called Mason Street. Is not that portion between G.O. Thomas and the Grove of different width on these notes of which you are speaking? A. That is not expressed as the same street on that survey; it is mentioned as Pierce Street. Pierce Street is different width from the greater part of Mason Street. Mason Street is no particular width, it is wider in some places than it is in others. the lines are not straight, that is if you take the lines of the fences as the lines of the street, or the lines of the hou-

ses as the lines of the street, from the fences or houses as the line of Mason Street.

- 210 Q. Taking the V.Wrenn house as one object on Mason Street, and the Masonic Hall as one object on Mason Street, and running a straight line from one to the other, what houses on that street are out of that line? A. Well the Academy, ~~and~~ the old house that belonged to my father's estate, is out of it.
- 211 Q. The Academy sets back considerably from the street does it not? A. Yes.
- 212 Q. And always did do so? A. Yes Sir.
- 213 Q. How much is the house belonging to your father's estate out of this same line of which we have been speaking? A. Oh! several feet; I don't know; I suppose six feet, six or seven.
- 214 Q. The face of the house? A. Yes it sets further back.
- 215 Q. Are the other houses on that street with the exception of these two you have mentioned, practically in the same line? A. I couldn't say positively, Mr. Thomas, but there is not as much difference between the others, as between these.
- 216 Q. Is there any perceptible difference to the eye? A. I think there is some, sir, I couldn't say how much. I never noticed. I have noticed the old house I own down there especially because my attention has been directed to it.
- 217 Q. Is the same difference of which you are speaking very slight, or otherwise? A. Well it is not very great, but I don't think that the Masonic lodge as the house you mentioned at the lower part, and Mr. Wrenn's house are both parallel to the same line. I think if you draw a straight line from one to the other, that you would find it would not be parallel

to the front of these two houses.

Q. How much would it lack of being parallel? A. I think
218 if you were to strike a line parallel with the upper part of
Mr. Wrenn's house, that part fronting on Main Street, and run
the prolongation of the same line down, that you would go some
distance further out than the Masonic Lodge; there's a bend
on that side of the house on Mason Street.

219 Q. You say "would go some distance out"; express in feet and
inches the extent? A. I could 'dnt tell you.

220 Q. As near as you can? A. I can't guess about it. I don't
know whether it would be out a foot or ten feet; I simply
know that the two houses don't set parallel to the same line.

221 Q. Do you not know it would not be any such thing as ten
feet? A. No, I don't know; I think it would probably be in
that neighborhood; it is a long distance down there.

222 Q. Was the plan aforesaid recorded in the Clerk's office
of the County of Isle of Wight? (Question objected to).

A. I don't know; the record says that it was.

223 Q. You don't know, then, whether or not it still remains in the
said office? A. I do not, but I don't believe it is. (Question
and answer objected to).

224 Q. In 1875 when C.F. Day became Mayor and you were one of the
Council, where were the Council meetings held? A. At differ-
ent places.

225 Q. Just mention some of them? A. I remember being present
at one in Womble & *Chapman's* office; I don't remember where the
others were held.

226 Q. Were not some of them held in the Academy building?

A. I dont remember to have ever been to one in the Academy building.

227 Q. At a meeting of the Council in July, or shortly after, was not this plan and survey thrown aside upon the mantel-piece of the building in which it was held, as a perfectly useless and invalid plan? (Question objected to because it has indeed been answered once or twice before, and because the records are the best evidence of what has been done) A. I have no recollection of anything of the sort.

228 Q. Did'nt you at the meeting held in July or August state that the said plan was invalid and worthless? (Question objected to on the same ground as above) A. I have no recollection of it; I dont know everything I have said in the last fifteen years.

229 Q. When was there a survey of the town of Smithfield proposed in 1889? A. The record will show I reckon; I dont remember; I think the order for the survey was made in the fall of '89. The order for that survey was made very shortly after these ordinances were approved on October 22nd, 1889; I think the order was made in October or November of that year; I am not certain as to the date.

230 Q. Is there any such order upon the record of the proceedings of the town Council? (Question objected to on the ground that the record itself is the highest evidence) A. I dont know whether there is or not; I know, sometimes the clerk failed to make a record; he would take his record upon a piece of paper, and it would be forgotten and never recorded, as the record of the meeting about those streets, as you and I know the order was made.

- 231 Q. Be kind enough to examine the records of the town Council now produced to you, and point to me any such order made in 1889? A. I don't know that there is anything on record, but I know the action was taken; the clerk some times failed to make a record; he in several instances did so.
- 232 Q. The clerk then some times fails to enter up an order as fully as it is made, is that correct? A. Yes; I have known him to do so in some instances.
- 233 Q. When in 1890 was there some effort made towards the said survey? A. I think it was in the latter part of the winter, or the spring of 1890.
- 234 Q. If you will allow me to correct you, I think it was in April, 1890? A. It was in the spring; I think you are right about that; it was in the spring, I don't remember -
- 235 Q. Where was the meeting of the Council held at which George R. Atkinson, R.E. Boykin, C.F. Day, John R. Purdie and R.S. Thomas had a conference with the said Council? A. I don't remember that Dr. Purdie was there, I remember the rest of you being there; it was held at the Mayor's Office.
- 236 Q. Where was that? A. In the Opera house.
- 237 Q. Be pleased to state who were the Attorneys at law then residing in the town of Smithfield? A. Yourself, Mr. Boykin and Judge Atkinson.
- 238 Q. Be pleased to state if they were there at the request of members of the Council, to give them any information they might have upon the law on the subject relating to streets? A. They were not there at my request, and I didn't hear anybody else request them to be there.

- 239 Q. Do you not know they were requested by other members of the Council to be present? A. I do not; I heard some persons say so. I am not giving you any hearsay evidence.
- 240 Q. Were the persons you heard say so, members of the Council? A. I think some of them were.
- 241 Q. The question then prominently before the Council was as to the right of the town as to the vacant spaces in front of the lot of V. Wrenn, and on down Main Street towards its intersection and at its intersection with Church, is not that so? A. That was a part of it.
- 242 Q. Did't the attorneys named then present to the Council, that the vacant parts of the street, that had never in the existence of the history of the town been enclosed, that had always been open to the public and used by the public, were public property, and as such the Council could not give it to anybody? A. I think some such statements were made, by yourself principally.
- 243 Q. Were not those statements concurred in by the other attorneys? A. I think they were. I think they had all had a conference before they came there, and agreed as to what was to be done. I think they had had a conference with some members of the Council before they came to this meeting of the Council.
- 244 Q. Did not they bring down to that Council the case of Chamberlaine, vs the City of Norfolk and read extensively from that case, and from other cases reported at the Court of Appeals, going to show that no Council could give away that which was public property? A. I remember your having referred to some cases, what they were, or to what extent you read, I do not

know.

245 Q. Do you not remember that I read extensively and almost completely from the aforesaid case of Chamberlaine vs. the City of Norfolk? A. I do not. I remember some reference to the case, but to what extent I do not.

246 Q. Do you not remember that I stated that I presumed the Council wanted to know the law fairly and squarely, and that therefore I would read the whole, or nearly the whole of the aforesaid case of Chamberlaine, vs. the City of Norfolk?

A. No sir, I don't remember what you said; I know your object was to prevent the town Council making this survey, but as to what you said or the minutia that took place, I do not remember. They said a good deal about dedication, I remember that.

247 Q. Do you not remember that I said that any property that had been dedicated to the public could not, by any town Council be taken from that public and be given to a private individual? A. I do not remember, Mr. Thomas, what you told me; I think it very probable I would have said that myself, as little as I know about law.

248 Q. Do you not know that the statements as made by me, and the authorities as quoted by me, had the sanction and concurrence of all the attorneys present? A. I don't know what you did say. As I said before, you all came with a plan to break up that survey, and you accomplished your purpose, didn't you?

249 Q. The facts bearing upon the localities which were in our opinion dedicated to the public, were stated in extenso by the gentlemen that you have named, were they not? A. You did most of the stating; I don't know that anybody else did any stating, they concurred in what you said. Judge Atkinson

answered a few questions I asked him; I dont know what they were.

250 Q. Is not Judge Atkinson a much older man and a much longer resident of the town than I am? A. I dont know; you are not older than I am.

251 Q. How much older is he than you are? (Question objected to as wholly irrelevant to the cause) A. Eighteen or twenty years, I reckon.

252 Q. The Council then concluded that it was inexpedient to have a survey did they not? A. The majority of them; three to two. -- No they did'nt conclude not to have the survey at that time. (The above question is objected to because the records are the best evidence of the facts).

253 Q. When did they do it? A. They went on with the survey and Mr. P. D. Gwaltney, who was one member of the Council, after that meeting stated up town at Mr. Morris Langhorne's store or ~~XXXXXXXX~~ between there and the Bank, if we would agree to make Main Street sixty feet wide throughout, that he would vote for the survey, but if we would not agree to make it sixty feet throughout, he would contend to let it remain as it was with irregular lines.

254 Q. When did Mr. Gwaltney make this statement? A. Between the time you refer to, when you came before the Council, and the Saturday afternoon it was discontinued altogether, when we met there at the Bank.

255 Q. When was it you met at the Bank? A. I dont know.

256 Q. It appears from the record that you met at that Bank on the 22nd of November 1890? A. I dont know; there were several meetings at the Bank.

- 257 Q. How long after the meeting held at the Odd Fellow's Hall was it, before the meeting was held in the Bank upon the Saturday afternoon in which it was resolved by the Council to discontinue the survey? A. Only a few days, and that it the meeting which is referred to, of which Mr. Andrews failed to get a record.
- 258 Q. A day or two prior to this last said meeting, and the day of this said meeting at the Bank, didn't you and Colonel Womble and Mr. Gwaltney and others of the Council make a considerable examination into the subject of the streets ~~streets~~ and lines of the said town? A. We made some examination into the streets, not into the lines; while I say we did not, I think it is very probable we did make some into the said lines.
- 259 Q. Did you not examine some of the lower lines of lots of the town, to see if they were regular or irregular? A. Yes.
- 260 Q. Did not Mr. P.D. Gwaltney make a similar examination of the front and rear of the said town? A. I don't know what he did alone.
- 261 Q. Didn't he with you? A. I just answered that question.
- 262 Q. Did not Mr. Gwaltney within your knowledge, and in the presence of other people make examination into the rear lines of a good many of the said lots of the said town? A. I just said he did with me.
- 263 Q. I said with others? A. I don't know what he did with others; I only know he was with Mr. Womble and myself measuring some few lots on Main Street.
- 264 Q. At this meeting that was held at the Bank, as you have mentioned, was not the resolution put and carried, not to make

that survey in consequence of the numerous legal difficulties that might arise? A. The resolution was put and carried not to make the survey.

265 Q. Were not the reasons assigned why it was not carried?

A. I always thought the survey was not made because you didn't want it made; that's my opinion.

266 Q. Were not the reasons assigned at that Council meeting by members of the Council that the difficulty in making the survey were so great that in their opinion it was inadvisable to do so? A. I don't think anybody but Mr. Gwaltney said anything on that side. Mr. Fulmer and Mr. Andrews voted with him.

267 Q. Did I at that said meeting open my mouth upon the subject?

A. I don't remember anything that you said at the meeting, but I saw you out in the street in private conversation with first one and then another of those gentlemen that I have referred to.

268 Q. That's true? A. It certainly is.

269 Q. But did I express any opinion or have anything to say at that meeting, either directly or indirectly?

The plaintiffs object to the whole of this examination, and ask to have all irrelevant matters on cross examination stricken from the examination at the expense of the defendant.

A. I don't know what you said at that meeting.

270 Q. Do you not remember that I did not say a solitary word?

A. No I don't remember that you did not; I remember that you were there, and that you appeared to be interested very much in the matter.

271 Q. Was the survey which was proposed to be made at that time

extended to any other street but that of Main Street? A.
The entire town.

272 Q. And to all streets of the town? A. All the streets of
the town.

273 Q. If the line of the V.Wrenn fence was projected on down
towards Church Street, what space would there be between the
face of the house and that line? A. I have never run the
line down, but I think the distance between the face of the
house and that line would diminish as you went down the street

274 Q. Speaking generally then, what would be the distance be-
tween the face of the house and that line? A. Well it would
be wider at Mr.Wrenn's fence and where it struck the river
by the County wharf; I have run that line down Main street
to the County wharf? I don't know where it would strike
Church Street; it diminishes as it gets to Church Street.

275 Q. At the ice house on Main Street what would be the distance
between the said ice house and the said projected line?
A. I don't know.

276 Q. As accurately as you can tell it? A. I have no idea;
might be four feet and might be six feet.

277 Q. Who owns the piece of property immediately adjoining the
ice house, and between the ice house and the residence occupied
by the Misses Womble? A. I own it.

278 Q. If this line were projected as I have indicated, and that
was established as the line of the town of Smithfield, that
would give you several feet in addition to the property which
you now possess, would not it? A. Yes it would give me
probably four feet out from the face as my fence now runs.

At the time the survey was ordered I did'nt own the property
(28)

referred to, and didn't own it for several months afterwards.

279 Q. When did you buy this said piece of property? A. The deed will show; I don't remember. I think I bought it about the last of February or early in March; I bought it after all that other property was sold.

280 Q. March of what year? A. March 1890; I think that was it. I know it was several months after this survey was ordered.

281 Q. In answer to the 38th question of your examination in chief, you say "shortly after this last paper referred to was recorded and the petition was presented to the town Council, signed I think by ~~at least~~ three fourth^{hs} at least of the white people of the town (the white voters) asking the town Council to have the survey made and recorded"; who wrote the caption to that said petition? A. I think that is my son's hand-writing.

282 Q. Which one of them? A. Willie, I think he wrote it at the request of Mr. E. M. Todd.

(The paper is herewith filed marked exhibit "W".)

283 Q. When was that said petition presented to the Council?

A. I don't remember the date that it was; it was presented shortly after the abandonment of the survey; I don't remember exactly when. It is a matter of record.

284 Q. At the meeting of the Council held February 4th, 1891, it is stated that E. M. Todd appeared before the Council asking to extend the fence on Church Street occupied by Mrs. R. A. Todd, etc. Was that the meeting of the Council at which this petition was presented? A. I think it was.

285 Q. Whose endorsement is that upon the back of it? A. Well I don't know whether it is yours or E. M. Todd's or Virginus

Wrenn's; when I first looked at it I thought it was Mr.Wrenn's
but I could'nt swear whether it was yours, Wrenn's or Todd's.

286 Q. Whose writing is that erased upon the back of the petition

A. Well I dont know that; that looks something like Mr.Wrenns
I reckon.

287 Q. By whom was that paper presented to the Council?

A. Mr Todd.

End of Cross examination.

288 Q. (by Judge Kendall) How many voters are there in Smith-
field? A. In the neighborhood of 130.

289 Q. White voters? A. Yes; about 130.

290 Q.(by Mr.Wrenn) You were asked about the line between the
V.Wrenn lot and the C.H.Wilson lot, and about your earliest
recollection of that line; was that line, or that enclosure
of the V.Wrenn lot a straight one with the back of the kitchen
you mentioned as a part of that line? A. I think it was
a straight line with the side of the kitchen; the side of
the kitchen sets to that line, and I always considered that
line was practically a straight line between your lot and
Mr.Wilson's lot.

291 Q. According to your recollection was that enclosure on the
line of that kitchen alluded to? A. The line was practi-
cally a straight line from Mason Street back to this hotel
lot; it may have been out a little. People are in the habit
of running a fence to a house when it was a few feet off;
had a habit of running it up to the house, and letting the
house be a part of the fence.

292 Q. How much would you say, according to your earliest recol-

lection, do you think it could amount to as much as two feet seven inches? A. What?

293 Q. The difference between the break in the line of the enclosure could amount to as much as two feet seven inches?

A. I dont think there was any break of any importance.

294 Q. Do you think there could have been a break to amount to that figure? A. There has been some rebuilding to that kitchen; it is built almost new. It is possible it is not on the same spot it was, but it is near it.

295 Q. You think that was about the line? the back of the kitchen and the remainder of the fence is about ^{as} the line was?

A. I think so. I think the line was a straight line.

296 Q. Do you mean to say there were no other changes in the enclosures, or that the fence and things remain up to the present time? A. I described it as being put there by Merritt Womble; I refer to the enclosure ^{on} the street only, the enclosure on Main Street and the enclosure on Mason Street.

297 Q. You said that Womble had put a brick pavement in front of his house out to the street before he put his yard enclosure in front of his house? A. My recollection is that brick pavement was put there when Womble kept store, and it ran up to the house.

298 Q. Did Womble take up the bricks inside the yard enclosure?

A. Yes Sir.

End of examination.

Signature of witness waived.

Testimony of E.M.Todd, a witness for the plaintiff, who
being called and sworn deposed as follows;

By Judge Kendall;

1 Q. What is your name? A. E. M. Todd.

2 Q. State your age and residence? A. I have been living in
Smithfield; I was born in 5 miles of Smithfield, and have
been living there 37 years. My age is 63 years.

3 Q. State whether or not you have been familiar with the town
of Smithfield from your earliest boyhood? A. I have, sir,
from the time I was fifteen years old. I was as familiar
with Smithfield as a boy who was born in the town.

4 Q. State whether or not you are familiar with the lot of Mr.
V.Wrenn at the intersection of Main and Mason Streets in said
town? A. Yes Sir, with its situation.

5 Q. State what you have regarded, and was regarded in the opin-
ion of the public generally as the true line and limit of
Main and Mason Streets opposite the property of V.Wrenn, and
what has been so regarded from your earliest recollection?
(Question excepted to, in part as it relates to the opinion
of the witness, and for the further reason that it inquires
as to lots on the other side of the street, and is therefore
not relevant to the case). A. I regarded, sir, the line of
his fence as legitimate and only embracing his rights as own-
er of that property, from the fact of other lines above and
below it, and while he had not continued and extended his
line, I had supposed it had been left out by former owners as
a mere matter of convenience, but the line upon which his
fence has now been extended and placed, was as legitimately
~~his~~ and properly his, as the first enclosure around his house.

6 Q. Do I understand you to mean that at the date of your ear-

liest recollection the true line of the property in front of V.Wrenn's house extended beyond the fence now enclosing his yards, so that his fence is wholly upon his line, and that this impression of yours was gained from the old persons living in the time of your child hood, and now dead? (Question excepted to because it assumes that certain statements have been made by Mr. Todd which I do not understand he has in fact made). A. My statement in regard to that, is this; the house was not built during my earliest recollection, but built subsequent to that. The house was once a store, and then a store and house, and I remember when there was no fence, and afterwards in the time of Mr. Womble there was a fence placed out in front of his house, and I know of no objection to its being placed there; it remained unmolested and undisturbed and acquiesced in. His fence is placed upon the general line of the street and on lines which have existed on portions of them from my earliest recollection.

7 Q. From your earliest recollection was the line of Main Street on the side next to Wrenn's house treated and regarded by the public as extending in any further towards Wrenn's lot than where his fence now stands? A. I should say not, sir; I should say that was conforming to it, and was accepted, and I reason from other lines in the town above and below it as really the line of the street on that side. (Answer excepted to as being an opinion.)

8 Q. Was this impression of yours gained from the public at that time, and their general dealing with the street? A. It was sir.

9 Q. State whether or not you remember the time when the first fence was put in front of this lot, and if it was in 1852?

A. I cant tell you in regard to that; I remember when it was put there and when it did not exist there, but the date I do not remember.

IO Q. State whether or not any public or private interests have grown up by reason of the space now enclosed by V.Wrenn's fence being left open? (Question excepted to because it involves the decision of a question af law). A. None at all sir; I should regard it as a most decided improvement to our town, and the majority in the town so consider it, to-day I believe that two thirds of the town consider it no injury, but a decided improvement. (the latter portion, of this answer excepted to, as not responsive to the question).

II Q. State whether or not Main and Mason streets at and near the said V. Wrenn's lot are of ample width for all public convenience? (Question excepted to because it calls for the opinion of the witness, and by agreement of counsel this exception shall extend to all other questions or answers that involve merely opinion) A. I should so regard it sir, as ample, especially Main Street, which is wider than the Street I live on (Mason Street), which has not much travel on it, but Main Street I should regard as wide as it has ever been.

12 Q. Would the public, or any private interest of any kind, be in any way benefitted by the removal of V.Wrenn's fence? (Question excepted to as irrelevant to the issue) A. Not at all, sir; could'nt possibly be.

13 Q. State whether or not a disposition on the part of the public and an effort on their p-art to have a survey of the town made, and why such effort has not been effectual? (Question excepted to as irrelevant to the issue) A. There was a petition made, and I was one of the chief parties, foremost in the

E.M.T.#4

matter in presenting it to the public, and I think of the citizens of the town of Smithfield, two thirds of them signed it, asking for peace sake that a survey should be made defining our lines. I presented it in person to the town Council of Smithfield, and they then and there determined and rejected the petition, refusing to make a survey. It was after this suit was commenced and instituted it was done. The petition was gotten up especially to subserve indirect interests of my own. There were some lines left out for convenience in front of a carriage house that is now owned principally by my daughter, and I asked the Council to allow me to run these lines, and they refused, and said they would remove my fence. I didn't ask for this survey in reference to Mr. Wrenn at all; I suppose it was so considered. I asked for it for myself, and hoped it would have a good bearing on his, but I asked for it for myself.

(Answer excepted to because irrelevant, and for the further reason that the petition alluded to was presented subsequent to the institution and commencement of this suit, and had no reference to the matters involved in this cause.)

14 Q. Do you know whether the town of Smithfield, prior to 1874, worked upon its sidewalks? A. I do not, sir, I don't recollect.

15 Q. You don't know, as I understand, about marl being put there?

A. No Sir.

End of Examination.

Signature of witness waived.

Adjourned until Thursday June 25th at 10 o'clock A. M.

A E.J.#I

In pursuance of adjournment, met again at the same place at 10 A.M. Thursday, June 25th and proceeded with the testimony of Mr. A.E. Jordan.

Testimony of A.E. Jordan a witness for the plaintiff, who being called and sworn deposed as follows;
By Judge Kendall;

- 1 Q. Please state your age and residence? A. I was born in Smithfield on the 19th of April, 1846, and lived there up to October 1891.
- 2 Q. State whether you are acquainted with the lot of Mr. V. Wrenn in Smithfield? A. I think I said I was fairly well acquainted with the lot. When I was a boy I used to play around considerably there and in the old hotel lot.
- 3 Q. State whether or not you are acquainted with the fence of Mr. Wrenn as it now exists? A. I only saw it once; I was up there Monday a week ago and saw it.
- 4 Q. State whether you have ever known marl put upon the space in this fence, and if so, by whom and when? A. Yes I have known it to be put there a good many times, by whom I do not know; my impression was it was put there by the property owners. I have seen Mr. Morrison's team hauling marl there and seen him spreading it.
- 5 Q. State whether or not it was usual for residents of Smithfield to place marl in front of their houses, or upon spaces in front of their houses, whether such spaces were part of the sidewalk or not? (Question objected to because irrelevant, and because it assumes that there are open spaces in front of the houses that are not part of the sidewalks) A. I think it was, sir; I think it was the habit of the people in this

place not only to fix the sidewalk, but all around in front of their houses.

6 Q. With marl? A. Yes Sir.

7 Q. State whether or not you ever saw the teams of Mr. Morrison at work? A. Yes I have seen Mr. Morrison's teams at work there.

8 Q. In the space enclosed by Mr. Wrenn's fence? A. Well the marl was hauled and dumped out on the edge of the sidewalk.

9 Q. By Mr. Morrison's team? A. I think so, sir, I am not positive of it. It was rather the common habit of the town for everybody to fix up their own sidewalks.

10 Q. State whether or not you saw Mr. Morrison himself at work on this space? A. I think I have seen Mr. Morrison at work on that place. He was an old gentleman, and would get his hoe and place lumps on that space; I think I have seen him do it, as positively as I could be of anything you know.

11 Q. Has any public or private interest grown up by reason of the fact that the space in front of Mr. ^{Wrenn's} ~~Morrison's~~ house may prior to 1852 have been left open, or since 1852 as to any part of said space which has been unenclosed? (Question objected to as it involves the opinion of the witness on legal points) A. I don't think there has been.

12 Q. Has any building been erected, or any enterprise of any character been engaged in by reason of said space being open to the public, which would not have been engaged in or been built, had said space been enclosed as they now are? (Former objection repeated) A. I think not, sir, I rather think it was an improvement to the place.

A.E.J.#3

13 Q. Can you conceive it possible that any such public or private interests could in any way have been effected by the reason that such place has been left open as heretofore stated? (Former objection repeated) A. None sir. I don't see how it could have been interfered with at all.

14 Q. Are Main and Mason Streets at and near the said V. Wrenn's house amply wide for all necessary purposes? A. I think so. (Answer objected to as involving the opinion of the witness merely).

End of direct examination.

Cross examination.

By Mr. Thomas;

15 Q. Where do you at present reside? A. Norfolk, sir; have been residing here since 1877.

16 Q. When did you leave the town of Smithfield? A. October 1871, sir.

17 Q. State the old line of the V. Wrenn lot on Main Street as you knew it formerly? A. Well as I formerly knew it, my first recollection of the lot a house stood upon the line, and the fence ran from the corner of the house to the corner of the hotel, the brick house that V. Wrenn occupies, that is my first recollection of it. The boys thought it a very great hardship, (and I think they are about the only ones that complained,) when Mr. Womble first put the fence out where Mr. Wrenn has it now; it kept us out of the front doors.

18 Q. My question related to the line of the enclosure as you first knew it; your answer relates to an enclosure put up by Mr. Womble subsequently; to which enclosure do you now allude?

A.E.J.#4

A. It was the fence which Mr.Wrenn now has out there, the old fence renewed. Mr.Womble put the fence there when I could first recollect.

19 Q. Did the line of enclosure as you first remember it run only from the hotel to the dwelling house of Mr.Womble, on Main street? A. On Main Street and also on Mason Street. On Main Street as I first remember it it ran from the street corner of the brick house to the hotel corner. I have been there a good many times.

20 Q. When you say the street corner of the brick house do you mean the street corner on Main Street or do you mean the street corner on Mason Street? A. I mean the street corner on Main Street, running towards the hotel.

21 Q. And then if I understand you properly, the line of the enclosure on Main Street as you first remember it was a paling running from the hotel to the building occupied by V.Wrenn in a straight line with both these buildings? A. Both of these buildings.

22 Q. When was the small enclosure that is in front of the door of the house on Main Street, and, on the side of the house on Mason Street, put there? A. I could'nt tell you the year, but I was quite a small boy; it was put there very long ago, and I remember we complained because we could'nt sit there. Mr.Womble claimed that he could put it there because it was on a line with the hotel porch, and with Mr.Andrews porch on the other side of the street; my idea was that he was trying to get it to correspond with those on the same side of the street, and with one house that was across Mason Street but

A.E.J.#5

on the same side of Main Street; one was Andrews and the other the hotel.

23 Q. About what year was it that this last enclosure was put up? A. I could'nt remember the year, it was a long time ago; before the war.

24 Q. About how old were you then? A. I suppose I was 8 or 10 years old; I know Mason Street was the boundary line for me to go away from home; I was not allowed to go any further than that.

25 Q. Were you present when this last enclosure spoken of was put up by Mr.Womble? A. Yes I was living in Smithfield.

26 Q. Were you present in the place? A. I dare say; you know how boys are when they are building a house or a fence.

27 Q. Do you remember distinctly to have been present when the said last enclosure was put up? A. Yes Sir; I mean the Womble enclosure.

28 Q. Did you hear him give any directions to the workmen? A. I dont know that I did.

29 Q. Did you hear him assert any claim to the ground in front of his house? A. I cant say that I did; I should think the simple fact of his putting it there would be an assertion.

30 Q. The other line of enclosure just above spoken of,running from the hotel to the building aforesaid,if I understand you properly,existed at the date of your earliest recollection; do I understand you properly? A. Yes Sir, the fence has been there ever since I can recollect.

31 Q. Is that line of enclosure of V.Wrenn now as it was at the date of your earliest recollection? A. The old line is there

A.E.J.#6

as I recollect it, the new one, as I say, I have only seen once.

32 Q. When was the new line of enclosure put by Mr. V. Wrenn as it now is? A. Well I don't know exactly, but I should think that it would not have been over a few months.

33 Q. How far is it advanced from where the old line of enclosure was, towards the street? A. Well I couldn't tell you exactly about that, but looking at it casually I should think it was on the same line; I should think it was advanced 4 or 5 or 6 feet; I have not the slightest idea how much.

34 Q. When was any marl put in front of the space between the hotel building and the building of V. Wrenn, in front of this old line of enclosure and between it and the street? A. Well the marl that I allude to I have seen put there before and during the war; I have not seen any put there since, unless it was done immediately after the war. Mr. Morrison always kept a team there, and used to fix up a little during the war before I went in the army.

35 Q. In what ^{year} ~~xxx~~ prior to the war was any marl placed upon the space in question by Mr. Morrison? A. I couldn't tell you sir

36 Q. In what year during the war did Mr. Morrison put any marl upon the space in question? A. I couldn't tell you that sir, what year it was.

37 Q. In what year since the war did Mr. Morrison put any marl upon the space in question? A. I couldn't tell you the year at all; I have not any idea as to the date when it was done; I would see it done, and that was the end of it.

38 Q. Do I understand you to say that Mr. Morrison used his team

A E J.#7

or horse and cart, or horse and wagon, for the purpose of putting marl on the space in question? A. Horse and cart, I have seen him use them.

39 Q. Was it his own horse and team that was used? A. I think so.

40 Q. How much marl did he put upon the space? A. I could'nt tell you sir; some times he would haul there for a day, and sometimes perbably more.

41 Q. Was this marl put upon the sidewalk in front of the hotel, or put upon this vacant space that we are speaking of between the hotel and the residence of V.Wrenn? A. Generally put all along I think sir.

42 Q. Did Mr.Morrison own the lot adjoining the hotel before the war, during the war, or since the war? A. Dont know that he ever owned it at all. He married the widow Womble and lived there after the war and during the war.

43 Q. During what year of the war did he marry the widow Womble? A. I think it was the last year, sir. Mr.Morrison died on that lot.

44 Q. Was the space in front of the old enclosure of V.Wrenn always during your residence in Smithfield open to the public and used by the public at will? A. I think so.

45 Q. Was there ever any obstruction of any kind, or hindrance of any kind to that use, upon the part of any property owner of that lot? A. Well it was never used as much as the portion of the sidewalk next to the street simply because the hotel porch came in the way of people walking, and the fence in front of Mr.Womble's house; they would always have to walk

A.E.J.#8

to the right of the sidewalk to avoid the porch and the fence of Mr.Womble nearest the street? Every year the grass had to be cut off that piece of ground.

46 Q. If not used as much as the balance of the sidewalk to which you have alluded, was it used as freely and completely by the public as they desired to do? A. I think so; there was nothing to keep them off of it.

47 Q. Is the use heretofore made of that vacant space alluded to, diminished and lessened by the new fence of V.Wrenn erected in ~~1890~~ November, 1890? A. Is the use of that piece of ground diminished?

48 Q. Yes? A. I should say so, it was enclosed and the public could not go in.

49 Q. In question number 12 in your examination in chief you were asked "has any building been erected, or any enterprise of any character been engaged in by reason of said space being opened to the public, which would not have been engaged in or been built, had such space been enclosed as they now are", and you replied "I think not". Since 1871 you have not resided in the town of Smithfield have you? A. I have not, sir.

50 Q. As you have not resided in the town of Smithfield since 1871 can you state whether the trade and traffic of that town has since that time ²increased or not? A. I could not, sir.

51 Q. Are you as able to judge, as a citizen of that town, whether the streets of that town are of sufficient width for all the purposes of that town? A. I should think they were; I mean by that, I should think they were sufficiently wide.

52 Q. That's not what I asked you? A. I think I am; I go there occasionally and see the need they have for narrower or wider

streets.

53 Q. On an average how often do you go there a year? A. I think I go about once a year.

End of cross examination.

Re-examination,

By Mr.Wrenn;

54 Q. Mr.Jordan,did you or did you not mean to say that Mr. Morrison put marl in front of the lot that I own before he married Mrs.Womble? A. I dont think Mr.Morrison had anything to do with that lot before he married Mrs.Womble.

55 Q. And that was during the war? A. That was during the war.

56 Q I think your testimony rather leads to the belief that Mr.Morrison put some marl there before the war; did you mean to say he did it? A. I did not.

By Judge Kendall;

58 Q. Youstated in your cross examination that you had heard Mr.Womble claim his right to put the fence in front of his house out on a line with the fence of Andrews and the Hotel porch, and in answer to question by the defendents counsel you stated that you did not hear Mr.Womble make any distinct claim to the ownership of that piece of land, please have those questions and answers read,and explain fully what you did mean? (the questions and answers are read by the Notary)
A. My answer was not in regard to that piece of land Mr. Womble did not occupy with his fence. I suppose he could have run his fence all the way if he wanted to.

59 Q. I am talking of the ownership of the piece where he did put his fence? A. I answered that by saying I did'nt hear

A.E.J.#10

hear him assert it, but the simple fact of his putting it there was an assertion. I do not recollect Mr.Womble coming out and making the assertion, but from the fact of his having put it there I -

60 Q. Then I understand you to mean to say that while you did not hear Mr.Womble in so many words say that he owned that land which he enclosed, you did understand him to mean and to assert a right to put the fence out on a line with the fence of Mr.Andrews and the hotel porch; do I understand you correctly? A. You do sir; I understood that was his idea, and he did it.

Further this deponent saith not.

Signature of witness waived.

The cross examination of Mr.W.D.Folk is now proceeded with.

V.W.#1

Testimony of Virginius Wrenn, ~~a witness~~ ^{in this cause} for the plaintiff,
who being called and sworn deposed as follows;

By Judge Heath;

- 11 Q. Are you the plaintiff in this suit? A. I am.
- 2 Q. Please state your age and residence? A. I am 49 years
old and live in Smithfield, Virginia.
- 3 Q. How long have you lived there Mr. Wrenn? A. I liv^{ed}
there when a boy of about the age of 5 or 6, and have lived
there recently about 11 or 12 years.

By Judge Kendall;

- 4 Q. Mr. J. G. Womble, a witness for the defendant on his examina-
tion in chief for the defendant in answer to question 11
stated that in conversation with you, you said that "I am
going to run this fence! I am going to do it! I don't believe
the land belongs to me!", referring I presume to the fence
erected by you in front of your house. Please state as well
as you can what conversation you did have with Mr. Womble, and
what occurred between you and him on that occasion? A. I had
a long conversation with Colonel Womble when my fence was
being put up; he wanted me to run the line a little different
if I was going to change it at all, not more than four inches
at the end next to the hotel, different from the way I did run
it, not to vary more than four inches. Our views differed
as to where the line should be, and I said that I was going to
run it on that line. I have no recollection of having said
to him "I don't believe that land belongs to me". I do not
wish to deny the remark, however; If I said it at all, it was in

V.W.#2

an unguarded conversation in which I must have been some what excited, as the language shows. It must have been said as a matter of argument only, and because my lot had not been bought by meets and bounds, and I did not know, and do not yet know exactly what did belong to me. It was said, however, if said at all, before I made my answer to the demands of the town Council to remove my fence, for in that answer I said positively and emphatically, in writing, that I did believe I was right in putting my fence there, in moral, in equity and in law. I have seen nothing in all the evidence taken since then to convince me that position was wrong, and much to make me think that I have the right to extend my fence further out towards the street than I then asserted. I will give you these things that I have seen since if you think proper to ask it.

5 Q. I understand you to say then that you did believe at the
5 time of your conversation with Mr. Womble and at the time that you wrote in reply to the order of the Council, that you had a moral right to the said strip, and that you had a legal right, but that you did not undertake to determine with accuracy what your legal rights were, not yourself being a lawyer, do I understand you correctly? (Question excepted to, because it assumes that the witness has made certain statements which he has not in fact made, and for the further reason that it inquires as to moral law.) A. I was influenced in my action by what I believed to be a moral right to put my fence there, because on every lot on my side of the street within the limits of the old corporation, with the exception of the corner lot at Church street, there had been either houses, fences or

porches extending as far as my fence extended, and because my own fence extended in front of my house on that line about one third or more of the distance across my lot, but I believed the front of my lot was intended to be a straight line.

6 Q. I just want you to state the fact of your feeling when you made that statement to Mr. Womble; did you believe that was your land, or not? A. I did believe it was my land, as much as anybody else along that street had a right to any land as far as that point. I had heard no question, or any demand, to stop any one along that part of the street from going out as far as that. The town had been in existence 139 years, and so far as I know I am the first person whose right to build to that extent has ever been questioned.

7 Q. Was it possible for you to have known that the strip of land in question was not your property? A. It was not possible.

8 Q. If it be true that you did make such a declaration to Mr. Womble, could it have been based upon any knowledge of facts? A. It could not have been based upon any knowledge of facts.

9 Q. From the best of your judgment and belief were you at the institution of this suit the legal owner of the strip of land in front of your house enclosed by your fence, and now in dispute in this cause? (Question excepted to as involving the opinion of the witness) A. I think so unquestionably.

10 Q. Did you think so at the institution of this suit? A. I certainly thought I had a moral right to put it there, and at the institution of this suit I absolutely thought so, and

V.W.#4

announced that decision by letter to the Council nine days before that time as I have stated before.

By Judge Heath;

- 11 Q. As I understand, Mr. Merritt Womble was the owner of this property in 1852 and prior to that time; and in the year 1852 he enclosed a portion of the front of this lot, your fence put up by you in 1890 being simply a renewal and extension of the fence which Mr. Womble built in 1852, and encloses a strip of land lying between your house and the hotel property, am I right? A. Yes Sir.
- 12 Q. Now as I understand, the line of this fence is upon a line with the most of the yards and porches to the East and to the West of you, except that some of them are further out in the street than is your line, as established by this fence? (Question excepted to, because it assumes that the witness has made statements that he has not in fact made?) A. You misunderstood my -
- 13 Q. What did you say then? A. I meant to say that on every lot within the limits of the old corporation on my side of the street, except the corner lot at Church Street, there had been in my recollection structures of either porches, houses or fences, as far out, or further, than my fence.
- 14 Q. Mr. Wrenn you have spoken of what you stated to the Council with reference to your lot, to put your fence where it now is will you please state whether or not you offered upon their having a survey, to make your lines correspond with the survey, whatever it might be, and conform thereto? A. On the 22nd of November I was informed that there was to be a meeting of the Council to decide upon my fence case; I asked in writing

V W.#5

to be allowed to come before the Council to argue my case. I was refused to be so allowed until after the case was decided; the Council had transacted all the business they had before them when they invited me and several friends that I had, to come before them, or allow me to come in the house (I had been standing out by the door) to argue my case. They told me that I would have to take my fence down, that they had decided the case. I complained about not being allowed to be heard in my own defence, and then told them that I did not know what action I would take, whether I would take my fence down or not, and told them that if I kept my fence there, or if they would have a town survey, and the lines legally defined I would adjust my fence to their line without any kind of question. I have been willing ever since to do the same thing; I will adjust it to any line that is impartially carried out and required of the other citizens of the town, and do that without any kind of ~~a quixotic~~ trouble or law suit or anything else.

End of direct examination.

Cross examination.

By Mr. Thomas;

- 15 Q. Be pleased to state the date of this conversation with Colonel Womble, alluded to, as well as you can? A. The conversation to which I alluded occurred on the 22nd of November 1890, I should say in the morning.
- 16 Q. What day of the week was that? A. If my recollection is right, it was on Saturday. I have absolutely no recollection of any conversation with him at any other time in which I

could have said anything like it.

- 17 Q. How far had the work of the construction of this fence proceeded at that time? A. I should say that all of the posts and railing had been put up on Mason Street, and all of the posts and some of the railing had been put up on Main Street.
- 18 Q? If I understand you properly then, it was in the forenoon of Saturday that this conversation occurred? A. I rather think so, but am not sure.
- 19 Q. And that conversation was quite an extended one? A. It lasted I should think about fifteen minutes; it was rather an extended conversation for a street conversation; everybody was passing by, and I had more or less conversation with nearly everybody that came by. I don't mean to say everybody, but most of the people I knew.
- 20 Q. In that conversation did not Colonel Womble give you the benefit of his information as to this lot as to its street boundaries? A. In that conversation I don't know that Colonel Womble did. In that conversation Colonel Womble I think made some allusion to the action of the town Council declaring the porches and fences as they then stood, should be the line of the street, but Colonel Womble himself did not think that that was a just definition of the lines of the street, but that if I would put my fence about four inches nearer in at the hotel end I would have it on a line which could not be upset.
- 21 Q. Did he not state to you that no enclosure had existed between the hotel lot and your dwelling from the time of his earliest recollection except that paling which you had remo-

V.W.#7

med, or which you were in the act of removing? A. He may have done so, but it would have been a work of supererogation, as I knew that before.

22 Q. Why would it have been a work of supererogation? A. Because I knew no enclosure had ever been there before, or had reason to know that no enclosure had been there before except that.

23 Q. Did he not say to you by virtue of that fact, and by virtue of the control that the town had exercised over that strip of land, that that strip of land was not yours?

A. I don't recollect anything like it in the conversation, more than what I have said to you. I have tried to give my full impression of that conversation.

24 Q. Did not Colonel Womble express to you his absolute conviction of the fact that that strip of land was the land of the town, and that you had no right to put your fence upon it?

A. Absolutely did not so far as I can recollect.

25 Q. Did he not in words (or in substance, for I don't undertake to repeat his language, but am only stating in substance) say to you that the land in question was the land of the town and not your land, and that you did wrong in placing your fence there? A. On the contrary Colonel Womble seemed to think that the town was wrong for claiming that land with the exception of the change of four inches next to the hotel corner, to my recollection.

26 Q. Did Colonel Womble so seem to think because he had a doubt of the right of the town to the strip of land, or did he so seem to think because he thought it might be better to agree upon some compromise in the matter? A. Colonel Womble

seemed to regret that any controversy should arise, but I thought, and still think that his sympathies and judgment were with me in the main.

27 Q. While you thought his sympathies and judgment were with you in the main, did he say anything that would indicate his belief that the strip of land in question was not the land of the town, and had not been from his earliest recollection?

A. I don't recollect that he said that it was the land of the town or was not the land of the town.

28 Q. Do you not recollect the fact that he expressed a decided belief and opinion that it was the land of the town? A. I do not.

29 Q. You have spoken of some resolutions that had been passed by the Council of the town of Smithfield about the lines of the town, and leaving the unenclosed spaces as they were and not disturbing any existing encroachments upon the line of the town. When did you understand from Mr. Womble that that resolution in substance was first originally agreed upon by the Council? A. I understood from Colonel Womble that that resolution had been agreed upon by the town Council, defining the lines in that way some time before that time, but I found out that night at the meeting of the Council that that resolution had never been recorded and did not then stand upon the books of the said town.

30 Q. You have failed to give me the date as you understood it from Mr. Womble of the passage of the resolution; be pleased to state that date as well as you can recollect it? A. So far as I can recollect Colonel Womble gave me no date, but the

records of the town give it to have occurred in April or May as well as I recollect, but the record of the town itself does not tell exactly when that occurred.

31 Q. Though the records of the town Council may not have stated the date originally upon which such resolution was passed, did you not know shortly after the passage of such resolution of the existence of it? A. I knew shortly after the passage of that ordinance that some such action had been ~~made~~ thought of, but I did not know for a considerable time afterwards that the town Council had really adopted any such action.

32 Q. What do you mean by "shortly after the passage of the ordinance"? State the time as definitely as you can? A. I can make no definite answer; I learned about that time - I can best explain my position in that matter by reciting the whole ground upon which I came to that conclusion. Judge Atkinson was in the habit of coming twice a week to my room to play chess, and on one occasion he told me that he had suggested to the Council to make the line of the porches and the fences the lines of the street definitely. I said that I didn't think that was right, that I thought that if any of the people had gone outside of the line they should be made to come in, and any of the people that didn't come out to that line might be allowed to go out to that point. He said that he was unwilling that any Council should interfere with his lines as they stood. That conversation occurred shortly after the commotion which was kicked up in the town by the survey which the Council had started to have made under Colonel Morrison in connection with the corner lot of Mr. Folk.

I dont recall the exact time but it was some where in that neighborhood when it occurred.

33 Q. Judge Atkinson was in the habit as you have stated in the months of April and May of playing chess in your room, was he not? A. He was.

34 Q. And it was upon one of these occasions that he made this statement to you that you have detailed? A. I think so.

35 Q. It has appeared on yesterday that the meetings of the Council to which you have alluded occurred some time in April, or say May,; then this conversation must have occurred between Judge Atkinson and yourself sometime in April or May as you have stated? A. Probably it did.

36 Q. ~~From~~ From April then until November, the date of the institution of this suit, you knew of the resolution in question as made by the Council? A. No I did not. I should say if I was called upon to say when I knew of that resolution, that I did not know positively of the resolution until about some time in November.

37 Q. But still Judge Atkinson stated to you the substance of that resolution, and that it was passed at his suggestion?

A. Judge Atkinson told me of a suggestion of his, but I made no further inquiry about it, and heard nothing more about it. I really did not know at that time that the Council had taken that action. I am now giving you my recollection.

38 Q. The resolution, as you have since seen it, and put in this record, expressed in substance the idea as conveyed to you in the conversation alluded to? A. The resolution of the Council adopted on the 22nd of November expressed in substance

the idea which Judge Atkinson alluded to, but the resolution adopted on the 5th of December modifies that idea.

39 Q. Did not Judge Atkinson tell you, so far as your own lot was concerned, that in his opinion you had no right to advance your fence as you had done? (Question objected to) A. Certainly not until after the 22nd of November according to my recollection. I do not recall having had a conversation with Judge Atkinson about the lines of my lot before the 22nd of November.

40 Q. In the conversation alluded to between Judge Atkinson and yourself, in April or May, did he not tell you that the vacant spaces in the town that had been standing as vacant spaces as long as yours, had been dedicated to the public and no person had a right to enclose them? (Question objected to)

A. I don't think he did at the time of the conversation alluded to above, but at some time before the 22nd of November he did make that general remark, but it had no reference, so far as I can recall, to my own lot at the time.

41 Q. But in his general terms it did refer to all such spaces, is that right? A. I should suppose so. He told me that that idea did not apply to countries but that it was the case in town; nothing else but his legal opinion, and I told him I did not think it was right. I remember on one occasion he spoke with some positiveness about his knowing these things better than I did; I was alluding to mere justice and equity, and he was alluding to law. I thought the same principal would apply in the country and in town, and he said it didn't apply in town.

42 Q. At the Council meeting upon the 22nd of November were you not admitted to that Council to express your views upon the subject? A. Not until after my case had been decided, and I was told when I came in that the Council had practically gotten through with all of its business; indeed they separated without putting another thing on the records.

43 Q. By whom was that statement made to you? A. I think the Mayor of the town was the person who made the statement, the presiding officer; the Mayor of the town.

44 Q. Did't that Council tell you that they would give you half an hour in which to express any views which you might have on this subject? A. Mr. Gwaltney pulled out his watch and said that he had 20 minutes to spare, and that he would listen to anything I had to say.

45 Q. In that 20 minutes? A. Yes, that he would have to leave then.

46 Q. Was not 20 minutes sufficient time for you to express your views on that subject? A. I think not.

47 Q. Did you consume these 20 minutes in expressing your views to the Council? A. He left after the expiration of that time.

48 Q. You introduced through W.D. Folk, a witness, on yesterday, paper marked P. O. S.; is the plan and survey of the town of Smithfield recorded in the Clerk's Office of the County Court of Isle of Wight County? (Question objected to)

A. I have been told by the Clerk that it was not.

49 Q. Have you not been to the Clerk's Office for the express purpose of making an examination, into this subject? (Question objected to) A. I have not. Mr. Young, the Clerk has

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made an examination, however, and has written me to that effect.

End of Examination.

Signature of witness waived.

The further taking of testimony is now adjourned by consent until Wednesday, July 8th, at the same time and place.

F.A.B.W.#1

In pursuance of adjournment, met again at the office of Messrs. Harmanson & Heath, in Norfolk, on Wednesday July 8th, 1891, present Jas. E. Heath and Gilmore Kendall for Plaintiff, and R. E. Boykin and R. S. Thomas for the defendants, Henry H. Little Stenographer.

Mr. F. A. B. Watson is called to the stand, and being duly sworn deposed as follows;

By Judge Kendall;

- 1 Q. Please state your age and residence? A. Am 63 the 29th of August. Live in Smithfield.
- 2 Q. How long have you lived in Smithfield? A. I have lived there 40 years in October.
- 3 Q. Were you born in Isle of Wight? A. No sir, in Accomac.
- 4 Q. State if you are acquainted with the lot of the plaintiff, V. Wrenn, situated at the corner of Main and Mason Streets in said town of Smithfield? A. Yes sir; I have known it ever since I have been there I believe.
- 5 Q. State if you know who built a fence erected in front of the house on said lot prior to 1860? A. I did.
- 6 Q. For whom? A. Merritt Womble, deceased.
- 7 Q. In what year did you do that? A. In the spring of 1862.
- 8 Q. '62 or '52? A. '52 I should have said.
- 9 Q. State the character of the fence, and where it was situated
A. The fence ran from the south-east corner to the north-west corner of the house I think; its character was a good ^{fence} ~~house~~, built of heart pine lumber with cedar posts.
- 10 Q. Dr. John R. Purdie, a witness for the defendants in this cause in answer to question 69 on examination in chief says

that an old store-house stood on the lot designated by him in his said deposition as lot No.14 in the town of Smithfield, had been improved and enlarged by you in the rear of said store-house, but that the front of the said store-house remains as it originally was before any alterations were made by you ; please state whether such a store-house stood upon said lot at your earliest recollection, whether or not you tore it down and rebuilt another, and state particularly the location of said original store-house before you tore it down, with reference to the street? A. There was a store-house that stood there; I renewed it after I bought the lot.

11 Q. That was when? A. That was in the year 1854. The house was a house running parallel with the street, the main body of it, and formed an "L" on the rear with a warehouse; it was not exactly on the corner of my lot; it was not exactly I say on the corner of my lot, there was a lane between the old house and the corner of my lot just as it is now. The house I tore down in '56 and built the house that is there at present running back much further.

12 Q. State whether the new house is further back or not? A. The old house stood on the line with my front fence, present front fence about 12 feet from my dwelling house. I put the new house on a line with my dwelling house, running back 60 feet. I did not repair the old house, but tore it down and built a new one.

13 Q. State whether or not the said old store-house before you tore it down stood out on a line with the hotel porch and

F.A.B.W.#3

the present enclosure, or the strip of land now enclosed by V.Wrenn's fence, or practically so? A. I think so sir; I have never examined it as to whether the hotel porch and Mr. Wrenn's fence and my fence, which was the line of the ~~old~~ house were on the same line or not; I presume they are, or were.

14 Q. I understand you, however, to say that the old store-house did stand out upon the line with your present enclosure?

A. Yes Sir.

Further this deponent saith not.

Signature of witness waived.

E.M.M.#I

Testimony of E.M.Morrison, a witness for the plaintiff,
who being called and sworn deposed as follows;

By Judge Kendall;

1 Q. Please state your age, residence and occupation? A. Near
50, Smithfield; teacher and surveyor.

2 Q. Please state whether or not you made a survey of the
streets, lots and coves of the said town of Smithfield in
the year 1874 by order of the town council of said town?
A. Yes Sir, I did.

The defendants, by their counsel, except to all questions, and
answers thereto, relating to said survey of 1874 for the reasons
heretofore stated in these depositions, and for the further
reasons that the said supposed survey is defective, illegal
and invalid and not made or recorded in the manner required
by law, and for the further reasons, and it is agreed by
the counsel for the plaintiff that this exception shall apply
to all questions and answers in relation to said survey.

3 Q. Please look at the paper filed as exhibit P. O. S. with
the depositions of W.D.Folk taken in this cause, and state
whether or not the field notes as shown in said exhibit are
the field notes made by you in making the said survey of 1874?
A Yes these are the field notes.

4 Q. State whether or not in your opinion you can reproduce the
plat made by you at the time of said survey from said field
notes? A. I can; I can with these field notes, very readily.

5 Q. Please state whether or not you have recently made a survey
of Main and Mason Streets, or certain parts thereof, showing
the relative widths of said streets at various points, and
the location of the houses, fences and porches thereon? (82)

E.M.M.#2

A. I have.

6 Q. At whose request did you make the said survey? A. At the request of V.Wrenn.

7 Q. Please look at the paper now shown you, filed herewith marked as exhibit "M" and state whether the same is the said survey?

The defendants by their counsel except to the survey now proposed to be introduced, because the same was not ordered or made by competent authority, or otherwise legally made, but that it purports to have been made by E.M. Morrison, County Surveyor, when it was not in fact made by him as such surveyor, because the defendants nor either of them had any notice of the time and place of making said survey; that the said survey is not a true survey of that portion of Main Street of which it purports to be a survey; that the plaintiff in this cause assisted the said surveyor as chain bearer in making measurements, and otherwise, and for other errors appearing upon its face, and for further reasons.

A. It is.

8 Q. State whether the said paper or survey is a careful and accurate survey of the said portions of Main and Mason Streets which it purports to represent? A. It is, to the best of my knowledge belief and skill.

9 Q. Please state what the various lines on the said paper represent? A. Red lines represent lines of enclosures; black lines represent the lines of porches and houses, and green lines represent the position of old enclosures and old structures - old houses.

- 10 Q. A line run from the front of T.H.Southall's lot across Main Street to M.F.Langhorne's store is stated to be 64 feet 10 inches - - A. These are not my letters; I employed a little boy, a clerk in the town of Smithfield to put the letters down for me. I just state that to explain why I had to squint down at these letters.
- 11 Q. Please state whether or not he did such lettering or figuring under your instructions? A. He did.
- 12 Q. Please state whether or not the letters so put down by the said boy are correctly put down? A. They were, to the best of my knowledge and belief.
- 13 Q. Now then the line running from said T.H.Southall's lot across to M. F. Langhorne's store purports to be 64 feet 10 inches; please state from where said line commences and where it ends; it commences at what point? A. At the upper corner of - -
- 14 Q. Do you call that South? A. You call it West - at the Western corner of Southall's brick store house.
- 15 Q. And goes where? A. And ends at the Western corner of M.F.Langhorne's store.
- 16 Q. Then I understand you to say from the said Western corner of said Southall's brick store to the Western corner of said Langhorne's store is 64 feet 10 inches; do I understand you correctly? A Yes Sir.
- 17 Q. A line drawn across Main Street from the Northern corner of W.S.Colonna's lot purports to be 64 feet; state where said line begins and where it ends? A. It commences at the Eastern end of Colonna's and extends across the street in a perpendicular line to the Eastern line of E.W.Little's lot.

- 18 Q. And is how long? A. 64 feet.
- 19 Q. Is that the correct length? A. It is sir; measured it
sever al times.
- 20 Q. A line drawn from the Eastern corner of the I.D.Cofer lot
across Main Street purports, to be 58 feet; state where that
begins and where it ends? A. It commences at the Eastern
extremity of the porch of I.D.Cofer --
- 21 Q. Well which corner? South-east is it? A. No, North-east;
it commences at the North-east extremity of I.D.Cofer's porch,
across the street perpendicularly to the line of enclosure
of J.P.Andrews lot.
- 22 Q. And is how long? A. 58 feet.
- 23 Q. The next cross line purports to be 65 feet 5 inches,
state where that begins and where it ends? A. From the
North-west corner of the old Clerk's Office across the street
perpendicularly -
- 24 Q. Is that the North-east corner? A. It is'nt exactly the
North-east corner -
Defendents submit that the surveyor ought to make his own
explanations.
- 25 Q. State whether ~~ixt~~ it runs from the face of the Clerk's
office or not? A. From the face of the old Clerk's office
across the street perpendicularly to V.Wrenn's enclosure is
65 feet 5 inches.
By Judge Heath;
- 26 Q. Then I understand you to say that from the face of the
old Clerk's office across to the enclosure of V.Wrenn the
distance is 65 feet 5 inches; do I understand you correctly?
A. Yes Sir.

27 Q. On the Mason Street side? A. Yes Sir.

By Judge Kendall;

28 Q. Please state the distance ~~from~~ from the front of J.O.Thomas' house to the red line representing his yard enclosure?

A. 14 feet 2 inches.

29 Q. Please state the distance from the front enclosure of J.O. Thomas to the front enclosure of V.Wrenn, that is to say the enclosure of V.Wrenn in front of the "Locus in quo"? A. 50 feet 7 inches.

30 Q. Please state the next cross line on said map, where it begins and where it ends, and its length? A. Commences at the ice house, lot number 36, thence perpendicularly across the street to R.S.Thomas' enclosure; 52 feet 6 inches.

31 Q. State whether or not a plank walk is along the whole of the South side of Main Street practically in a line with that represented as being in front of Wrenn's lot? A. It is practically the same line; it may be a few inches out of the way I suppose.

By Judge Heath;

32 Q. It is drawn in up here (indicating) isn't it? A. I don't know; it is practically the same line I should say. There is a line of ^{planks} ~~skid~~ there.

By Judge Kendall;

33 Q. A green line in front of F. A. B. Watson's store is marked "front line of old store"; what is meant by that? A. It represents, sir, the line of an old store, whose front was on a line with the present enclosure of Mr. Watson's house lot.

34 Q. State whether or not there is any enclosure now in front

of the present store? A. No sir, there is not.

35 Q. State whether or not there is an enclosure in front of the part of the said Watson lot now used by him as a residence

A. There is, sir.

36 Q. Is that represented by the red line in front of his porch?

A. By the red line in front of his porch.

37 Q. Colonel please state if there is any difference in the lines of this survey and the lines of a plat drawn according to the field notes of the survey made by you in 1874, to which you have referred, and if so, where such difference should

exist, generally I am speaking, not of any particular spot, but of the whole town? A The old field notes were taken only as the boundaries of the lots, irrespective of the houses and porches; this includes both.

38 Q. As I understand you then, in making the survey of 1874 you undertook to define the limits of the streets and lots, whereas in this survey you have undertaken to define the enclosures, houses and porches, and have made it strictly with reference to that; do I understand you correctly? A. That's the difference between the two surveys.

39 Q. I understand that in making the said survey of '74 you were seeking to determine and locate the lines of the streets according to what you believed them to be, and that if any discrepancy exists between the field notes then made, or the survey then made, and this survey, it is because in this survey you have not had reference to such a purpose, but only to the enclosures and houses and porches as they now actually exist; do I understand you correctly?

Question excepted to because it presupposes that the witness has made statements which he has not in fact made, and is objectionable as a leading question.

A.. Do you mean by that question that I authorized myself to define the streets in that survey of 1874?

40 Q. The best you could do; you undertook to fix a survey that would be satisfactory to the town, and which the town did in fact accept? A. I don't know, sir. 1874 is so long ago. I suppose I tried to make as accurate a survey as I could. By Judge Heath;

41 Q. The record shows, Colonel, that in 1874 you were directed by the town Council of the town of Smithfield, ^{to establish} ~~and especially~~ the lines of the streets and lots in said town, and to make a survey and plot of the said town; you did that, didn't you? A. I did.

42 Q. Then that survey had reference, and was made with reference to the order under which you were acting, was it not? A. It was, sir.

43 Q. The plot now before you marked M was made at the request of the plaintiff in this suit was it not? A. It was.

44 Q. And it shows the existing lines of Main Street according to the enclosures, houses and porches on said street, does it not? A. It does.

Question and answer objected to as leading.

By Judge Kendall;

45 Q. State what the line on the back part of the V. Wrenn lot marked "old fence now moved" represents? A. It represents what was said to be an old fence; I have no knowledge of its ever being there.

46 Q. State what the line in front of the word "kitchen" represents, and whose kitchen it is? A. It is the back of the kitchen of C.H. Wilson.

47 Q. What does that red line marked "fence" represent? A present enclosure is it? A. A fence between Wrenn's lot and C.H. Wilson.

48 Q. Now then what does the red cross line represent? A. An old chimney.

49 Q. Is that there now? A. Yes sir.

50 Q. An old chimney to what? A. To C.H. Wilson's house.

51 ~~Q.~~ Q. Do you know anything about the size of this kitchen and so on? A. No Sir.

By Mr. Wrenn;

52 Q. In the depositions of Mr. Day taken by the defendant in this suit he made some statement as to the location of the line of an old fence in front of the Major Thomas place; be kind enough to state how far back that fence commenced from the end of the old jail? A. 13 feet 4 inches, or 3 inches probably.

By Judge Kendall;

53 Q. You have never testified but once before have you Colonel?

A. No. Once in the town of Smithfield, sir.

End of direct examination.

The defendants, by counsel, without waiving the exceptions heretofore made, proceed to cross examine the witness.

By Mr. Thomas;

54 Q. Your examination to-day relates chiefly to the survey made in 1874 and to the paper now on exhibition before us marked M; please state if in that plot of 1874 you ran any

lines on the South side of Main Street? A. I suppose so.

55 Q. What line did you run upon the North side of Main Street?

A. I dont recollect.

56 Q. What line did you run upon the South side of Main Street?

A. Idont recollect.

57 Q. Please state if you ran the line of the enclosures of the

lots upon the North side of Main Street? A. I did.

58 Q. Did you run the line of the enclosures upon the South

side of Main Street? A. I did. If I made a plot, I was

bound to run the line of the enclosures; I suppose I did; the

plot's lost you know. I have never seen it since I gave it

to the town Council. I have some faint recollection of how

it looked; it was not half as large as this. I did plot the

enclosures on the North and South side.

59 Q. On what street? A. I dont know; let me see. How could

a man make a plot without he took that? I have not looked

at these old notes. I made a plot I know - I will state then

that I dont recollect.

60 Q. For refreshing your memory I will ask you if you have not

frequently stated to R.E.Boykin, R.S Thomas and others that

you only ran the line of enclosures on the South side of

Main Street? A. My base line was on the North side of the

street. The line run by compass was on the North side of the

street, but the width of the street was given on that plot,

or certain lines representing the width of the street, and

the lines of the enclosures was marked on the lines of the

plot.

61 Q. That paper you have not seen for many a long year; are

you clear in the statements you now make? A. Yes, I think I

did all the work with the compass on the North side of the street.

62 Q. What work did you do upon the South side of the street?

A. Measured the width of lots - length of lots, on that side of the street.

63 Q. Did you draw any line upon that said plot showing the line of the street on the South side of the town?

A. I dont recollect.

64 Q. For the purpose of assisting your me mory only, please recall whether or not you have not made statements that no such line upon the South side of the street was run? A

A. I dont recollect.

65 Q. In making that said survey did you give any notice to the owners and occupiers of lots that you were making such survey, and did you ask them for their lines of property?

A. I think not; in very few cases.

66 Q. Then the line on the North side of the street, and if one should be on the South side, the line on that side of the street also was run by you without the aid of the Council of the town or of the individual citizens of the town who owned the respective lots; is not that correct? A. It is.

67 Q. So too the designations of the streets and the width of the respective streets were placed by you according to your own impressions and belief, without the aid from the Council or any of the citizens of the town; is that correct? A. It is.

68 Q. Then this survey having been made by you without any directions by the Council or any of the citizens was regarded by you as informal and incomplete, was it not? A. It was I think.

E.M M.#II

The foregoing question and answer are objected to on the ground that the opinion of the witness as to the completeness or incompleteness of the plot made by him in the opinion of the town Council is a matter of record and cannot be testified to by him from personal knowledge.

The counsel for the defendant replies that the learned counsel is mistaken in his opinion ~~on that subject~~ in that statement; that the minutes of the said meeting were never signed by the Mayor of the town at that time, and they have never been recognized as official or legal by any succeeding body, and the said plan has never been recorded according to the directions of the law.

69 Q. Then for all purposes of defining lines ~~it~~ was regarded by you as incorrect and unreliable was it not? A. It was, as far as the lines of the streets were concerned.

70 Q. Is not that true also as to the lines of the several lots?
A. Yes sir. I measured the fronts and backs of lots to the best I could.

71 Q. As you received no assistance in that labor from either the town Council or the individual owners of the property, you did the best you could under the circumstances did you not? A. I did.

72 Q. You have no knowledge of the particular ^{boundary} ~~any~~ of any lot in town save and except your own have you? A. None whatever, except as indicated by these enclosures.

73 Q. Further than that, and outside and beyond that you had no knowledge whatsoever? A. None.

74 Q. Now on this exhibit M be pleased to state if the red, the black and the green lines thereon were not put exactly as and

where they were directed to be put by the plaintiff in this cause? A. No. I put them where the measurements called for them to go.

75 Q. What measurements called for the green line in front of F. A. B. Watson? A. Information furnished by Mr. Watson himself as told the location of the front of his old store.

76 Q. Who else was present when that information was furnished? A. V. Wrenn.

77 Q. And who else? A. No one else that I remember.

78 Q. What is there to indicate that there was an old store at that said designated spot? A. Nothing that I know of; you mean on the ground?

79 Q. Yes sir. You have stated that these lines were placed where the measurements called for them to go, who directed where and how these measurements should be made? A. I took such measurements as Mr. V. Wrenn requested me to take.

80 Q. And only such measurements as he requested you to take?

A. And such others as in my judgment were necessary to make the plot.

81 Q. What others were necessary according to your judgment?

A. The locating of base lines that would clear houses, porches and enclosures.

82 Q. Were these placed at your or his suggestion? A. At mine, with his assistance.

83 Q. You have stated as I understood you, that the line running from T.H. Southall's to M.F. Langhorne's ran from the brick store-house of T.H. Southall; has T.H. Southall any brick store?

A. He has not; it ought to be the brick underpinning of his

house.

85 Q. Does that said line then run from the brick underpinning of the house, across to the front of M.F. Langhorne's store?

A. It does.

86 Q. And that is 64 feet 10 inches? A. It is.

87 Q. And the cross line running from E.W. Little to M.S. Colonna is what distance? A. 64 feet.

88 Q. The next line upon this map upon the South side thereof, is a green line marked "front line of old store-house". I understand you to say there is nothing there now to indicate the past or present existence of any such store? A. Nothing.

89 Q. The next cross line is the one running from the I.D. Cofer lot to that of J.P. Andrews and it is marked 58 feet; did your measurement begin from the porch and run only to the present enclosure of James P. Andrews? A. It runs from I.D. Cofer's porch across the street to the enclosure of J.P. Andrews lot.

90 Q. I will ask if it is to the present enclosure? A. Yes sir.

91 Q. Is the porch on the said I.D. Cofer lot a recent construction or an old porch? A. I don't know positively.

92 Q. When was it put there? A. I don't know.

93 Q. Do you not remember the said house without any such porch as it now has there? A. I do.

94 Q. State your recollection of what the porch was to that house as you originally remember it? A. A much smaller porch than this, and I now recall that this porch is a recent structure.

95 Q. How recent? A. Don't know.

96 Q. Put there in the last ten years? A. I wouldn't like to say.

- 97 Q. State the best of your recollection and belief? A. Oh! I cant tell when it was put there; I dont know when it was put there.
- 98 Q. Do you not well remember when there was no porch towards that part of the house next to Pierce Street? A. I do.
- 99 Q. You have marked on the James P.Andrews lot a porch,and in front of that you have marked a green line on which you have written "old front"; state what old front existed there?
A. And old enclosure; and old fence enclosure.
- I00 Q. When did any old fence enclosure exist there? A. Dont know the exact date.
- I01 Q. State any impressioh or recollection that you may have?of it? A. There was a wooden enclosure there previous to this iron one.
- I02 Q. In front of that porch? A. I think so.
- I03 Q. State when? A. I dont know.
- I04 Q. When was it removed? A. I dont know.
- I05 Q. Who put it there? A. I dont know.
- I06 Q. Have you no distinct recollection of any fence of any kind that existed there in front of that porch,and further into the street than that porch is? A. No.
- I07 Q. On the said James P.Andrews lot state if you do not distinctly remember when there was no such enclosure as shown by the red line in front of it on Main Street? A. I do.
- I08 Q. State whether or not that is a recent or ancient structure
A. Bomparatively recent.
- I09 Q. Do you not remember that was put there since the war by W.D.Folk? A. I have heard so.

- 110 Q. What is the distance from the front of the I.D.Cofer house to the front of the James P.Andrews house? A. 71 feet 10 inches.
- 112 Q What is the distance between the side of the I.D.Cofer house and the side of the old Clerk's office on Pierce Street? A. 48 feet.
- 112 Q. State what is the distance from the side of the James P. Andrews to the side of the V.Wrenn house on Mason Street? A. 38 feet near.
- 113 Q. 38 feet then represents the distance between the J.P. Andrews house and the Wrenn house on Masoq Street; is that correct? A. I ought to have measured it from this corner where it goes across here (indicating the corner of the street) 38 feet 9 inches I should call it, but I was down here on the plat; 38 feet 10 inches.
- By Judge Kendall; That's the side of the house (indicating the black line).
- The counsel for the defendent object to the plaintiff or the counsel for the plaintiff rendering any assistance to the witness.
- The counsel for the plaintiff insists that if the witness misunderstands the question of the defendent, and places the compass so that the counsel ~~in~~ on each side see that thw witness misunderstands it, it is the duty of the counsel of both sides to call his attention to that mistake and misunderstanding before his answer is given.
- 114 Q. The distance of 38 feet 9 inches then represents the distance between what places?

By Judge Kendall;

115 Q. Tell me here what you understand as the line of the V.
Wrenn house?

The counsel for the defendant feels himself under the necessity of stating that the plaintiff in this cause has spread himself upon this map, and is indicating certain things to the witness upon the stand.

The plaintiff responds that he has done so because he finds out that the counsel for the defendant is misleading the witness, and that the witness does not understand the question at all. The plaintiff merely wishes to get at the truth, the whole truth and nothing but the truth.

The defendant replies by counsel that the questions propounded ~~by~~ are perfectly plain and explicit, and that he is seeking in no way, shape or form to mislead the witness or any other person.

The witness says that he does not think he understood the question and asks that it be repeated.

116 Q. (By Mr. Thomas) Then the attorney for the defendants repeat the question. What is the distance between the side of the James P. Andrews house and the side of the V. Wrenn house?

A. 53 feet 4 inches.

117 Q. State the distance on Mason Street of the enclosure of the V. Wrenn line as shown by the red and black lines respectively?

A. At one end 6 feet 2 inches; at the other 6 feet 8 inches.

118 Q. State the distance of the said points on Main Street from the house to the enclosure? A. 8 feet 2 inches at both ends.

119 Q. State whether the said enclosure to the house upon Main and Mason Streets is an old enclosure or a comparatively ^{new} one?

- A. It is an old one comparatively.
- 120 Q. Existing from when? A. I dont know.
- 121 Q. Do you not remember it when there was no enclosure there?
A. I do.
- 122 Q. What is the distance from the front of the house of J.O. Thomas to the front of the house of V.Wrenn? A. 72 feet.
- 123 Q. What's the distance from the red line of his enclosure to the black line of the enclosure of V.Wrenn? A. 58 feet 9 inches.
- 124 Q. In front and on the sides of the annex to the hotel is a green line in which is written "old enclosure", what is there to mark the existence of an old enclosure at that said spot?
A. Nothing now.
- 125 Q. What was there? A. I remember when there was a wooden paling around it.
- 126 Q. Around what? A. Around the annex, what represents the annex to the hotel.
- 127 Q. When was that enclosure removed? A. I dont know.
- 128 Q. By whom was it rMOVED? A. H.R.Parker I think.
- 129 Q. Did that enclosure extend out as represented by the green line on the front and sides? A. I think so.
- 130 Q. Was there an old office where that enclosure now is?
A. There was.
- 131 Q. Was that old office removed, and if so, when and by whom?
A. By H.R.Parker I think, a few years ago.
- 132 Q. Was that old office of about equal width with the present annex? A. I cant say.
- 133 Q. Was it a one story or a two story office? A. One story
I think.

134 Q. Now that your mind has been directed to this ~~XXXX~~ office, state as well as you can remember the character of the enclosure, and the distance of that enclosure from the front of the office; in other words did that enclosure extend out as far as indicated by these green lines? A. I desire to state just here with regard to these green lines, as located on the plot, that I will not vouch for the accuracy absolutely, but only relatively, as nearly as I ~~xxx~~ could from the parties who furnished the information to me.

135 Q. Who furnished the information as to the distance of this enclosure about which we are inquiring? A. I think I myself remember it as coming out as far as now represented, but upon consideration, I think probably it didn't come as far out.

136 Q. How far did that old enclosure fall within the line of the hotel porch? A. I don't recollect positively.

137 Q. State as well as you can? A. I should say about a foot probably.

138 Q. Within? A. Yes sir.

139 Q. About a foot nearer? A. Yes Sir.

140 Q. Are these lines as at present drawn, that green line, put ~~xxxx~~ according to your recollection, or according to the direction of another, and if so, by whom? A. I have just stated partly by my own recollection, and at the information furnished by parties with whom I spoke relative to it.

141 Q. Who were the parties? A. F.A.B Watson, V. Wrenn and other citizens, names not remembered.

142 Q. In front of the next lot, to-wit Shabby Hall, there is a

green line on which is written "old front", what does that old front indicate? A. Of the old porch.

143 Q. And of an old porch only? A. An old porch only.

144 Q. Which has recently been removed and another one substituted? A. Yes sir.

145 Q. What's the distance at lot 36 from the black mark at which there is an intersection with a red mark, from the point of intersection to a line in front of it called the base line? A. 8 feet.

146 Q. If you were to extend the black line indicating the sidewalk in front of the hotel porch down to Church Street, what additional amount of that street would be taken in by the said sidewalk? A. Only 4 feet more.

147 Q. What's the distance from the porch of J.O.Thomas to the front of the house of V.Wrenn? A. 65 feet.

148 Q. What's the width of the porch? A. 7 feet.

149 Q. On Masen Street at the rear of the lot of V.Wrenn there is a green line on which is written "old fence now moved", when did the said fence exist there? A. I don't know.

150 Q. Have you no recollection at all of any old fence ever existing there? A. I cannot recall that I have.

151 Q. By whose direction were those words put there "old fence now moved"? A. Mr.Wrenn informed me that he had been informed that there was an old fence there.

152 Q. And where these words put there at the direction of Mr. Wrenn? A. They were.

153 Q. And not upon your knowledge at all? A. Not upon my knowledge at all.

- 154 Q. While you lived on lot 34 have you any recollection at all of any old fence at the point designated? A. None at all; I cannot recall that I have, that portion of one.
- 155 Q. And when did you leave the said lot 34 to go off to school? A. 1858.
- 156 Q. Your father was owner of the said lot 34 down to what date? A. I don't remember, sir.
- 157 Q. State as near as you can? A. '68 say.
- 158 Q. The red line dividing the enclosure of J.D.Thomas from R.S.Thomas; does the present enclosure run as indicated by that line? A. It was not measured back; it was supposed to be run perpendicularly from the corner of the street, which is properly located.
- 159 Q. The inquiry is not as to how it runs back, but it is as to the location of the line on Main Street; is the line on Main Street exactly as shown on this diagram? A. It is, to the best of my knowledge and belief.
- 160 Q. In making the measurements of lots etc. according to this exhibit M did you call upon the owners of the respective lots to aid and assist you? A. I did not.
- 161 Q. Was any information furnished to you by the Council in this effort? A. None at all sir.
- 162 Q. Then the lines upon that map are exactly such as you and Mr.Wrenn defined them to be? A. And as near as we could, and found them to be.
- 163 Q. Point out the differences or discrepancies between these lines as they are on exhibit M and on the said plan and survey which you have spoken of of 1874? A. Of the old plot?

- 164 Q. Yes; what are the differences between the measurements etc.as you have them down there and the lines,measurements etc. as on the plan of 1874? A. The old plot I dont remember very well, but am pretty sure of only indicating thereon lines representing the lines of lots and possibly streets and cross streets,with the fronts of ne houses or porches, and made on a scale much smaller than this. The base line which I ran,to which I referred other lines was taken on and near on,I think, the North side of Main Street, which constitutes all the differences between the two surveys.
- 165 Q. Were any measurementen upon that old survey given to show the width of Main Street in any of its parts? A. I of my own knowledge do not recall, but I suppose it is of record on the books of the Council of the town of Smithfield with the original field notes. I dont know whether it is mentioned therein or not.
- 166 Q. Take these same field notes to which you have referred,and answer from them? A. I dont think I attempted to define the width of Main Street.
- 167 Q. From thosenotes what is the width of Pierce Street? A. Width 48 feet.
- 168 Q. What's the width of Mason Street? A. That's not on the field notes I dont think.
- 169 Q. At the end of Pierce Street there is a green line marked "line of fence now moved". What does that green line indicate
- 170 AQ From information furnished me by ~~Jx&JThomax~~ I.D.Cofer it indicates the line of an old fence that formerly joined his lot to that of Joe Thomas on Pierce Street.

171 Q. Was Joe Thomas present when that line was indicated, or did he have any knowledge of it? A. He was not.

172 Q. Re-examine the aforesaid field notes, and from them state the width of Mason Street? A. I find upon re-examination that its width is 45 feet.

End of cross examination.

Re-examination,

By Judge Kendall;

173 Q. You have stated that the green lines representing old Landmarks were placed where you believed old land-marks to stand from your own knowledge and the best information you could derive from others; please state how you obtained your information for marking the red and black lines? A. From my own knowledge.

174 Q. How did you gain that own knowledge? A. I intended for the red lines to represent enclosures and black to represent houses and porches.

175 Q. Was it done by measurement? A. Yes Sir. I desire to state that the red and black lines on that plot I consider as nearly correct as they can be plotted. Of course, with the dividers especially, in these distances that I am giving you — to the distance of 2 or 3 inches may not correspond, but when plotted from the field notes, and plotted by the red and black lines, was as near correct as I could make them; the green lines I don't so much vouch for their accuracy.

176 Q. You have stated on cross examination that for all purposes of defining the lines of the streets you considered the survey of 1874 as unreliable; did you or not mean anything more than
(103)

to say that you did not undertake to determine by that survey where the lines of the street originally stood?

(Question objected to as leading.)

A. That's about what I meant.

177 Q. When you used the word "originally stood" did you mean, or not, as the town was first plotted or laid out? A. Yes, when first laid out.

178 Q. Could you or not now from the said field notes of the 1874 survey reproduce Main Street as shown on said survey? (Question objected to as not new matter, and answered in examination in chief).

A. Except defining the width of Main Street, which I do not find on the field notes, and therefore could not undertake to plot it accurately.

179 Q. Could you do that thing by landmarks about the town which are shown on those field notes? A. Question objected to because not new matter) A. I could make a plot giving the relative connections between the different enclosures, their length, their depth back, and would have to leave to wiser heads than mine what the width of the street was, speaking from these old field notes.

180 Q. You have stated that you thought you did not undertake to define the width of Main Street on the survey of 1874; do you mean any more than that you did not undertake to ascertain the limits of that street as originally laid out?

(Question objected to as not new matter, and because it is leading) A. Yes that's what I mean.

181 Q. On your cross examination you stated that in making the

plot filed as exhibit M with these depositions you took only such measurements as Mr.Wrenn requested you to make. Did or not Mr.Wrenn request you to make a survey of all the houses, porches and yard enclosures represented by the said map?

(Question objected to as leading, and suggestive of the answer desired)

A. I think I stated I took said measurements as Mr.Wrenn directed me to take, and also such other lines as I thought necessary to enable me to make an accurate plot, namely in the location of base lines to which to refer other measurements.

182 Q. You have referred to T.H.Southall's old store, and have since stated that it was a dwelling house of the said T.H. Southall to which you referred? A. The house and store come together.

183 Q. Is there a store there now? A. (By Mr.Wrenn) Yes sir, a wooden store, the store and dwelling come together.

A. (By Mr.Morrison) I think as near as possible I measured from their intersection. I was misled by the store being now wood, and the house being in the old brick store.

184 Q. Colonel please state again the width of J.O.Thomas' porch? (Question objected to as not new matter) A. 7 feet.

185 Q. State the width from the face of J.O.Thomas' house to his yard enclosure? A. 14 feet 2 inches.

the face of
186 Q. State the width from J.O.Thomas' house to V.Wrenn's fence on Main Street? (Question objected to for the reasons before stated) A. Very near 65 feet.

187 Q. To what scale is this map made? A. 10 feet to the inch.

188 Q. State the distance from the face of J.T.Purvis' house

to the face of the house on the opposite side of the street known as the Todd building? (Question objected to as not new matter) A. 69 feet 3 inches.

189 Q. State the distance between the face of E.W.Wilson's house and the face of the house on the other side of the street? (Question objected to for the reasons before stated)

A. 70 feet 6 inches.

190 Q. State the distance between the face of V.C.Baten's house and the face of Shabby Hall on the opposite side of the street? A. About 70 feet 3 inches.

191 Q. State the distance between the face of the house of T.H. Southall and the face of the house belonging to M.F.Langhorne on the opposite side of the street? (Question objected to for reasons before stated) A. 64 feet 5 inches.

192 Q. You have stated on your cross examination that the lines of the map filed as exhibit M are such as you and Mr.Wrenn defined them to be; now what I want to know is whether in making this plat you followed existing lines of enclosures as they now exist and that such plot was made with reference to such enclosures,without any attempt at defining any lines of streets? (Question objected to for reasons before stated) A. I did.

193 Q. You have testified on cross examination in reference to a green line indicating some structure in front of the porch of J.P.Andrews; after refreshing your memory upon the matter, state what that green line does refer to? (Question objected to because not new matter) A. It is very clear to my mind now that it was only a porch there,without an enclosure around

it as I stated.

194 Q. At what time did such a porch exist? A. Way back as far as '57 or '8.

Re-cross examination.

by Mr.Thomas;

195 Q. Do I understand you to say that in 1857 and 58 there was any porch at said Andrews lot that extended out as far as the green line? A. There was a porch in front of said lot that extended out I think to a line that would be fairly represented by that green line.

196 Q. Do you remember that porch? A. Not much, except as a porch.

197 Q. Do you remember it as a porch? A. I do I think.

198 Q. When did it cease to exist there? A. Concerning that my recollection is not clear.

199 Q. When did you last see it? A. I cannot recall, but I remember as a boy a porch about that place.

200 Q. Do you remember as a boy that the porch alluded to extended further into the street than the porch now existing?
A. I do not.

201 Q. Have you any recollection of any porch extending into the street further than the porch now existing? A. I cannot say of my own recollection that the porch did extend further than the porch now existing.

202 Q. Upon what authority then did you say one did exist?
(Question objected to because the witness has not said what that question undertakes to make him say) A. Did I say it existed beyond the present porch?

203 Q. I so understood you? A. I have not said it.

204 Q. I understand you then to say that you do not recollect
the existence of a porch as far as the green line indicates?

A. Yes, I cannot recall where that porch exactly reached.

205 Q. Do you recall a porch that reached as far as that green
line? A. I don't recall whether it extended out as far as
that.

Further this deponent saith not.

Signature of witness waived.

E.V.W.#I

Virginus Wrenn the plaintiff in this cause being recalled deposed as follows;

By Judge Kendall;

- 1 Q. Please state whether or not you aided Colonel Morrison in making the plat marked exhibit M? A. I aided him throughout and will swear to the accuracy of the plot to the best of my knowledge and belief.
 - 2 Q. State whether or not in all things which you did in helping him to make said plat, you acted fairly and honestly, and that all measurements made by you were properly reported to him, and state all that you did in helping him to make the said survey? A. Generally speaking he carried one end and I carried the other end of the line; some times he had one of his sons to carry one end and he carried the other: I put down the measurements as he read them out to me, and I will swear to the accuracy of these measurements as he gave them to me.
 - 3 Q. Now then please state anything further that you know with reference to the green lines made, by him? A The green line in front of Andrews porch is the extension of the line of Bott's porch which Mr. Folk told me was about where the porch he removed was taken from; that's the way the information was gotten; I asked Mr. Folk to tell me where the line came out-- (Answer objected to because hearsay entirely) -- I will prove it by Mr. Folk; get him again if necessary.
- By Judge Heath;
- 4 Q. Do you know anything about the green line that you have not stated? A. I remember the porch perfectly; while I think

V.W.#2

it was wider than the porch there now, and we located it the best we could where it is now. The green line across Pierce Street at the J.O.Thomas side is measured from a sill that remains on the ground now that used to be under a carriage gate which was on that line, so I know that it is correct; the others have been answered in the testimony.

End of direct examination.

Cross examination.

By Mr.Thomas;

5 Q. Where is the said sill located? A. Exactly as it is located on that plot.

6 Q. Where is it located on the ground? A. Where it used to be, under the gate.

7 Q. What gate? A. Carriage gate that went through that enclosure.

8 Q. Where was the gate? A. At the end of the enclosure next to the J.O.Thomas line.

9 Q. When was that sill placed there? A. I don't know.

10 Q. Who placed it there? A. I don't know.

11 Q. When was the gate removed? A. I don't know.

12 Q. By whom was it removed? A. I don't know, but I think it was removed by order of the town Council.

13 Q. Do you remember the said sill there at the time the gate was there? A. Mr.I.D.Cofer told me - -

(Mr.Thomas objects to the answer because hearsay only) --

Mr.I.D.Cofer located the line for Colonel Morrison and myself, and told us where it struck the house and carried us a showed us the sill now remaining, which was under the carriage gate, which was a part of this enclosure.

(110)

V.W.#3

14 Q. These statements then are made upon the authority of Mr. I.
D. Cofer? A. They are.

15 Q. And they are hearsay are they not? A. I heard him say
so.

16 Q. Don't you know hearsay ought not to be given? A. I know
I am only trying to get at the truth, the whole truth, and
nothing but the truth.

End of examination.

Signature of witness waived.

Fee for these depositions \$60.00.

Worcester, June 17th 1891. The taking of the deposition provided for by within
notice is performed to Wednesday the 24. inst. at the same town of place.

Henry H. Carter
Notary Public

June 10th 1891. Executed the within notice
~~by delivering~~ on the
Town of Smithfield
~~by~~ by delivering
a copy hereof to
W. D. Folke its
Mayor & on W. D.
Folke Mayor of
Smithfield by
delivering a copy
hereof to him
J. R. Thetford
Sargt

To the Town of Smithfield Virginia, and to
W. S. Folk, Mayor of the said Town of Smithfield

Take Notice, That I shall proceed on the 17th day of June 1891
and between the rising and setting of the Sun, at the office of
Harmonson Heath, 57 Main Street, in the City of
Norfolk Virginia, to take the deposition of A. E. Jordan, R. W. Jordan and
others —

to be used as evidence in a certain suit now pending in the Circuit Court of the
County of Isle of Wight

in which I am — plaintiff and you are —
defendants And if, from any cause, the said deposition should not be commenced
on that day, or if commenced, be not concluded on that day, the taking of the same will be
adjourned and continued from day to day, or from time to time, until the same shall be completed.

Virginius Wrenn
by his Counsel.

TESTIMONY

o f

WITNESSES

in the cause of

V. WRENN vs THE TOWN OF SMITHFIELD, VA.

b y

H. H. LITTLE,

Stenographer,

57 Main St.,

Norfolk, Va.

Jas. E. Heath and Gilmore Kendall appearing for the Plaintiff,

R. S. Thomas and R. E. Boykin appearing for the defendant.

Mr. R. E. Boykin Atty

Exhibit "XX" filed with and made a part
of the case in the suit of Virginia Wren vs
Firm of Smith & Co, in the Circuit Court of
Isle of Wight Co Va.

Whereas a satisfactory compromise
has been reached between the Town
of Smithfield vs Mr O. Wrenn concerning
the pending Injunction suit in the
Circuit Court of Ichabod Wright Co as
to the lines of said Wrenns lot and
whereas it is earnestly desired by all
parties that said suit shall at once
be dismissed upon terms agreed upon
by the aforesaid parties,

Therefore be it ordained by the Council
of the town of Smithfield that Messrs
R. S. Thomas vs R. E. Boykin Attys for
the town be and are hereby instructed
to confer with Messrs Starmanson & Heath
vs W. F. Folk Attys for the Plaintiff,
and do or cause to be done whatever
may be necessary to have said suit
dismissed at once,

Be it further ordained that the
Clerk deliver a copy of this
ordinance to the aforesaid attys.
for each party,

A. R. Chalmers, Clerk,

(Copy)

When the Depositions of the plain'tiff
were ended we gave immediate notice
that we would take rebutting testimony
and the agreement between the town of
Smithfield and the Mr Warren
was made before we could get the
papers and take that rebutting tes-
timony.

R. S. Thomas

Paper marked "R. E. B. & R. S. T" filed with the
court at Springfield, Mass. & on of Smithfield.

Smithfield Va July 29/91
Messrs Harmonson and Heath and Kendal
Gentlemen.

We herewith enclose
you a copy of a resolution of the Council
of the Town of Smithfield, which was
sent to us by the said Council. As the
compromise with Mr Wmum was enter-
ed into without conference or consultation
with us, as no information was given
us of the terms of the agreement either
by the said Council or any member
thereof, in fact we have no idea of its
terms at this writing. We wrote them
among other things, that under the
circumstances, we would have no fur-
ther connection with the suit of Wmum
v The Town of Smithfield, but would
forward you a copy of their resolution,
and that we had no doubt the suit
would be dismissed by you, at the
request of Mr Wmum upon the terms
of the agreement. This communication
is addressed to you in compliance with
our statement to the Council and to
inform you that we have no further
connection with the case.

Very Truly Yrs

R. F. Thomas

R. E. Boykin

A B. Return the copy of the resolution please.

R. F. Thomas

R. E. Boykin

Papers marked "Agreement"
filed with Deem in the suit
of Virginians Union vs Town of Smithfield

J. W. L. Gock a Notary Public
in and for the County of Isle of
Wight and state aforesaid do hereby
certify that W. D. Gock V. Drenner and
A. R. Chalmers whose names are
signed to the above writing bearing
date July 14th - 1891 This day
personally appeared before me in
my County & State aforesaid and
acknowledged same
Given under my hand this
25th day of April 1892
W. D. L. Gock
Notary Public

said Survey when so made to be recorded and filed in the Clerk's Office of the County Court of Isle of Wight County, and said Survey to be evidence of the Streets, Alleys and Lanes and width of same and size and boundaries of the Lots within the town.

Secondly Each Party is to pay their own cost in this suit, except the town of Smithfield agrees to contribute Fifty Dollars (\$50⁰⁰) towards paying V. Wrenn's Attorney fees.

For and in consideration of the above agreements entered into and to be done and performed by the Corporation of Smithfield, V. Wrenn hereby agrees to accept and abide by the lines as laid down in said Survey and further agrees to dismiss said suit upon the performance of said Covenant by the said Corporation of Smithfield.

Witness the signatures and seals of the said Parties affixed the day and year first above written.

Corporation of Smithfield
By W. D. Folk Its Mayor
V. Wrenn

Teste

A. R. Chalmers, Clerk

State of Virginia }
County of Isle of Wight } Docet



This agreement entered into the 14 day
of July in the year of our Lord
Eighteen Hundred and Twenty one
by and between the Corporation of Smith
field of the first part and V. Wrenn
of the town of Smithfield and County
of Isle of Wight and State of Virginia
of the second part. Witnesseth that where-
as this is a certain suit depending
in the Circuit Court of Isle of
Wight County wherein the said
Corporation of Smithfield is defendant
and V. Wrenn is Plaintiff and
whereas the parties to said suit
mutually desire that said suit
shall be dismissed. therefore this
agreement witnesseth that in consid-
eration of V. Wrenn having said
suit dismissed the Corporation of
Smithfield agrees in manner and
form following to wit

First That they will reproduce the
Survey and Plan of the town made
in 1874, making only such changes
as may be necessary to a fair
and equitable survey and in all
respects putting V. Wrenn on the
same footing as the other property
owners on the same side of Main
and Mason Streets, within the
old corporate limits, so far as the
front enclosures ^{of his Lot} are concerned.

Virginus Wrenn
to Stanchery
Town of Smithfield

Deene

To be entered
C.M.F.

Entered #16

We consent to this deene.

V. Wrenn Platf

Corn of Smithfield

By Wm D Folk Mayor
Teste

A. R. Chalmers Ck,

Virginia News. In the Circuit Court
B. J. In Chancery, of the County of Wight County
The Town of Smithfield 175

This cause came on this day to be heard upon the plaintiff's bill and exhibits filed therein and upon the answer of the said defendant and exhibits filed with it, and upon the depositions of witnesses taken on behalf of the plaintiff and defendant and duly filed with the papers of this cause, and upon the resolutions and ordinance of the said defendant Corporation under its Corporate Seal filed herewith as a part of this decree marked "XX," and the agreement entered into by the said parties herewith filed marked "agreement", and upon the letter of R. E. Boykin and R. S. Thomas, withdrawing as counsel for the said defendant from this suit, filed herewith as a part of this decree marked, "R. E. B. & R. S. T.", and was argued by Counsel.

On consideration whereof and by consent of the plaintiff and defendant, it appearing to the Court that the parties hereto have settled and compromised their disputes and differences as set out in said paper marked "agreement", it is adjudged, ordered and decreed that said compromise and settlement be ratified and confirmed; and by like consent of parties it is further ordered that upon each party to this suit paying the costs incurred by him and it respectively and upon the defendant paying to the plaintiff fifty dollars, then the injunction heretofore awarded be dissolved and the plaintiff's bill dismissed.

REVISED ORDINANCES
OF THE
TOWN OF
SMITHFIELD,
VIRGINIA.

Approved and adopted October 22nd, 1889.

NORFOLK, VA.
T. O. WISE & SON, PRINTERS,
1890.

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THE ORDINANCES.

CHAPTER I.—RULES OF CONSTRUCTION.

Sec. 1. In the construction of this and all future Ordinances, the following rules shall be observed, unless such construction would be inconsistent with the manifest intention of the Ordinance.

RULE 1. A word importing the singular number shall apply with equal force to several persons or things, and a word importing the plural number shall apply to one person or thing.

A word importing the masculine gender shall apply to all of the same species without reference to sex or age.

The word "person" shall be applicable to bodies politic and corporate, as well as to natural persons.

RULE 2. The word "Justice" shall comprehend the Mayor, an Alderman or any Justice of the County.

RULE 3. The word "Street" shall comprehend every street or lane in the town, public or private.

RULE 4. When a notice is required to be given or an act to be done, a certain length of time before proceedings can be had, the day on which such notice is given or act done, shall be counted in computing the time. But the day on which such proceeding is to be had shall not be counted.

Sec. 2. No new Ordinance shall be construed to repeal a former one, unless so stated specially in the new one.

Sec. 3. When any Ordinance which repeals another, shall itself be repealed, the previous one shall not be revived, unless so stated.

CHAPTER II.—OFFICERS.

Sec. 4. The *official* year of this Corporation shall begin on the first day of July, and the *fiscal* year on the first day of January in each year.

Sec. 5. The regular meetings of the Council shall be held on the first Tuesday in each month. Special meetings may be convened at any time by the Mayor, or by the summons of three Aldermen.

Sec. 6. At the first meeting held on or after the first day of July next succeeding their election and qualification, the Council shall elect from its members, a Treasurer and a Clerk, (one and the same person may hold both) and from the electors of the town a Commissioner of the Revenue, a Collector and a Surveyor of the Streets, (the same person may hold all of these offices, and also be the Town Sergeant) whose term of office shall be for two years, or during the will of the Council, and until their successors shall be elected and qualified.

Sec. 7. The Council shall judge of the election, qualification and returns of its members, may fine them for disorderly behaviour, and with the concurrence of two-thirds, expel a member; and its powers to order new elections to fill vacancies, &c., are fully prescribed in V. C., 1887, Sec. 1030.

Sec. 8. The place of holding town elections and meetings of Council shall be fixed by Ordinance.

Sec. 9. With the unanimous consent of the Council, a non-resident may be appointed a town officer.

Sec. 10. At the regular meeting in January, annually, the Council shall determine the sum total necessary to be appropriated for defraying the expenses of the corporation during the ensuing year, and to cover any deficiency of the preceding one, on which as a premise the Council shall proceed to lay a levy on the real and personal property of the town and assess, on any business which by law a license may be required, license for raising a revenue sufficient to meet the several appropriations decided to be requisite for the year.

CHAPTER III.—QUALIFICATION OF OFFICERS.

Sec. 11. The Mayor and Aldermen, before assuming office, shall qualify before a proper municipal or county officer by taking the oath required by law, and all other town officers in addition to taking the oath of office shall severally execute bonds, with sufficient security, in a penalty prescribed by the Council, conditioned for the faithful discharge of his official duties, and the taking and executing said oaths and bonds shall be entered on the journal.

Sec. 12. With the consent of the Council and subject to its removal, a town officer who is not a member of the Council may appoint a deputy for whose acts his principal shall be held responsible.

CHAPTER IV.—TREASURER.

Sec. 13. The official bond of the Treasurer shall be in a penalty of not less than double the sum of his probable annual receipts, to be delivered to the Clerk and its receipt noted on the journal.

Sec. 14. The Treasurer shall receive all moneys payable into the town treasury and disburse the same by order of the Council, signed by the Mayor, and countersigned by the Clerk. Under the directions of the Council he shall provide books and stationery necessary for his official duties.

Sec. 15. The Clerk shall deliver to the Treasurer on or before the first day of May, annually, and take his receipt for the same, the tax bills, town levies and any other claims due the corporation, which he shall forthwith proceed to collect, after five days public notice given by advertisement at the Mayor's office, and two or more suitable places that he will receive the town taxes and dues at his office or place of business, daily, between the hours of 10 o'clock, A. M. and 3 P. M., from the first day of May until the first day of July following.

Sec. 16. The Treasurer shall be allowed a compensation for his services of five per centum on the annual amount received by him into the treasury, payable at the expiration of his official term; and for any violation of the provisions of this Chapter, not amounting to felony or misdemeanor, shall forfeit a sum double the damage incurred, recoverable on his official bond by action or motion in a court of record or before a Justice.

CHAPTER V.—CLERK.

Sec. 17. The Clerk shall attend all meetings of the Council; shall enter on his journal a fair record of its proceedings; have the custody of all books, papers, records, blanks and stationery belonging or appertaining to the corporation; provide when so directed books and stationery necessary for the use of the Council and suitable for his official duties; furnish the Commissioner of the Revenue with proper assessment books; make out and deliver to the Treasurer all tax bills, licenses, certificates, and other levies; issue when properly directed, licenses and summons; and prepare advertisements, notices, and other public writings properly ordered.

Sec. 18. The Clerk shall receive for his services such compensation as the Council shall allow, and for failing to attend any meeting of the Council without satisfactory excuse may be fined fifty cents; and for violating any other provisions of this Chapter shall forfeit double the damage incurred, recoverable by action at law.

CHAPTER VI.—TOWN SERGEANT.

Sec. 19. The official bond of the Town Sergeant shall be in the penalty of five hundred dollars.

Sec. 20. Within the corporate limits and one mile beyond, his jurisdiction, powers, duties, liabilities and fees are the same as those of a constable.

Sec. 21. Five days previous to any municipal election, he shall post notices at three or more places in the town, stating the time and place of same, and receive fifty cents for each notice.

Sec. 22. In the absence or vacancy in office or any other cause of inability of the Town Sergeant to act, process under ordinances or state laws may be executed by the sheriff or constable of the county.

CHAPTER VII.—COMMISSIONER OF THE REVENUE.

Sec. 23. He shall perform all the duties, exercise all the powers, and be liable to all the penalties prescribed by the act of incorporation, the general laws of the State, and the existing or any future ordinances passed by the Council.

Sec. 24. On or before the first day of February annually the Clerk shall furnish him with books properly arranged for his duties, when he shall proceed to assess all the subjects within the limits of the corporation on which the Council has ordered a tax to be levied or a license to be granted for the next succeeding fiscal year; and he shall complete the same and deliver his books to the Mayor or Clerk on or before the first day of March following.

Sec. 25. All persons liable to be assessed and listed shall on oath or affirmation, when called on by the Commissioner of the Revenue, give such list as the ordinance specifies and exhibit the property, if required, and for a refusal to comply with these provisions or any other ordinance or any laws of the State relating thereto and especially those laws laid down in Chapter XXIV, V. C. of 1887, the delinquent shall forfeit and pay not less than five nor more than twenty dollars.

Sec. 26. The Commissioner of the Revenue shall receive two dollars each day necessarily employed in these duties, and for failing to

perform any duty required of him by this chapter, the laws of the State, or the charter and ordinances of the town, he shall forfeit all right to compensation.

CHAPTER VIII.—COLLECTOR.

Sec. 27. The official bond of the Collector shall be in a penalty of not less than double the amount of his annual collections.

Sec. 28. On all taxes, levies and other claims which remain unpaid after the first day of July five per centum shall be added, and the Collector shall collect the principal and premium by levy, distress, garnishee or otherwise, as the law directs. Any loss to the town treasury, arising from delay or neglect of the Collector, unless he satisfactorily shows the collection of any such claim to have been impracticable, shall be reimbursed by the Collector.

Sec. 29. At each monthly meeting of the Council, the Collector shall pay over to the Treasurer, and in his absence, to the Mayor or Council, all moneys he may have collected to that date; and on or before the regular meeting in July of each year he shall settle his transactions of the preceeding fiscal year with the Treasurer, Mayor or Council. For all taxes and levies against insolvent and non-resident property returned and certified, the Collector shall have credit on his receipt.

Sec. 30. The Collector shall receive for his services five per cent. on the amount collected during his term; and for failing to perform any duty required of him by this Chapter, the laws of the State, the Charter and Ordinances of the town, he shall forfeit all rights to compensation.

CHAPTER IX.—SURVEYOR OF STREETS.

Sec. 31. All male residents of the town not exempt by law, shall be compelled to work on the streets three days of each year, in person or by substitute, with such tools and implements as the Surveyor may direct. Provided, that any such person may elect in lieu of personal service in any year, to pay an annual street tax of two dollars and twenty-five cents.

Sec. 32. The Surveyor shall cause the streets to be kept in good order, smooth and clear of obstructions, well drained, and the width ordained by the Council; order the removal, by the person who caused it, of any nuisance or obstruction from the streets and gutters, and in default, cause the same to be removed at the expense of the offender, and report him to the Mayor.

Sec. 33. He shall enter and examine any premises, out-houses and other buildings on or in which he believes any unhealthy or offensive matter to exist, and order its removal. If any person hinder or obstruct him in the discharge of his duty, he may be fined not more than five dollars, and for failing to abate the nuisance on his premises after legal notice received, he shall be fined not more than two dollars for every twenty-four hours or fraction thereof of its continuance, with the cost of removing same.

CHAPTER X.—STREETS AND PUBLIC PLACES.

Sec. 34. The streets of this corporation shall be known by the following names, viz:

Main—Running from the County wharf S. $52\frac{1}{2}^{\circ}$ W. to the boundary line.

Church—From Main St. S. S. E. to an angle on the lot of Geo. R. Atkinson.

East Church—From the Eastern terminus of Church Street E. to Purdie Bridge.

Mason—From Main St. S. E. by E. to the line of property owned by John Shady Wilson.

Pierce—From Main St. N. W. by W. to the line of the Grove property owned by J. O. Thomas.

Hill—From the Southern back line of the property of R. A. Todd S. W. by W. to Cocke's Lane.

Cedar—From Mason Street N. to Church Street.

Canal—From E. Church St. S. to line of Fillmore Jordan's property at Little Creek.

Wharf—From E. Church St. N. to Pagan Creek.

Cove—From Main St. N. W. by W. to the line of the property owned by Mrs. S. A. Eley.

Smith—From Main Street S. E. by E., between the lots of Mrs. Drummond and O. C. Goodrich to corporation limit or intersection of Cocke's Lane.

Cocke's Lane—From Main Street S. E. by E., between the lands of the Misses Hayden and Mrs. Drummond to the Northern line of Miss Hayden's or Southern limit of corporation.

Commerce—From Main Street near its beginning at the County wharf N. W. by N., N. by E., and North to the causeway leading to Folk's Bridge.

All of which streets are more fully defined in the survey of the town made and recorded as referred.

Sec. 35. Be it ordained by the Council of the Town of Smithfield, that no street in the town shall be deemed entitled to improvement at public expense, unless the same shall have been openly and legally recognized or accepted as such by the town through the Council; and no street shall hereafter be opened, recognized or accepted by the town outside of those named in these Ordinances, except by resolutions of the Council, entered in the records of the town.

Sec. 36. That it shall not be lawful to encroach upon any side-walk, foot way or street by the erection thereon of any porch, veranda, portico, steps, building, fence or other thing or otherwise; such encroachment shall be deemed an obstruction, and shall be removed by the owner or occupant of the premises where such encroachment may occur, within ten days after notice from the Mayor requiring the same to be removed. Any person violating this Ordinance, shall be subject to a fine of five dollars for each day such encroachment is allowed to continue after the expiration of the notice to remove same, and on the failure of such persons to remove the same after such notice, the Mayor shall cause it to be removed, and all reasonable charges therefor, with cost, shall be collected of the owner or occupant by the same process by which taxes are collected.

Sec. 37. It shall not be lawful for any merchant or other person to encroach upon the side-walks or foot ways within the limits of the town, so as to prevent a clear and open way of 6 feet on the side-walk

in front of their store-houses or places of business, by placing thereon or suspending in any way above at less than eight feet, any wares, goods, merchandise, or other thing for sale, display as a sign or for any other purpose; such encroachments shall be deemed an obstruction, and any merchant or any other person violating this Ordinance, shall be fined five dollars for any day or fraction thereof which he shall allow any such encroachment to continue.

Sec. 38. It shall not be lawful for any person to hang or suspend any sign or other thing over the side-walks or foot ways of the streets at a less height than eight feet above the surface of said side-walks or foot ways; nor over any street between the side-walks or foot ways on each side thereof at a less height than eighteen feet above the surface of the street; nor shall it be lawful for any person to place or build an awning or shed of any kind over the side-walk or foot ways of any street at a less height than eight feet above the surface of said side-walk or foot way. Every sign, flag or other thing hung or suspended, and every awning or shed placed or built at a less height than is hereby prescribed, shall be deemed an obstruction, and any person violating this Ordinance, shall be subject to a fine of not less than two nor more than ten dollars for every day such obstruction shall be allowed to remain after said person shall have been required to remove the same.

Sec. 39. It shall not be lawful for any person to put straw, paper, sweepings, refuse or old brick-bats, tin cans, or refuse of any kind in the streets, gutters or side-walks of this town; any person violating this Ordinance, shall be fined not less than one nor more than five dollars for each offence. This section shall not apply to persons excavating for building, who use the streets temporarily. All earth or other material so placed upon the streets, must be deposited so as not to interfere with the drainage of the gutters, and must be removed within a reasonable time.

Sec. 40. No owner of any lot fronting the street in this town shall permit from on or after January 1st, 1890, any gate on the said lot to open outwards or across any part of the side walk, but these gates so hung as to close themselves shall be excepted. Every person having such a gate shall remove the same after ten day's notice from the Mayor and for failing to do so after such notice, he shall be fined fifty-cents for each day such violation is allowed to continue.

Sec. 41. It shall not be lawful for any person to change, obstruct or interfere in any manner with the culverts or drains of the streets, or leading from any street in the town, without permission of the Council. Every violation of this Ordinance shall, at the discretion of the Mayor, be punished by a fine not exceeding ten dollars for each offence, or ten dollars for each day such obstruction or change in or interference with such drains or culverts is allowed to remain.

Sec. 42. Any person engaged in building, repairing or making improvements on any roof, wall or chimney of a house on any street, shall place barriers sufficient to warn foot passengers against passing such roof, wall or chimney, and for failure to place said barriers, the person shall be fined not less than two nor more than five dollars for every day of failure to place said barriers.

Sec. 43. Any person who shall drive any vehicle at a greater speed than six miles an hour, or ride or drive any animal in any street in so

rapid and careless manner as to endanger persons passing along the streets, or train or break any horse or other animal, or try any unbroken horse or other animal in any street, shall be fined not less than one nor more than ten dollars for each offence.

Sec. 44. If any person shall, in consequence of fast or careless driving or riding through the streets, hurt or injure any person, he shall be fined not less than five nor more than twenty-dollars; and this Ordinance shall in no wise affect the right of such person so hurt or injured, to bring his action for damages for the same.

Sec. 45. No person shall ride a bicycle or velocipede with a wheel or wheels larger than twenty-four inches in diameter, or use roller skates on any of the side-walks of the town; a fine not less than one nor more than five dollars shall be imposed on any person violating this Ordinance.

Sec. 46. It shall not be lawful for any person to roll or otherwise propel a hand-cart, truck, iron safe or wheel-barrow on the side-walks of the town. Any person violating this Ordinance, shall be fined not less than one nor more than five dollars.

Sec. 47. Any person who shall play base ball, foot ball or bandy, or fly kites, or use an instrument known as a sling shot, or discharge arrows or other things from a bow or cross-bow, or shall throw bricks, stones or shells, or pitch or throw a ball in the streets, shall be fined not less than one nor more than five dollars.

Sec. 48. That it shall not be lawful for persons to gather and stand in crowds upon the side-walks of the town, so as to impede or obstruct free travel over same. Any person or persons violating this section, shall be fined not less than one nor more than five dollars for each offence.

Sec. 49. It shall not be lawful for any person to drive or back any horse or cart or wheel carriage on the foot paths or side-walks of any street, under a penalty of two dollars for each offence.

Sec. 50. If any person take up or carry away earth from any street, he shall pay for every such offence a fine of five dollars.

Sec. 51. If any person shall maliciously, wantonly or carelessly mark with chalk or daub with paint, cut, break or otherwise injure or deface any fence, walk, lamp-post, lamp or lantern, tree, tree box, telegraph or telephone poles, house or other buildings or plank-walks in or upon any street, lane or public square of the town, shall pay a fine of not less than one nor more than five dollars.

Sec. 52. No person shall throw grape hulls or rind of any fruit or vegetable upon any street or side-walk of the town. Any person violating this section, shall pay a fine of not less than one nor more than five dollars for each offence.

CHAPTER XI.—FIRE ARMS AND FIRE WORKS.

Sec. 53. Be it ordained by the Council of the Town of Smithfield, that any person who shall shoot off a gun, pistol or other firearms charged with powder, ball, shot or other deadly thing within the jurisdiction of the town, except in the destruction of some rabbit, animal, or in case of a similar necessity, shall be fined not less two nor more than ten dollars.

Sec. 54. Any person who shall shoot off or burn any rocket, fire cracker or other fire works, or any combination of gunpowder or other combustible or dangerous material within the corporate limits of the town, except on such public or holiday occasions as such may be allowed by the Mayor, or the firing of military salutes, shall be fined not less than one nor more than five dollars.

CHAPTER XII.—OFFENCES AGAINST MORALS AND DECENCY.

Sec. 55. Be it ordained by the Council of the Town of Smithfield, that no bar-room, saloon, or other place for the sale of intoxicating liquors shall be opened, and no intoxicating liquors, bitters or other drinks shall be sold in any bar-room, restaurant, store or other place from 12 o'clock on each Saturday night, until sunrise of the succeeding Monday morning. Any person violating this section, shall be punished by a fine of not less than ten nor more than fifty dollars for each offence.

Sec. 56. Any person not being an apothecary, livery stable keeper or dealer in ice, who shall open his or her store, shop or place of business for the sale of any article kept for sale by such person, or labor at any trade or calling, except such work as may be deemed by the Council to be of necessity or mercy, or for supplying the necessities of sick, or for burials, at any time on Sunday, shall be subject to a fine not less than one nor more than ten dollars for each offence.

Sec. 57. Any person who shall be found bathing in Pagan Creek or its tributaries, or elsewhere within the jurisdiction of the town, in a nude state, between the hours of 4 o'clock, A. M. and 9 P. M., shall be fined not less than one nor more than five dollars for each offence.

Sec. 58. Any person who shall be guilty of disorderly conduct at any exhibition or public meeting, at any public hall in the town, or at any church or place of public worship, or shall in any way annoy or disturb an audience, shall be fined not less than two nor more than five dollars for each offence; and if any person so offending, shall not when required by the Sergeant or other officer, desist from such conduct, he shall be arrested and committed to Jail, and at the discretion of the Mayor or other Justice, be confined therein for a period not greater than twenty-four hours.

Sec. 59. Any person who shall be present and aid in any way any unlawful or disorderly assembly, or be guilty of gaming, shall be fined not less than two nor more than twenty dollars for such offence.

Sec. 60. Any person who shall be found drunk or who shall make a disorderly noise in the streets or other place of public resort, or who disturb in any way the quiet and good order of the town, shall be fined not less than two nor more than twenty dollars for every such offence.

Sec. 61. Any person who shall be found asleep during the day or night in the streets, or in the porch, door or other exposed or public place, shall be fined not less than one nor more than five dollars for each offence.

Sec. 62. If any person keeping a stallion or jack "in the stud," shall advertise or call public attention to such stallion or jack on any of the streets, lanes or alleys of the town, by the blowing of horns or in like manner, he shall be subject to a fine of five dollars for each offence.

Sec. 63. No stallion or jack shall be used for the service of mares on any lot, street, lane or alley or other place exposed to public view, under a penalty of five dollars for each offence.

Sec. 64. Any person found guilty of making an assault and battery upon any person within the jurisdiction of this town, shall be fined not less than two nor more than ten dollars for each offence.

Sec. 65. It shall be unlawful for any person to permit any pigeons, except carrier pigeons to fly at large within the limits of the town, and for any violation of this Ordinance, the owner or occupant of the lot or premises upon which the pigeons are kept or permitted to harbor, shall be subject to a fine of five dollars, and a fine of one dollar for each day thereafter until the nuisance is abated.

Sec. 66. It shall not be lawful for any person to keep a hog within the limits of the town in a pen, unless such pen has a plank floor raised at least one foot above the surface of the ground, and kept perfectly clean. Any one violating this Ordinance, shall be fined not less than one nor more than five dollars.

Sec. 67. Any person who shall be guilty of using profane, indecent or abusive language to another, shall be fined not less than one nor more than five dollars.

CHAPTER XIII.—CONCERNING TRAMPS AND VAGRANTS.

Sec. 68. Any able bodied person who shall go about begging or loitering without some visible means of subsistence or honest employment; any person who shall unlawfully return to town after having been legally removed; all persons who not having the wherewithal to maintain themselves and families, live idly and without employment, and refuse to work for the common and usual wages given to other laborers in the like work in the town; all persons going about from door to door, or placing themselves in the streets, highways or other public places to beg alms, and all other persons wandering about in the streets and begging, unless disabled and incapable of work; all persons who shall come to town and loiter and reside therein and following no labor, trade, business or occupation, and having no visible means of support, and can give no reasonable account of themselves or their business, shall be considered as vagrants, and shall be subject to all penalties imposed by law upon vagrants. (Code of 1887, Sec.'s 885 and 886.)

Sec. 69. Any vagrant who shall be found within the town limits, by warrant of the Mayor, may be brought before him and required to leave the town within twenty-four hours, or shall be required to give security for good behaviour for the period of twelve months.

Sec. 70. The Sergeant of the town shall be and is hereby required and empowered, upon discovering any vagrant or vagrants in the town, to bring them before the Mayor, and if upon examination it shall be found that the person or persons are within the true description of a vagrant as described in Sec. 68, he may, by his warrant, order such vagrant or vagrants to be employed in labor for a term of not exceeding twelve months.

CHAPTER XIV.—DOGS.

Sec. 71. Upon every male dog kept within the limits of the town, there shall be paid annually a tax of one dollar and on every female

dog two dollars, to be collected and demanded of the owner or keeper upon the first day of August of every year, or rateably after that time; but this Ordinance shall not apply to dogs or puppies under the age of three months. The occupant or occupants of any house or lot to which any dog may belong, or which such dog may frequent, shall be deemed to be the owner of such dog or dogs, and be liable for the tax and fines herein imposed.

Sec. 72. It shall be the special duty of the town Clerk, the town Sergeant and the Police, to report the name of any party owning or harboring a dog upon which the tax has not been paid.

Sec. 73. Any vicious dog may be killed by order of the Mayor.

CHAPTER XV.—CONCERNING FIRES.

Sec. 74. Be it ordained by the Council of the Town of Smithfield, that no person shall keep in his house, any stove for burning wood or coal, unless the same shall be placed on a suitable foundation of brick, stone, or metal, or a bed of sand properly boxed, and at least three inches deep.

Sec. 75. The said stove shall have its funnel or pipe leading directly through a shaft of brick, stone or terra cotta, or suitable metal, and extend at least three feet beyond the side of the house, or above the roof, and if the pipe passes through a partition, he shall use like material.

CHAPTER XVI.—NUISANCES.

Sec. 76. Be it ordained, that the following offences shall be classed as nuisances and punished as is hereunto specified.

Sec. 77. Obstructing any street or side-walk, public or private, bridge, culvert, drain, sewer or gutter on conviction, the offender to be fined not less than one nor more than five dollars; and after legal notice to remove the obstruction, each twenty-four hours or fraction thereof is deemed a distinct offence.

Sec. 78. Allowing a vehicle drawn by one or more animals to pass on the street without a driver or leader, the owner (and in his absence the person who has charge of the team) shall be fined one dollar for each offence.

Sec. 79. Permitting a horse or mule to range beyond the enclosed premises of the owner, for each offence two dollars; a bull, ox or cow for each offence one dollar; and a hog, sheep or goat for each offence fifty cents. Provided, that unless otherwise ordained, any house-holder may have one cow actually giving milk, may be permitted to roam the unenclosed parts of the town from sunrise to sunset without fine.

Sec. 80. Suffering an animal known to be dangerous or mischievous to go at large in the town, the owner shall be subject to a fine of two dollars; and after legal notice, if this offence be continued, the Mayor or an Alderman may order the animal to be killed, and a fee of one dollar shall be paid by the owner to the officer for executing the order.

Sec. 81. Allowing a female dog when in heat, to appear outside of her owners premises, the owner shall be fined five dollars; and any such slut is hereby out-lawed, and may be killed with impunity by any disposed to do so.

Sec. 82. The owner or tenant of any premises on which the animals named in this Chapter usually frequent, are held as their responsible owners.

Sec. 83. Any person who shall endeavor by force or words to prevent or obstruct the execution of any provision of this Chapter, shall forfeit for each offence not less than one nor more than ten dollars. And each of the penalties named in this or any other Chapter of these Ordinances, shall be independent of any liability incurred for damages by a violation of their provisions by action or prosecution under the laws of the State.

Sec. 84. It shall be the duty of the Surveyor of the streets or any other Police officer, to take up and empound, when practicable, any animal named in this Chapter, going at large or ranging the streets or unenclosed parts of the town, or give information of such violations to the Mayor or an Alderman.

Sec. 85. Either of said animals when taken up or empounded may be redeemed by the owner or his agent on payment of the prescribed fine, a fee of fifty cents to the officer, and a fair compensation for feeding the animal while in his custody. Provided, that if not properly redeemed after *ten days* public notice, the arresting officer shall sell the same to the highest bidder *for cash*, and pay over the proceeds of sale, after deducting his fees and expenses of arrest, to the Mayor or Treasurer.

Sec. 86. In addition to the offences named and prohibited above, no person residing in this corporation, shall suffer to remain on his premises, any unhealthy or offensive matters, and for failing to abate the same, after receiving legal notice, he shall be fined two dollars for every twenty-four hours or fraction thereof of its continuance and the cost of recovery.

Sec. 87. If any person shall tie or hitch a horse or any other animal, to any tree or rack in the town, in such a negligent manner so as he may be able to turn around and stand upon the side-walks, shall be fined from one to five dollars.

Sec. 88. Be it ordained by the Council of the Town of Smithfield, that if any person or persons shall, by words, actions or otherwise, interfere with any officer of this corporation in the discharge of his duty, such person or persons shall be deemed guilty of misdemeanor, and be punished by a fine of not less than five nor more than twenty dollars.

CHAPTER XVII.—MISCELLANEOUS.

Sec. 89. Be it ordained by the Council of the Town of Smithfield, that any person who will pave in front of his property to a width of five feet, with good hard brick, well curbed, to be received by the Street Committee, that the corporation will repay the party so paving *forty cents* for every square yard so paved, to be paid by the corporation in taxes as they shall become due, by the party so paving.

Sec. 90. Upon legal information of the violation of an Ordinance, it shall be the duty of the Mayor or an Alderman, to summons the offender to appear and answer for same. All fines, forfeitures and penalties imposed by Ordinances for a less sum than \$100, shall be recoverable by warrant, and if the sum be greater than \$100, by action or motion in a court of record.

CHAPTER XVIII.—LICENSE.

Sec. 91. The specific license taxes upon subjects and persons of whom the State requires a license pursuing the business, trade, occupation or callings herein specified, within the town, shall be as follows :

Agents for selling Books.....	\$3 00
“ “ “ Land	10 00
“ “ “ Fertilizers	5 00
“ “ “ Labor.....	5 00
“ “ sale by retail manufactured articles or machines of other States otherwise than Sewing Machines.....	5 00
Artist, Daguerrean, Photographic or otherwise, and their Agents.....	3 00
Attorneys at Law, practicing over five years.....	5 00
“ “ “ “ under five years.....	3 00
Boarding Houses.....	3 00
Billiard, Pool and Bagatelle Rooms, for each Table.....	10 00
Bowling Saloons and Alleys	10 00
Brokers, Pawn.....	100 00
Circuses, Menageries, for every twenty-four hours or part thereof.....	25 00
Criers, Common.....	3 00
Companies or Societies—Insurance, Telegraph or Telephone or like, each.....	5 00
Carts, Hacks, Drays, Wagons, kept for hire, or as carriers for each horse.....	2 00
Dentist.....	5 00
Eating Houses, each.....	5 00
Grocers, Green, for one year or any part thereof.....	5 00
Hobby Horse Machine, Merry go-round and other like machines or things	5 00
Junk Dealers.....	10 00
Livery Stables.....	10 00
Liquor Dealers, Wholesale.....	50 00
“ “ “ “ and Retail.....	50 00
“ “ “ “ Retail, Bar-room and Ordinary keepers, each separately	15 00
Liquor Dealers, Retail and Bar-room together, or Retail and Ordinary keepers together.....	20 00
Merchants, Commission.....	10 00
Merchants or Mercantile firms, retail, on purchases over \$1000 and not exceeding \$2000.....	4 00
Merchants on each \$100 of purchases exceeding \$2000.....	1 00
Which tax on Merchants or mercantile firms as aforesaid, shall be in lieu of all taxes upon capital actually employed by said firms in their mercantile business.	
Physicians, resident.....	5 00
Physicians, itinerant.....	10 00
Peddlers on foot (license not transferable).....	20 00
“ otherwise “ “ “ “	50 00
Private Entertainment Houses, keepers of.....	3 00
Stallions and Jackasses, keepers of, for each animal.....	3 00

Sellers on Commission, or for profit of horses, mules, &c.....	10 00
Butchers, or sellers of Meat in the street or any part of the town by retail.....	5 00
Tobacco, Cigars and Snuff, retailers of.....	1 00
Theatricals, Plays, and all similar performances, except Exhibitions for benevolent or charitable purposes, or School Entertainments, for each performance.....	2 00
Venders of Patent Medicines, Salves, &c., per day.....	1 00

Sec. 92. All license tax shall be for the period of one year, except as otherwise specially provided, and shall be payable on the first day of July annually, and shall be for the period of one year, or such part of the year as may remain from the time the license is issued, until the 1st day of July following. But if any license be granted for less than a year, there shall be an abatement from the tax, so that the tax paid thereon shall bear such proportion to the tax imposed for the whole year as the space of time between the date of license, and the first day of the following July bears to the whole year.

Sec. 93. All licenses shall be issued and transfers thereof made by the Commissioner of the Revenue, who, for each license issued and transfer thereof made, shall be entitled to a fee of fifty cents, to be paid by the person to whom the license is issued to or transfer made to.

A license may be assigned to any person to whom it might originally been issued to, and when assigned, shall be a personal privilege to the assignee, and shall not be exercised by any other person than the assignee; but before the assignment shall be valid, a certificate transferring the license shall be obtained of the Commissioner of the Revenue by the assignee.

Sec. 94. Applications for licenses shall be made, licenses issued, and taxes paid before any person or firm or corporation shall be permitted to transact any business, profession or calling, for which a license is required.

Sec. 95. When any person, firm or company is engaged in more than one business on which a license tax is required, such person, firm or company shall pay the tax laid upon each branch of his or its business.

Sec. 96. Persons, subjects, professional, business and callings, except green grocers, of which license may be required, shall be such as are subject to the State license laws, and come within the definition of those laws.

Sec. 97. Upon the application of any person desiring to sell or distribute religious books, newspapers, pamphlets or periodicals, the Mayor, if satisfied that the person applying is of good character and a proper person to be trusted with the selling or distribution of such books, papers, &c., may direct the Commissioner of the Revenue to grant him a license for a nominal sum only.

Sec. 98. Any person commencing or doing business for which a license is required, without first obtaining same, shall be fined not less than two nor more than twenty dollars for each day that he shall do business without such license.

Sec. 99. All licenses shall be as follows :

TOWN LICENSE, No.

The Treasurer of the Town of Smithfield, Va., will receive of
 Dollars, assessed by me as Commissioner of the
 Revenue for said town, which sum is the tax imposed by me for the
 privilege of in said town, from the
 day of 189 , until the 1st day of July, 189 .

Given under my hand this day of 189 .

Commissioner's fee, 50 cts. Commissioner of the Revenue.

Received of Dollars,
 the tax assessed above by the Commissioner of the Revenue for the
 town of Smithfield, Va.

Given under my hand this day of 189 .

.....
 Treasurer of the town of Smithfield.

Sec. 100. In all respects except as otherwise provided by Ordinance, the Commissioner of the Revenue in issuing licenses, and granting transfers thereof, shall be governed by the laws of the State concerning the public revenues of the State and matters pertaining thereto, in so far as said laws may be applicable, and shall make and deliver to the Treasurer a list of all licenses issued and transfers made as soon after the issuing and transfer of same as possible; and shall annually make a report to the Council at its first meeting in August or September, of all licenses issued and transfers made, to whom and when issued or made and the amount thereof.

Sec. 101. A certified copy of an Ordinance shall be evidence in any legal proceedings when applicable.

Sec. 102. No Ordinance can be suspended, repealed or amended, except by an Ordinance.

Sec. 103. These Ordinances shall be in force from date of ratification of same by the Council.

Approved and adopted October 22d, 1889.

Wren

✓ } In the ancient
Town of Smithfield &c

Whit-B

Fled with the Bill

Wren
V 3 In Chancery
Town of Smithfield &c

Exhibit "C." Filed
with the Bill.

WM. L. FOLK,
ATTORNEY AT LAW.

COURTS:
ISLE OF WIGHT, SURRY
AND WARWICK.

VS.

SMITHFIELD, VA.,

Nov 24th 1890

V. Loren Eyr

Dear Sir

You are hereby
notified that the fence you are
now erecting is in violation
of Chapter ten Sec 36 revised
ordinances of The Corp^{rs} of
Smithfield and you are
hereby required to remove
same

Respy

W L Folk Mayor

Francis M. Boykin et ux

date { Dec

Robert Butler

Acopy

We the undersigned in pursuance to the within
commission to us directed, have waited on the
within Ann Johnson wife of said James and she
did before us relinquish her right and interest
in the lot of land conveyed by said deed, freely and
voluntarily of her own free will and accord, and is
willing the same should be recorded in the county
court aforesaid

Given under our hands and seals this fifth
day of July 1812.

And Hodley J. P. (seal)
Joseph W. Ballan (seal)

At a county court for Isle of Wight county
the 11th day of July 1812. The foregoing instrument
was acknowledged by Fanny M. Baykin and
James Johnson two of the parties thereto, and together
with the annexed commissions for taking the
acknowledgements & prior examination of Fanny
Baykin, and Ann Johnson the other parties
thereto, and the certificate of the execution of the
said commissions thereon endorsed, were ordered
to be recorded.

Teste

Rich^d. Young C. C.

A copy

Teste

Rich^d. F. Young Deputy
for Rich^d. P. Young C. C.

and whereas the said Ann wife of the said James Johnson, cannot conveniently travel to our County Court, or to the general court of the state of Virginia, to relinquish her right and interest in the said land, in said indenture contained, and which is hereto annexed, Therefore we do give unto you or any two ^{or more} of you, full power to receive her relinquishment of right and interest in the said land, if she shall be willing to make the same before you, and we do therefore command you or any two or more of you that you do personally go to the said Ann wife of the said James Johnson and receive her relinquishment of right and interest in the said land, and examine her privily and apart from her said husband, whether she doeth the same freely and voluntarily, without the persuasion or threats of her said husband, and whether she be willing the same shall be recorded in the County Court of Sales of Right, or in the general court of the state, and when you have gone to the said Ann wife of the said James Johnson, and have received her relinquishment of right and interest in the said land, and have examined her as aforesaid, that you certify the same under your hands and seals, and send them with this signature together with this writ.

Witness Nathaniel Young, clerk of our said County Court at the Court house the 6th day of July 1812, in the 37th year of the Commonwealth

Nathl. Young

County Court, at the Court house the 6th day
of July 1812, in the 34th year of the Commonwealth.
Nathl. Young

Pursuant to the within commissions from
the worshipful Court of Isle of Wight County,
to us directed, we have waited on Fanny
Boydin wife of the said Francis M. Boydin
and have examined her privily and apart
from her said husband, touching the premises
conveyed by the annexed indenture; Whereupon
she doth freely and voluntarily relinquish her
right of dower in the said indenture, and
is willing the same should be recorded in the
County Court of said County.

Given under our hands & seals this 6th
day of July 1812.

And. Woodley J.P. seal
Joseph W. Ballard seal

Isle of Wight County, to wit:

The Commonwealth of Virginia to
Andrew Woodley, Joseph W. Ballard and Edmond
Cooby gentlemen Justices Meeting:

Whereas Francis M. Boydin and
Fanny his wife and James Johnson and
Ann his wife, by their certain indenture
of bargain and sale, bearing date the 6th
day of July 1812, have sold and conveyed
unto Robert Butler of the said County, the
fee simple estate, of in and to two certain lots
or pieces of land lying in and being in the
County aforesaid, and town of Smithfield, and
bounded as is expressed in the said indenture

his wife, by their certain Indenture of bargain
and sale, bearing date the 6th day of July 1812
have sold and conveyed unto Robert Butler
of the said county, the fee simple estate of, in
and to two certain lots or parcels of land, lying
and being in the county aforesaid and town
of Springfield, and bounded as is expressed in
the said indenture, and whereas the said Fanny
wife of said Francis M. Boykin cannot con-
veniently travel to our county court, or to the
general court of the state of Virginia to relinquish
her right of dower in the said land, in said
indenture contained, and which is hereto annexed
Therefore we do give unto you or any two or more of
you, full power to receive her relinquishment of
dower in the said land, if she shall be willing
to make the same before you, and we therefore
command you or any two ^{or more} of you, that you personally
go to the said Fanny wife of said Francis M. Boykin
and receive her relinquishment of dower in the
said land, and examine her privily and apart from
her said husband, whether she doth the same fully
and voluntarily, without the persuasion or threat
of her said husband, and whether she be willing
the same shall be recorded in the county court
of Isle of Wight or in the general court of the
state, and when you have gone to the said Fanny
wife of the said Francis M. Boykin and have
received her relinquishment of dower in the said
land and have examined her as aforesaid,
that you certify the same under your hands
and seals, and send them with the said indenture
together with this writ

Witness Nathaniel Young clerk of our said

executors and administrators, the said two
lots designated in the plat of said town by No.
eight and thirty three, with all and singular the
appurtenances before mentioned into the said
Robert Butler his heirs and assigns free from
the claim or claims of them the said Francis
M. Boykin and Fanny his wife and James
Johnson and Ann his wife or either of them
them or either of their heirs, and of all and every
person or persons whatsoever, claiming by
through or under them or either of them, or either
of them, and also free from the claim or claims
of all and every other person or persons whatsoever
except that of Elizabeth Johnson, Sarah Smith,
James Smith, Robert West and Fanny his wife,
and Lillias Smith them or either of their heirs,
executors or assigns, shall, will and do warrant
and defend forever by the presents.

In witness whereof the said Francis M. Boykin
and Fanny his wife and James Johnson and
Ann his wife have hereunto set their hands and
affixed their seals the day and year above written.

signed, sealed, acknowledged

& delivered in the presence of

Rich^d W. Baker

Is^r B. Baker

Thos. Hancock

Francis M. Boykin (seal)

Fanny Boykin (seal)

J. Johnson (seal)

Ann Johnson (seal)

Isle of Wight County, to wit;
The Commonwealth of Virginia to Andrew Woodley
Joseph W. Ballard and Edmond Cosby, gentlemen
Justices Greeting. Whereas Francis M. Boykin and
Fanny his wife and James Johnson and Ann

This Indenture, made this 6th day of July, in the year of our Lord one thousand eight hundred and twelve, between Francis M. Boykin and Fanny his wife and James Johnson & Ann his wife, all of the county of Isle of Wight and State of Virginia of the one part, and Ro. Butler of the town of Smithfield and county and state aforesaid, of the other part, Witnesseth, that the said Francis M. Boykin and Fanny his wife, and James Johnson and Ann his wife, for and in consideration of the sum of four hundred and fifty dollars to them in hand paid by the said Robert Butler, at or before the sealing & delivery of these presents, the receipt whereof is hereby acknowledged, have granted bargained and sold and by the presents do grant bargain sell alien & convey unto the said Robert Butler his heirs, executors administrators & assigns two certain lots or pieces of land in the town of Smithfield, designated in the plat of said town by lot No. eight, being the lot on which the old Court House, clerk's office and Jail now stand, and also the lot designated in the plat aforesaid by lot No. thirty three, being the lot on a main street opposite to the lot No. eight before mentioned. To have and to hold the said two lots, together with all houses ways and appurtenances thereto belonging, unto him the said Robert Butler his heirs executors and assigns forever. And the said Francis M. Boykin and Fanny his wife, and James Johnson and Ann his wife, for themselves, their heirs

²
Robert Butta et ux
To 3 Dec
Robert West

Acopy

of our said County Court at the Court house the
1st day of March 1813 in the 37th year of the
Commonwealth -

Nathl. Young -

In conformity to the within commission to us
directed from the Honorable Court of Isle of
Wight we have personally waited on Sarah
Butler, wife of Robert Butler, and examined her
privily and apart from her said husband,
touching the premises conveyed by the annexed
indenture, who did fully and voluntarily
without the threats and persuasions of her
said husband, relinquish her right of dower
in the same, and that she was entering the
same should be recorded in the County
Court of Isle of Wight. Given under our
hands and seals &c. this 20th May 1813 -

B. Sherr *Sealed*
J. B. Southall

At a Court held for Isle of Wight County the 6th
day of September 1813, the foregoing indenture
was proved by the oaths of Arthur Smith,
James B. Southall, and Benjamin Sherr,
the witnesses thereto, and together with
the annexed commission and certificate
thereon endorsed were ordered to be
recorded -

Teste

Nathl. Young clk -

A copy Teste

N. F. Young Deputy

for M. P. Young clk.

Robert Frost of the said County, the full simple
estate of, in and to one certain lot or parcel
of land lying in and being in the town of
Smithfield and County aforesaid and
bounded as is expressed in the said Indenture,
and whereas the said Sarah wife of the said
Robert Butler, cannot conveniently travel
to our County Court, or to the general court
of the State of Virginia, to relinquish her right
of dower in the said land, in said indenture
contained, and which is her right as a married
woman, therefore we do give unto you, or any two or
more of you, full power to receive her relinquish-
ment of dower in the said land, if she
shall be willing to make the same, before you,
and we do therefore command you, or any
two or more of you, that you do personally
go to the said Sarah wife of the said Robert
Butler, and receive her relinquishment
of right of dower in the said land, and
examine her privately and apart from her
said husband, whether she doth the same
freely and voluntarily, without the persuasion
of threats of her said husband, and whether
she be willing the same shall be recorded
in the County Court of Isle of Wight, or in the
general Court of the State; and when you
have gone to the said Sarah wife to the said
Robert Butler, and have received her re-
linquishment of dower in the said land, and
have examined her as aforesaid, that you
certify the same under your hands and seals,
and send there with the said indenture together
with this writ - Witness

Nathaniel Young clerk -

in the Court of the County aforesaid, will
more fully and at large appear - To have
and to hold the said lot of land with its
appurtenances unto the said Robert West,
his heirs and assigns forever, and the
reversion and reversions, remainder
and remainders, rents, fines and profits
thereof and every part thereof, unto the
said Robert West and his heirs forever -
and the said Robert Butler and Sarah
his wife, for themselves, their heirs, executors
and administrators, do hereby covenant
with the said Robert West to warrant and
defend the said lot of land, against
themselves their heirs, executors and
administrators unto the said Robert
West and his heirs forever, In Evidence
whereof the said Robert Butler and Sarah
his wife have hereunto set their hands
and affixed their seals the day and
year first herein written -

Signed sealed and
acknowledged in the
presence of

Arthur Smith
J. B. Southall
B. Shew -

Ro. Butler Seal
S. Butler Seal

Isle of Wight County, Virg.

The Commonwealth of Virginia to Benjamin
Shew and James B. Southall gentlemen
Justices, greeting, Whereas Robert Butler and
Sarah his wife, by their certain indenture
of bargain and sale, the 24th day of May
1813, have sold and conveyed unto

✓ This Indenture made this twenty fourth day of
May in the Year of Christ one thousand
eight hundred and fifteen between Robert
Butler & Sarah his wife, of the town of Smith-
field in the County of Jackson of the one
part, and Robert West of the town and County
aforesaid, of the other part, Witnesseth that the
said Robert Butler and Sarah his wife for
and in consideration of the sum of two
hundred dollars to them in hand paid, at
or before the sealing and delivery of these
presents, the receipt whereof is hereby acknowledged,
they the said Robert Butler and
Sarah his wife, have granted, bargained
sold and confirmed, and by these
presents do grant, bargain, sell, alien,
release, enfeoff and confirm unto the
✓ said Robert West his heirs and assigns
forever, one certain lot of land lying in
✓ the said town of Smithfield designated
and known by the appellation of lot
number thirty three, as will more fully
appear by a reference to the surveyor's plat
of the said town, which said lot was
formerly held as public property by the
✓ county, the right of which was granted to
Francis Boykin by an act of the General
Assembly of Virginia, and which was
sold by James Johnson and Nancy
his wife, Francis M. Boykin and Fanny
his wife, the heirs of the said Francis Boykin
and the heirs of Thomas Smith decd, to the
said Robert Butler, reference being had to
the deed of conveyance which is duly recorded

Isle of Wight County 15th day of June 1814, pursuant to
the within commission they have met at the house
of Robert West Smithfield and taken the re-
cognizance of John. Frances West agreeable
to the tenor of the law. In testimony whereof we
have hereunto set our hands & seals this day and
date above written.

Isaac Jordan *(seal)*
Thomas Pearce *(seal)*

In Isle of Wight County, July 4th 1814,

This indenture was acknowledged in the Clerk
office by Robert West, one of the parties thereto
and together with the commission & certificate
of the acknowledgment of Frances West, was
admitted to record.

Teste, Nathl. Young Clk,
A copy, teste.

N. P. Young Clk

W. 3rd R. of 1814
to
Pearce & Thos.

copy.

the said Frances cannot conveniently
travel to the County Court to relinquish
her right and interest in the said lot
which is described in said conveyance
which is hereto annexed, we do there-
fore give unto you or any two or more
of you, full power to receive the said
Frances' relinquishment of right of
interest; and we do therefore command
you or any two or more of you that
you do go personally to the said Frances
wife of the said Robert West, and receive
her ~~right~~ relinquishment of right
and interest in the said lot of land
and in the said indentured appraised
if she shall be willing to make the
same, before you or any two or more
of you, and that you examine her
privily and apart from her said
husband; whether she doth the same
freely and voluntarily without the
persuasion or threats of her said
husband; and when you have gone
to the said Frances, wife of the said Robert
West and have received her relinquishment
of right and interest in the said lot, and
have examined her as aforesaid, that
you certify the same under your hands
and seals, sending them then, the said
indentures together with writ.

Witness Nathaniel Young Clerk of our said
Court, at the Court-house, the 14th day of June 1814.
in the 38th year of the Commonwealth.
Nathl Young clk

Thomas Purdie his heirs and assigns forever,
and the reversion and reversions, remainder and
remainders, rents, issues, and profits thereof and
every part thereof, unto the said Thomas Purdie and
his heirs forever; and the said Robert West & Frances
his wife for themselves, their heirs, executors and
administrators do hereby covenant with the said
Thomas Purdie to warrant and defend the said
lot of land against themselves, their heirs
executors and administrators, and against the
title claim or claims of any other person or persons
whatsoever unto the said Thomas Purdie and
his heirs forever. In evidence whereof the said
Robert West and Frances his wife have hereunto
set their hands and affixed their seals the
day and year first herein written.

Robert West *(seal)*

Frances West *(seal)*

signed, sealed and
acknowledged in
the presence of

Meril Jordan

William D. Newley

Wilson Moody

Isle of Wight County, to wit:

The Commonwealth of Virginia, to Thomas
Pierce and Isham Jordan, gentlemen
justices of the peace of Isle of Wight
County, Greeting: Whereas Robert West
and Frances his wife of the town of
Smithfield, have sold and conveyed the
fee simple estate of and in one certain
lot of land, lying in Smithfield to Thomas
Purdie of the said town. And whereas

This Indenture made this day of
in the year of Christ one thousand eight
hundred and fourteen, between Robert Vest and
Francis his wife of the town of Smithfield
in the county of Isle of Wight of the one part,
and Thomas Purdie of the town and county
aforesaid of the other part. Witnesseth that the
said Robert Vest and Francis his wife for and
in consideration of the sum of Five Hundred
to them in hand paid at or before the sealing and
delivering of these presents, the receipt whereof is hereby
acknowledged, they the said Robert Vest and Francis
his wife, have granted, bargained sold and
confermed, and by these presents, do grant, bargain
sell, alien, release enfeoff and confirm unto
the said Thomas Purdie his heirs assigns forever
one certain lot of land, lying in the said town
of Smithfield, designated and known by the
appellation of lot number Thirty Three, as will
more fully appear by reference to the survey plot
of the said town which said lot was formerly
held as public property by the county, the right of
which was granted to Francis Boykin by an act
of the General Assembly of Virginia and which
was sold by James Johnston and Nancy his wife
Francis^m Boykin and Fanny his wife the heirs of
the said Francis Boykin and the heirs of Thomas
Smith decd: to Robert Butler, which also was sold
by Robert Butler and Sarah his wife to the said
Robert Vest, reference being had to the deeds of
conveyances which is duly recorded in the court
of the county aforesaid will more fully and
at large appear: To have and to hold the said
lot of land with its appurtenances unto the

4
Thomas Purdie et ux
vs } Deed
Wilson Davis

Acopy

and when you have gone to the said Sally
wife of the said Thomas Purdie and have
received her relinquishment of dower and
have examined as aforesaid, that you certify
the same under your hands and seals, sending
them then this said indenture together with this
writ. Witness Nathaniel Young Clerk of our said
court at the court house the 11th day of July
1816, in the 41st year of the commonwealth.
Nathaniel Young c.c.

Sale of Wight County to wit!

Agreeable to the within commission
we the undersigned Justices of the Peace for the
said county have personally waited on Sally
Purdie wife to the within mentioned Thomas
Purdie, and she did freely and voluntarily, without
the persuasion or threats of said husband relinquish
her right of dower conveyed by the within mentioned
indenture, and she is willing that the same shall
be recorded in the county court of Sale of Wight
County under our hands and seals this 27th day
of July 1816.

John Jordan (seal)
John H. Purdie (seal)

Sale of Wight County July 1st 1816, This indenture and
the receipt thereon endorsed were acknowledged in the
clerk's office by Thomas Purdie one of the parties thereto
& together with the commission & certificate of the
acknowledgment of Sally Purdie the other party
thereto were admitted to record.

Teste Nathaniel Young c.c.

A copy Teste N. Y. Young Deputy
for N. P. Young c.c.

Received 5th January 1816 of Mr. Wilson Davis
the sum of Two Thousand five hundred dollars
in full for the within mentioned lots N^o 3 & 34
Wetzel
Joseph Atkinson

Judge of Wight County Court;

The Commonwealth of Virginia to
Isaac Jordan and John R. Purdie gentlemen
Justices of the said county greeting; whereas
Thomas Purdie and Sally his wife by their certain
indenture of bargain and sale bearing date
the 4th day of January 1816 have sold and
conveyed to Wilson Davis of the Town of Smithfield
the full simple estate of and to two certain
tracts or lots of land in the town of Smithfield
and bounded as is expressed in the said
indenture and which is hereunto annexed; and
whereas the said Sally Purdie cannot conveniently
travel to the court of this county to relinquish
her right of dower in the said lots; therefore we
do give unto you or any two or more of you full
power to receive her relinquishment of the same
if she shall be willing to make the same before
you, and we do further command you or
any two or more of you that you do personally
go to the said Sally wife of said Thomas Purdie
and receive her relinquishment of dower in
the lots in the said indenture contained, and
examine her privily and apart from her said
husband, whether she doth the same freely and
voluntarily without the persuasion or threats of
her husband, and whether she is willing that the
same shall be recorded in the county court of said

This Indenture made this 4th day of January
in the year of our Lord Christ one thousand eight
hundred and sixteen, between Thomas Purdie and
Sally his wife, of the town of Smithfield and county
of Isle of Wight of the one part, and Wilson Davis
of the town and county aforesaid of the other
part, Witnesseth, that the said Thomas Purdie and
Sally his wife, for and in consideration of the
sum of Two Thousand five hundred dollars
current money of Virginia in hand paid
have bargained and sold, and by these presents
do bargain and sell, alien and convey unto the
said Wilson Davis and his heirs forever two lots
of land and their appurtenances in the town of
Smithfield, which are designated in the plan of
the said town by the appellation of lots number
33 and 34 to have and to hold the said lots of land
and their appurtenances unto the said Wilson
Davis his heirs and assigns forever; and the
said Thomas Purdie and Sally his wife do
hereby covenant with the said Wilson Davis
to warrant and defend the title of the said
lots and their appurtenances against the claim
or claims of any person or persons whatsoever
unto the said Wilson Davis his heirs & assigns
forever. evidence whereof the said Thomas Purdie
and Sally his wife have hereunto set their hands
and affixed their seals the day and date
above written.

signed, sealed & acknowledged Thomas Purdie (seal)
in the presence of Sally Purdie (seal)
B. Drew
John W. Purdie
John R. Todd

5
Wilson Davis
Will

Copy

Nov 1832

Wilson Davis (seal)

In the county court of Isle of Wight
county the 2^d day of March 1835. The
paper purporting to be the last will and
testament of Wilson Davis decd. bearing
date May 10th 1832, was presented for probate
by Meritt Womble the executor therein named
and then being no subscribing witnesses
thereunto. Arthur Smith, Robert Butler and
Willie W. Woodley were sworn and severally
deposed that they are well acquainted with
the hand writing of the testator Wilson Davis,
that they have frequently seen him write &
that they verily believe the said writing dated
the 10th of May 1832 & the name thereto subscribed
to be ~~solely~~ written by the testator's own hand,
whereupon the writing first aforesaid dated May
10th 1832 is adjudged by the court to be the last
will and testament of the said Wilson Davis decd;
and it by the court ordered to be recorded as the
last will and testament of Wilson Davis decd.
Nathl Young clk

Accep Teste N. F. Young Deputy
for N. F. Young clk.

- the deficiency must be paid out of
or by my above named children in
equal part, to him & his heirs forever.
- 4 If either of my above named sons
should die before they arrived at the age
of twenty one years, then the survivors
to receive equally the decedent's part of
my estate given him.
- 5 I have done all that I can do for my
two daughters and their heirs, namely
Patsy, Mrs. Jordan and Mary H. Anderson,
but I hope my children above named will
be as benevolent with them as their sit-
uation will admit.
- I hope my friend Doct. Richard A.
Arguehart will take my son John William
Davis under his guardianship, and
have him brought up to some mechanical
business adapted to his capacity.
- Lastly I do nominate and appoint
my friend, and ^{my} son in-law Meritt
Hornblum my executors to this my
last will and testament, which I have
affixed my seal and acknowledged to be
my last will and testament, in presence
of us called to witness the same this
16th day of May in the year of our

- In the name of God Amen. I Wilson Davis of Isle of Wight county near Smithfield Virginia, in usual health, sound mind, and memory, do make and ordain this my last will and testament, in manner and form following to wit:
- 1st I give and bequeath to my three children, namely, my daughter Susan Anne Womble wife of Merrit Womble and my two sons George Wilson Davis and James Latimer Davis, my house and lot in the above named town, with all the appurtenances and improvements thereon, designated by the said plat No 36, to them and their heirs forever.
 - 2 I give and bequeath to my two sons above named George and James, the balance, of my lots and parts of lots, in the said town of Smithfield, with all the improvements and conveniences of whatever kind they may be, equally to them and their heirs forever.
 - 3 I give and bequeath to my son John William Davis, all the residue of my estate both real and personal, except my household and kitchen furniture, stocks of all kinds, which must be sold and the proceeds applied to the payment of my debts, and

⁶
Davis G. W.
to 3 Deed
Double M.

a copy.

George W. Davis, a party to a cer-
tain deed bearing date the 27th day
of February 1836, and hereto sumpt
personally appeared before us
in our County aforesaid, and ac-
knowledge the same to be his act
and deed and desired us to certify
the said acknowledgment to the
clerk of the County Court of Isle
of Wight in order that the said
deed may be recorded.

Given under our hands and seals
the 27th day of Feby. 1836.

Jas. C. Jordan *J. C.*
Watson P. Jordan *J. P.*

In Isle of Wight County Court Clerk's
office, June 6th 1836.

The foregoing deed being certified
by two justices accordingly to law,
was admitted to record.

Jests,

Nathl. Young, *clerk*.

a copy,

Jests,

N. P. Young *clerk*.

To have and to hold the real estate
aforesaid with the appurtenances thereto
belonging, to have the said M^rist W^mble
his heirs and assigns forever. And the
said George W. Davis for himself
his heirs and administration doth hereby
covenant and agree to send with the
said M^rist W^mble his heirs and
assigns, that he the said George W. Davis
and his heirs, the said tract or parcel
of land or lots and parts of lots so as
aforesaid conveyed, with all appur-
tenances thereto belonging, unto
the said M^rist W^mble his heirs and
assigns against him the said George
W. Davis and his heirs, and against
all persons whatsoever. shall and
will by these presents forever war-
rant and defend. In witness whereof
the said George W. Davis hath hereunto
set his hand and affixed his seal the
day and year above written.

Geo. Wilson Davis *Seal*
County of Wight, S. C.
We James C. Jordan & Watson C. Jordan
Justices of the Peace in and for
the County aforesaid in the State
of Virginia, do hereby certify that

of the said George W. Davis in lots
or parts of lots in the said town,
bounded by the main street and
freemason street; one of said
lots is at the corner of main and
freemason streets, the first of
which said lots, was devised to
Susan Ann Dombb wife of Merit
Dombb, and the said George W. Davis
and James Sateinor Davis by the will
of their father Wilson Davis, and
the other lots or parts of lots hereby
intended to be conveyed, so far as
relates to the interest of said George
W. Davis, were by the said last
mentioned will and testament,
given to the testator sons George
and James Davis; with all the
improvements and appurtenances
thereto belonging, all which will
more fully appear by reference
to the will of said Wilson Davis
recorded in the County Court of
Isle of Wight, which said designation
is designed to cover and convey the
whole interest of the said George
W. Davis in the real estate devised
to him under the will aforesaid.

This Indenture made and entered into
this 2nd day of February 1836,
between George W. Davis of the one
part, and Merit W. Double of the other
part, all of the County of Isle of Wight
and State of Virginia: Witnesseth,
that the said George W. Davis for and
in consideration of the sum of
Seven Hundred and Twenty (\$720)
dollars, lawful money of the United
States, to him by the said Merit
W. Double in hand paid, the receipt
whereof the said George W. Davis
doth hereby acknowledge, hath
granted, bargained and sold, and
by these presents, doth grant bargain
sell and convey unto the said Merit
W. Double, his heirs and assigns, the
following real estate, that is to say,
One undivided interest and third
part of a lot in in the town of
Smithfield, County of Isle of Wight
and State of Virginia, usually
called "The Tavern", and now occu-
pied as such by James W. Wheldon,
and which lot is designated in
the plot of the said town as lot
no. -- Also the undivided moiety

7
Davis J. H.
To Z. Reed
Woruble on
a copy.

to the foregoing deed of conveyance
to Mint Womble, bearing date the
10th day of March 1834, personally
appeared before us in our said court
and acknowledged the same to
be his act and deed, and desired
us to certify the said acknowledge-
ment to the Clerk of the County
court of said County in order that
the said deed may be recorded.
Given under our hands and
seals this 10th day of March 1834.

J. N. Purdie Jp. *Seal*
W. P. Jordau Jp. *Seal*

Isle of Wight County Clerk's Office,
April 3rd. 1834. The foregoing
deed from Davis to Womble
was certified and admitted
to records.

Teste, Nathl. Young clk.

a copy.

Teste, N. P. Young clk.
Dec. 1890.

brother George Davis, by their
father Wilson Davis decd: To
have and to hold the said James
S. Davis' right, title, interest, claim
and demand in and to the said
lot with its appurtenances, thereto
belonging, unto the said Merit
Worrell, his heirs and assigns forever.
And the said James S. Davis for him-
self and his heirs, covenants to
and with the said Merit Worrell,
to warrant and forever defend
the right and title hereby sold &
conveyed in and to the afore men-
tioned lot and premises, against
the claim of him the said James
S. Davis and his heirs, and against
all and every person whatsoever,
unto the said Merit Worrell, his
heirs and assigns.

James S. Davis 

Shel of Wright County, to wit:

We John W. Perdue and Watson
P. Jordan, Justices of the Peace
in and for said County, do hereby
certify that James S. Davis, party

This Indenture, made and entered
into this 14th. day of March in the
year 1837, between James S. Davis
of the one part, and Elliot Womble
of the second part, both of the County
of Isle of Wight and State of Virginia:
Witnesseth, that the said James S.
Davis for and in consideration
of the sum of two hundred and
twenty five dollars lawfully money
of the Commonwealth of Virginia,
to him in hand paid by the said Elliot
Womble at or before the executing
and delivery of these presents, the
receipt whereof is hereby acknowl-
edged, he the said James S. Davis
hath granted, bargained and sold,
and by these presents doth grant,
bargain sell and convey unto the
said Elliot Womble, all his, the said
James S. Davis' right title, interest,
claim and demand in and to a
certain lot in the town of Smithfield,
and County aforesaid, commonly
called "The Corner lot," and designated
in the plot of the said town by lot
No. 38; which said lot was bequeathed
to the said James S. Davis and his

Meritt Hornblow's
Will

Copy

In the county court of Isle of Wight County
July 3^d 1854, the last will and testament and
codicil of Merit Hornble decd. was proved
by the oaths of John Scott and Jas. W. Atkinson
two witnesses, to have been executed 16th June
1854, and ordered to be recorded.

Teste W. P. Young clk

A copy Teste

N. F. Young Deputy
for W. P. Young clk

them the sum of two hundred dollars to defray the expenses of their removal to Liberia or to some free state as they may prefer.

I give the balance of my estate to my heirs equally to be divided between them.

I appoint my friends George R. Atkinson and Edwin Morrison executors of this my last will and testament, and request my friends George R. Atkinson, Edwin Morrison, Henry H. Womble and S. J. Wilson to have my body decently interred at some suitable spot and I direct my executors to put around my grave, near the old Brick Church a substantial enclosure large enough for two or three persons to be interred therein.

Signed in

Merret T. Womble

presence of

Joseph R. Atkinson

John Scott

Henry H. Womble

As codicil to this my last will and testament I direct my executors not to collect the claim due to me by the Methodist Episcopal Church in the town of Smithfield, and I release the said claim to the trustees of said church.

signed in presence of

Merret T. Womble

Joseph R. Atkinson

John Scott

Henry H. Womble

I Merret Womble being weak in body, but disposing mind do make this my last will and testament, revoking all others ever made by me.

I give to my wife Susan the sum of eight thousand dollars worth of Virginia state stock for her natural life.

I give to her also the house and lot on which I now live to her and her heirs forever. I also give her the household and kitchen furniture therein, and one cow and my gold watch to her and her heirs forever. I also give to my wife Susan my man Lamb with the desire she will take good care of him. I also give to my said wife my woman Lucky and her three children to have and to hold until the youngest of said children shall arrive at the age of sixteen years old, when the said woman and children and her future increase are to be free and to be moved to Liberia in Africa at the expense of my wife, the amount of said expenses of removal is not to exceed four hundred dollars.

I give to Mary Ann Jordan the house and lot now occupied by William F. Shelly, the said lot to be surveyed and to contain one acre, to her and her heirs forever.

I give to my nephews and nieces of the whole blood the sum of one thousand dollars each in fee simple, and to my nephews and nieces of the half blood, the sum of five hundred dollars each in fee.

I give to my slaves Jim and Louisa their freedom at the end of ten years, and give to

Exhibit 'P.O.S

1858

July 16

pp. 83 -

called sometimes "H. Southalls Shop or Office" shall be the Town Hall or Mayor's office until further ordered.

Chap. 13

A copy or record of any ordinance, or of any proceedings of the Council ~~attested~~ attested by the Mayor or by the Clerk of the Council shall be evidence in any case where the ordinances of the town or proceedings of the Council shall be called in question.

Chap. 14

Repeal of former ordinances -

X X X X

Arch^d. Atkinson Mayor

1873

Dec. 3rd

pp. 146

The Council met on Wednesday evening Dec 3rd 1873 at A. J. Coper's in the town of Smithfield
Present W^m D. Folk Mayor

J. O. Thomas J. P. Jordan A. J. Coper } Councilmen
X X

Ordered that the Sergeant cause all obstructions to be removed on the street leading East from Mason St. running by the Academy to R. A. Todd's line - and also all obstructions on Mason Street to its western terminus. X X X

J. P. Jordan Secy.

W^m D. Folk Mayor

"That the aforesaid resolution of the Council as it appears upon the minutes of the Council entered upon the 22nd day of November 1890 be & the same is hereby repealed; and it is resolved by this Council in accordance with its previous meaning and intention, that any and all encroachments upon the streets of said town made since the 19th day of April last be abated and that hereafter no encroachments upon the streets of said town be allowed."

"Resolved that R. E. Boykin and R. S. Thomas be employed as Counsel and attorneys at law to see that the above resolution is enforced."

"It was ordered that Robt. M. Pitman be allowed his tax acct. for services rendered as police on the wharf."

"J. P. Andrews {Secty}"

Merchants & Farmers Saving, Bank,
it was resolved that it was inexpedient at that time to disturb any existing encroachments "yet" without sanctioning the same, that no other, or further encroachments should be made upon the streets of said town; and whereas at a meeting of the said council held at the Mayor's office on the 22nd day of November 1890, it appearing that the above resolution was not entered upon the minutes of said meeting the resolution of April last was readopted prohibiting any encroachments upon the streets of the said town, which did not exist prior to Apr. 19th 1890, without intending to sanction the encroachments if any, made prior thereto; and whereas the resolution as spread upon the minutes of the said Council does not correctly express the resolution of the said Council, or the meaning thereof intended to be expressed, therefore be it resolved

1890 On next page
Dec. 2nd

"At a regular meeting of the Council
held Dec. 2nd 1890

Present W. S. Folk Mayor
Geo G. Womble P. D. Gwaltney J. A. Fulmer
Aldermen — J. P. Andrews Secty."
"On Motion of P. D. Gwaltney the
following was ¹⁴acted on and
passed by the Council.

Whereas at a meeting of the
Council held at the Office of
the Mayor of the town of Smith-
field in March or April last,
it was the sense of the said
Council that they had no right
to confer upon any citizen of
the said town the right to en-
croach upon the streets of the
same, whether by building or
enclosures, and that in their
opinion, it was impossible
to define the true boundaries
of all the lots and streets of
the said town; and whereas
at a meeting of the said Coun-
cil held on the 19th day of Apr.
last, in the rear room of the

Books of
Council
meetings
1890
May 5th
July 15th

Extracts from Minutes of Town Council
of Town of Smithfield Va. - pages not
numbered.

Nov. 22

"At a called meeting of the Council
held Nov. 22nd 1890"

"Present W. D. Folk Mayor

P. D. Ewaltney

Geo S. Womble

J. A. Fulmer

J. P. Andrews Secty & Treas.

"On motion of P. D. Ewaltney, at a
meeting of the Council held last
Apr. It was ordered by the Council
that the fences & Porches as they
now stand shall be the bounds
of the Street and hereafter no
encroachments on the Street shall
be allowed from Apr. 1890."

"This act was passed by the
Council in Apr. last and re-
passed Nov. 22nd 1890."

"Voted for by P. D. Ewaltney - J. A. Fulmer
& J. P. Andrews (Secty)"

(Just below on same pp. of minutes) "W. D. Folk Mayor"

Oct. 7

"At a meeting of the Council held
Oct. 7th 1890 - Present W. D. Folk Mayor

Geo S. Womble

J. P. Andrews } Alder.
Secty"

It was ordered that the Street
Committee be instructed to buy 5 lamps
lay plank walks buy shells & fix
the streets. There being no further busi-
ness the Council adjourned.

J. P. Andrews Secty"

Mason Street East Side

		Length	Depth-
1	Run S. E. Mornin	152 ft-	98 1/2 ft-
2	Capt. Geo. F. Cholmon	98 "	128 "
3	(Grading) Maj. Colonna	31 "	166 "
Hill St- width 24 1/2 feet-			
4	Smithfield Academy	95 "	156 1/2 "
5	Wm Folk (Old Lot)	75 "	340 "
Cedar Street - Run N 58 E width 17 1/2 feet-			
6	Mason's Hall	82 "	171 "
7	Mr M. A. Bennett	90 "	168 "
8	Colman Baptist Church (alt)	184 ft-	on Cedar Street
157 feet - next - Mason's Hall; next to Baptist (Presbyterian) Church 179 feet-			
9	Geo. B. Smith all East - from End of Mason's Street		
S 56 E 37 ft-; N 32 W 41 ft-; S 59 W 145 ft-; S 02 W 206 ft-; N 88 E 129 ft-; S 86 E 433 ft- to Little Creek: thence along the Creek to the old Baptist Church; thence S 59 W 395 ft- to Mason Street.			
Hill Street runs N 58 E Capt. Geo. E. Adams Back Line runs N 30 W from Hill St- to Main Street - Long Johnson Length back Academy 87 3/4 ft-, Depth to Laid line on Folk 150 ft-: Length on R. A. Todd 102 1/2 ft-: Length on Hill St- opposite Purdie's Lot 106 feet-			

2

No of Lots	Names of Owners	Length	Depth
13	Mrs Susan Morrison	98 1/2 ft	152 1/2 ft
11	W. W. Cerper, Hotel	89 1/2 "	256 "
9	Los. A. Brown	91 "	152 "
6	H. M. & J. S. Purdie	94 1/2 "	222 + " + 152 ft on "

Church St - Runs S 68 E Width 51 1/2 ft -

5- A. E. London (3400 sq ft) 137 feet on Main: On Church

76 ft: Thence S 05 W to Main

3 A. E. London ^{from last part of the lot -} (1300 sq ft) & Smith

1 Robt. F. Barnett 369 ft on Main: On Creek

94 ft: Thence S 25 W to Church 255 ft.

Church Street - North Side

1 Lady Geo. R. Atkinson 182 " 216 ft -

2 Capt. L. P. Thorne 84 3/4 " ²⁶⁴ 204 "

3 R. F. Barnett 167 " 82 1/2 "

4 Episcopal (Chino) Church 53 1/2 " 60 "

Church Street - South Side

1 H. M. & J. S. Purdie 153 " 317 "

2 R. A. Ladd 254 " 264 " Thence S 49 W

339 ft - to Folded Back line.

3 Baptist (Presbyterian) Church 75 1/2 " 321 "

4 Santa Fe (Mrs J. E. Watkins) Runs S 19 W to Creek

S 68 E, 33 feet: Thence S 77 E 102 ft: Thence East 133 ft -

Length on Lane leading to Fillmore London S 346 ft -

East Church St - North Side

1 Worthington Thomas 772 ft 132 ft -

2 Benjamin Nelson 33 " 206 "

No of Lots	Names of Owners	Length	Subst
3	Calmer (M E Church) old ship yard	99 ft-	230 ft-
4	Mrs A. M. Y. Day	138 "	257 "
5	E. M. Morris (Wilson)	116 "	251 "
6	Thomas Pargo ^{prop} (A. Morris)	63 "	266 "
7	Wm Jordan " " "	140 "	140 1/2 "
8	Women Vanderentten	270 "	279 "
9	Zidd & Day	154 "	285 "

East Church Street South Side runs N 86 E
from Church Street, width 42 ft-

1	Lane to Fill Indur's width	15 ft-	
2	Odd Fellows Hall	90 "	346 ft to Creek
3	Murray Lot) M M Zidd Est. runs N 45	85 "	191 "
4	2. R. Purdie (Mrs Purdie)	175 ft	248 1/2 " " "
5	R. F. Brown	180 "	248 " " "
6	Capt. G. E. Smith	87 "	208 " "
7	Dr. P. Jordan	88 1/2 "	185 " "
8	Mrs Bennett (W. A. Womble)	185 1/2 "	126 "
9	Capt. (Dr.) Moore	120 "	153 "
10	" Wm Simonson	64 "	175 "
11	Weston	127 "	154 1/2 "
12	Henry Drake	67 "	154 1/2 "

Thence along the Leavenworth to Middle of Drums Arch of
Wilson Bridge.

Mason Street West Side runs S 32 E

1	W. D. Folk	154 1/2 ft	103 ft-
2	Capt. Dr. E. Adams	160 "	303 "

Hill Street runs N 59 E width 24 1/2 feet

3	M. E. Church	^{on corner} 35 ft-	70 1/2 ft on Hill St-
4	Snider	21 8 1/2 ft	308 "
5	Old Methodist Church	37 " "	145 "

No of Lots	Names of Owners	Length	Depth
14	L. C. Thomas	99 ft	145 ft
12	Major Colonna	28 1/2 "	145 "
10	Rectory Christ Church	62 1/2 "	139 ft
8	Inv. G. Womble	86 1/2 "	139 "
7	Gen. A. Brown		
5	W. A. Jordan, Est.		264 "
4	E. M. Field	230 "	144 + 133 ft
2	Inv. G. Womble (Folk St)	48 " on Main Street to	
Commerce St. depth. on Commerce 153 ft. On the line			
of W. A. Jordan's Est. 60 1/2 ft			

Main Street South Side

47	H. H. Womble, Lee Home Ld	448 ft	858 to Creek
44			
42	G. C. Fordrich (Mrs Powell)	87 1/2 "	858 ft - " "
Smith's St. Width 29 runs S 30 E			
39	Mrs. Hamitt, Drummond	189 1/2 ft	770 + 711 feet
37	Irene & Lou Hayden	91 1/2 "	352 1/2 ft to Hill Street
35	L. C. Chalmers	89 ft	321 " " " "
33	Inv. A. Jordan	88 1/2 "	321 " " " "
31	Wm. W. Cooper	117 1/2 "	330 " " " "
29	Dr. Inv. N. Atkinson	76 1/2 "	321 " " " "
	Chapman	68 "	321 " " " "
27	M. F. Langhorne, Stone	20 "	68 " " " "
24	B. F. Chalmers	68 "	321 " " " "
22	F. A. B. Watson	90 "	154 1/2 "
17	S. Bott	90 "	154 1/2 "
15	W. D. Folke	102 1/2 "	154 1/2 "
Mason Street Width 45 ft runs S 32 E			

N. 58 1/2 E to Pagan Creek + embraces the following lots			
nos of lots	names of owners	Length	Depth
50	Wm A. Womble	8 3/4 ft	158 1/2 ft
49	L. Edwin Coper	178 1/2 ft	159 1/2 "
47	L. Willis Johnson	72 1/2 "	160 + 163 "
46	Unknown	108 "	163 ft
44	"	102 1/2 "	163 "
42	Pretlow, J. & ^{son} J. F. Futner	88 1/2 "	163 "
41	Pretlow		
39	Peter Hilger	89 "	163 "
37	L. A. Johnson	88 "	162 "
34	F. A. B. Watson	86 1/2 "	156 "
	L. S. Womble (vacant)	90 "	156 "
33	L. A. Jordan	38 "	163 "
31	Wm. B. Rouse	120 "	163 "
Cone St here intersects Main runs N 32 W 357 1/2 ft -			
Clark's Lot Width 29 1/2 feet.			
28	L. S. Womble	66 "	173 1/2 ft
26	R. S. Johnson	38 "	183 3/4 "
25	Dr F. J. Vail	66 "	188 "
23	C. B. Hayden	57 1/2 "	559 "
21	C. C. Johnson ^{Stone}	23 "	40 "
20	Forner & Munkin, Mc	13 "	40 "
19	L. S. Womble, S. S. Boykin ^{Stone}	89 3/4 "	198 "
18	S. S. Boykin	89 "	
16	A. L. Coper & Les	97 1/2 "	201 "
Pierce St runs N 31 W 156 " Width 48 ft -			

Numbers	Bearing	Distance in chains	Remarks
8	N. 34. W.	8.84	To Goodrich line
9	N. 50 E.	.99	" Ravine
10	N. 23 E.	4.92	" "
11	N. 56 E.	5.10	" "
12	N. 03 E.	7.24	of Thomas & Adams line. To a point on Ravine prolongation
13	S. 85 E.	13.21	To Causeway (End of Commerce St.)
14	S. 01 W.	3.32	Commerce Street
15	S. 02 W.	6.20	" "
16	S. 24 E.	4.27	To intersection of Commerce ^{Main} Street
17	S. 52 E.	4.59	Along the creek
18	S. 86 E.	8.00	" " "
19	E.	4.87	" " "
20	N. 88 E.	5.00	" " "
21	S. 72 E.	3.00	" " "
22	S. 68 E.	2.73	" " "
23	S. 79 E.	7.00	" " Causeway
24	N. 88 E.	7.43	To middle of Wilson's Bridge

Thence to opposite the mouth of Little Creek;
 Thence up that creek to a Ravine adjoining
 G. W. Britt's, thence up the middle of the
 Ravine to the Corporation limits (to the
 beginning) at the Old Culvert.

Main Street (North Side)

No's of lots Commencing at the Old Culvert South
 Western extremity of Corporation limits,
 runs N. 60 E. to Church Street, & thence

Field notes of a survey & plan
 of the Town of Smithfield made by
 Col. E. M. Morrison in compliance
 with an order of the Town Council
 entered the 7th of July 1874, which
 Survey & plan was approved the
 6th of April 1875; filed for except-
 ions in the Office of the Secretary
 of the Council sixty days, after
 public notice was given; a true
 copy of which has been delivered
 to the Clerk of the County Court of
 Sale of Wright County for record;
 & is herein entered in obedience
 to Chapter 54. Section 1 of the code
 of 1873"

Outlines, Commencing at an old
 Culvert at the Southwest extremity
 of Main St.

no's	Bearings	Distance in chains	Remarks
1	N. 30 W.	2.09	To R. G. Spratley's line
2	N. 58 E.	2.14	
3	N. 59 E.	2.54	
4	N. 59 E.	4.12	
5	N. 59 E.	2.70	
6	N. 59 E.	2.79	
7	N. 60 E.	2.43	To lane - corner of Rouse's lot on Cove Street.

June 1st 1875^{or} a regular meeting of the town of Council held on the 1st day of June 1875 present W Vanderwaal Mayor A. J. Cofor & Jas R Pundie Secty

x x x x x x x x x x x x x x x x In consid-
eration that the new Council will qualify and assume their duties on the 1st day of July 1875 ~~reads~~ that a plain and correct exhibit of the financial condition of the Corporation may appear on record which cannot be made in the absence of the Pres. it was ordered that the Council adjourn till the 28th inst (4th Monday)

W Vanderwaal

Jas R Pundie
Secty

Mayor

June 28th 1875

The Council met according to adjournment. Present W Vanderwaal Mayor

J O Thomas

A J Cofor

W^m J Jordan Pres

Jas R Pundie Secty

Admnd

(Report of Committee ~~was read~~)

X X V

Jas R Pundie Secty

Mayor

This was the last meeting of the old Council and on next page of the Journal appears the following

x y \ / x x x x x x x x y \ /

~~John R. Tucker~~ 10

~~Scaly~~

X X Y Y Y Y Y Y Y Y X X



 X X X V I

On motion the Council adjourned

Geo R Purdie

Betty

May 6th 1875

read and approved x x x x

Ans R. Purdie

Wong

[illegible]

Col E. M. Morrison submitted a report with the following resolutions which were adopted namely 1st That the Treas. pay to Col E M Morrison the sum of \$75⁰⁰ out of any money in the Treasury not otherwise appropriated 2nd That the Secty give public notice by advertisement in three or more places in the Corporation that the Survey and plan of the town with the field notes this day accepted and adopted will be on file for exceptions in his office until the 5th day of June 1875 that is 60 days 3rd That after the 5th day of June 1875 a copy of the report and accompanying table (marked 'A') also of the Survey and plan with the field notes be delivered to the Clerk of the County Court of I see of Wright Co to be submitted to his Court for consideration and record if approved. 4th That after the 5th day of June 1875 and the approval of the same by the Judge of the County Court of I see of Wright Co and of an order by the Court ~~that~~ ^{for} it to be recorded

1
submitted into and confirmed by
the Council on the 9th day of
July 1874 Ordered that the Survey
and plans be referred to a Committee
of two for examination and report
and the same Committee is further
more directed to consider the best
plan for numbering the lots and
real estate embraced in the present
boundaries of the Corporation and report
the same to the Council when com-
pleted The Mayor appointed Jas R.
Purdie and J. O. Thomas to compose
the above Committee of two

W Vandewater

Jas R Purdie
Depty

Mayor

X
April 6th 1875

At a meeting of the town Council
of the Corporation of Danfield
held on Tuesday the 6th April 1875
Present Warren Vandewater Mayor
J. O. Thomas Wm F Jordan Pres
Jas R Purdie Depty x x x x x x x x
x x x The Committee appointed on the
20th of March to examine the Survey
and plan of the town executed by

9th Survey and plan of the Town
\$75⁰⁰ x x x x x x x x x x x x x x x x x x

Ordered that Hail E. M. Morrison's
proposal in relation to a Survey
and plan of the town for \$75⁰⁰
be and is hereby accepted and
that the work be executed without
delay

Ordered that the board adjourn
W Vanderwenter

Jos R Purdie Mayor
Depty

March 2nd 1875

At a ^{monthly} meeting of the Town Council
of the Corporation of Smithfield
held in the Council Chamber on
Tuesday the 2nd day of March
1875 Present Wm Vanderwenter
Mayor J. O. Thomas W. F. Jordan
Jcs Jos R Purdie Depty x x x x x x x x

x x x x Wm. F. Jordan presents for
the Examination and approval of
the Council two copies of the
accurate Survey of the boundaries
of town lots Streets Lanes and
Coves executed by Col E. M. Mor-
rison according to the contract

No 2 Continued

x x x x x x v x v

Signed

Jno. R. Purdie Secy

x x

x x x x x x x x x x

W Vanderwater

Jno R Purdie

Mayor

Secy

At a meeting of the Town Council
held on Tuesday the 7th day
of July 1874 Present W Vander-
water Mayor Jas P Jordan Treas
J O Thomas & Jno R Purdie Secy. x x x

y x y y y x y

This being the first meeting in
the official year as the ordinance
requires the Council elected the
following Officers for the year
ending the first of July 1874
Jas P Jordan Treas. Jno R Pur-
die Secy x

each of whom took the oath
of Office. x

Be it ordained that the following
appropriation be made to defray
the necessary expenses of the year
ending on the 31st day of Decem-
ber next. x

over

June 26th 1874 Adjourned Meeting of
 the Town Council held on Friday
 the 26th day of June 1874 x x x
 Present Wm W Sandwaute Mayor
 or Jas P Jordan Treas. Jas R
 Purdie Secty
 The Secty. submitted the follow-
 ing report

Smithfield Va
 June 26th 1874

To the Mayor & Council

In obedience to the order
 entered on the 3rd inst. namely
 1st to ascertain the cost of a
 Survey and plan of the town
 and 2nd x x x x x x x x x x x x x x x x

The Secty respectfully reports
 that on application to Genl E.
 M Morrison an accomplished
 Surveyor he proposes to make
 a minute of the boundaries Street
 Lanes Coves and town lots from
 which he will make and furnish
 two (2) accurate plat of the town
 handsomely executed on thick draw-
 ing paper for the sum of \$75⁰⁰
 Security five Dollars The opportunity
 has offered to consult the County Surveyor
 or other qualified for the work x x x x x x

streets in the Town and for other purposes.
Sec. 1 "The main Street of the Town shall run
from the Commencement of the Corporate
limits near Geo W. Britts land
as defined by the Charter granted by
the general assembly to the County
Wharf, and except at the Hill
near Todds & Wm H. Jordans dwelling
the said street shall be 60 feet
wide & the street or road from
the said County Wharf at or near
Todds store house to the Causeway
of Thomas & Adams bridge shall
be 30 feet wide, ~~and~~ and the same shall
begin at the corner of Todds store house, & run
parallel with the East side of the Carriage house
of the said E. M. Todd & running thence a straight
line to a post at the corner of the lands of Geo
Thomas & Wm H. Jordan, thence to another post
& thence to the corner post of the porch of
the store house of Thomas Adams & Co. &
thence to the Causeway of the toll bridge
of said Thomas and Adams (meaning the
beginning thereof) and the Surveyor of the
Streets shall work upon and keep in order as
far as he can the said streets and all
other streets in the said Town. The House
belonging to the heirs of T. H. Southall and

1
1
June 3rd Meeting of the town Council
1874 present. W Vanderwaeter Mayor
Jas P. Jordan, J. O. Thomas A. J.
Cofor & Jas R Purdie Secty

xxxxvxxxxxx Ordered that the several
Street Lanes & Coves shall be
designated and known by the
following names, first Main
Street from the County wharf
running South west to the
Incorporation boundary line xxxvxxx

xxvxxxv
5th South Mason St from Main
S. E. by E. to the line of Dr Jas
B Southall house xxxxxxxxxxxxx

Ordered that the Secty ascertain
the probable cost of a Survey
and plat of boundaries Streets
Lanes and Coves embraced in
the limits of the Corporation and
make report to the Council xxvv

xxxxxxxxv

Signed

W Vanderwaeter

Mayor

Jas R Purdie
Secty

~~Extract~~

185-7 Feb. 23

Town Ordinances

p.p. 32

"It is further ordained unanimously that the main St. shall continue & run from the boundaries of the Old Corporation, & wit, from the brick Storehouse of the property of the estate of the late Dr. J. H. Southall to the termination of the boundary of the Corpⁿ of Smithfield leading toward Isle of Wight C. H. & shall be 60 ft. wide from the said Storehouse throughout the said road or street & that the Surveyor of ^{the} streets shall work upon & supervise & keep the said street as well as all the other streets of the said Town in good repair." x x x

(Signed)

Arch^d Atkinson

185-8

July 16

p.p. 56

"At a meeting of the Mayor & Aldermen of the Corporation of Smithfield at their Hall on the 16th of July 1858

Present Archibald Atkinson Mayor
Edwin Morrison - W. H. Stephens ^{only} Aldermen
Jesse Hodges & Sampson White }

p.p. 57

x x x x "Ordinances of the Town of Smithfield Virginia revised, amended & finally adopted this 16 of July 1858 x x x x Chapter 12

p.p. 83

"An act defining the width of the

1857
Feb. 23rd
(p. 31)

At a meeting of the Council of the Town of Smithfield at their Hall on Monday the 23rd of Feb. 1857. Present A. Atkinson Mayor - J. B. Southall. L. Morrison Wm H. Stephenson Aldermen. The Council proceeded personally to view the ground from the County Wharf or at the store house of Everett M. Todd & the Causeway of Thomas & Adams bridge having before them Wm H. Jordan Everett M. Todd, Geo E. Adams & Geo. R. Atkinson two of the parties of the firm of Thomas Adams & Co. proprietors of lands on said road - Geo Thomas another of the proprietors having been summoned before the board but failed to appear. The board proceeded to examine upon oath Geo R. Todd, Geo B. Whiteland & Robt. F. Barrett as witnesses, & having heard the testimony of said witnesses & the statement of the said owners who were present have resolved unanimously & hereby ordain that the public street in that part of the Town of Smithfield shall be adopted & considered to be 30 feet wide and beginning at the corner of Todd's Store & running parallel with the east side of the Carriage house of said Everett M. Todd & running thence a straight line to a post at the corner of the lands of Geo Thomas & Wm H. Jordan thence to another post & thence to the corner post of the porch of the store of Thomas Adams & Co. & thence to the Causeway of the toll bridge of the said Thomas & Adams & it is ordered that the Surveyor of the Streets of the Corporation take the said street under his supervision as measured & laid out & that he keep the same in good repair -

185-7

Feb. 20

p. 30

At a meeting of the Council of the
Town of Smithfield at their Hall on
the 20th day of Feb. 185-7 Present
A. Athinson Mayor
J. B. Smithall - S. Morris W. H. Stephens
Aldermen - The Surveyor of the
road & street of the Town of Smithfield
having reported to the Council that
he is prevented from improving
such part of the road or street as
leads from the County Wharf to the
Causeway of the bridge of Thomas
& Adams by a difference existing
between James Thomas & W. H. Jordan
as to the proper boundaries of the
road or street; it is ordered that
the said James Thomas & W. H. Jordan
be summoned to appear at the
Mayor's Office of this Town on Monday
next about the hour of 9 o'clock
of said day & that Jno R. Todd &
Wm Lightfoot be requested to attend
at the same time for the purpose
of giving information about the
said road or street - Ordered
that the board adjourn till Monday
next - A. Athinson
Mayor

Exhibit "W"

Petition to

Mayor & C

2

Smith & Co

for

Survey 2

town

Assessors' report

See also South of the city of

"the present"

Sequel.

[illegible]

To the Council of the Corporation of
Smithfield of a
Petition

In consequence of
the uncertainty which exists with re-
ference to the lines of the various
streets of the town; and of the difficul-
ties which are constantly arising on
account thereof, and of the fact
that the town is now involved in
litigation and of the probability that
other complications of a like char-
acter will arise which will tend
to destroy the peace and harmony
of our community and entail large
expense upon the tax payers of the
town in payment of cost and
Lawyers fees, damages &c and whereas
the state law requires that the Council
of every town shall have a Survey
made and recorded and whereas
no such Survey of this town exists -
Therefore we the undersigned Citizens
believing that all of this expense
and illfeeling can be avoided by
compliance with the law, most
respectfully petition your honorable
body to have a just and equitable

N. W. Green

to {

INJUNCTION BOND.

Commonwealth

*Decr. 5th 1890,
Exp. Ted Jackson
edged by the obligors*

I know all Men by these Presents, That we Virginia Wren
and Emily W. Wren
are held and firmly bound unto the Commonwealth of Virginia, in the sum of Two Hundred
and Fifty dollars, to the payment whereof, well and truly to be made to
the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors
and administrators, jointly and severally, firmly by these presents. And we hereby waive the benefit of our
exemptions as to this obligation, and also of any claim, or right to discharge any liability to the Common-
wealth arising under this bond, or by virtue of said office, post or trust, with coupons detached from bonds
of this State. Sealed with our seals, and dated this 5th day of December,
one thousand eight hundred and ninety.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas the above bound Virginia
Wren

on his bill in chancery against The Town of Smithfield
and William D. Falk Mayor of said

addressed to the Judge of the Circuit Court of the County of Isle of Wight
has obtained from the said Judge an injunction to injoin and restrain the Town of Smithfield &
W. D. Falk Mayor of said town from interfering with the plaintiffs:
herein first of his lot as described in the bill, and from
interfering with the plaintiffs, in the creation & completion
of said fence, as set out in the restraining order,
until the future order of the said court; and whereas it is provided, by the order of the said Judge awarding
the said injunction, that the plaintiff shall not have the benefit thereof until Virginia Wren
or some one for him, shall enter into a bond, with good security, in the clerk's office of the said
court, payable to the Commonwealth of Virginia, in the penalty of Two Hundred
and Fifty dollars, and conditioned to pay all such costs as may be awarded against the
said plaintiff, and all such damages as shall be incurred in case the said injunction be dissolved. Now,
therefore, if the said Virginia Wren shall pay all such costs as
may be awarded against him and all such damages as shall be incurred in case the said injunc-
tion be dissolved, then this obligation to be void, otherwise to remain in full force and virtue.

Executed in the presence of

V. Wren

E. W. Wren



In the Clerk's Office of the Circuit Court of the County of Isle of Wight
This day personally appeared before me N. P. Young, Clerk
of the Circuit Court of the County of Isle of Wight personally
appeared E. W. Wren, and made oath
that her estate, after the payment of all her just debts, and those for which he is bound as
security for others and expect to have to pay, is worth the sum of Two Hundred
and Fifty dollars, over and above all exemptions allowed by law.
Given under my hand this 5th day of Decr, 1890.

N. P. Young Clerk.

Main Street

Line of Hotel Porch

A Plot of V. Wrenn's Lot, Cor. Main & Mason Streets, Smithfield, Va.; The dotted red line indicates the line of his fence which lacks 15 inches of being on the line of the Chalmers' Lot on Mason St. and 9 inches of being on a line with the Hotel Porch on Main St. The Broken Black Line represents a line with the Chimneys of the Hotel.

Nov 22nd 1890.

E. McAllister
Geo. L. Lumsden

V. Wrenn's Lot -
Plotted 20 ft = 1 inch

Line of Hotel Porch

Mason Street

Line of Chalmers' Lot

N 60 E

96 7/8 ft

15 inches

S 30 1/2 E

101 1/2 ft

95 ft

N 60 E

Wm
✓ J. M. Hancock
Iron of Smithfield &c

Exhibit "A."
Filed with the Bill.

Church Street

Line of Fences

Line of House on Church St.

The streets not plotted by any scale

April 10th 1891

E. M. McCreary
by George

main Street

Scale 20 ft = 1 in

Lane

Plot Form

House

Stable

Smoke House

Chimney

7' 6" Parings on Chalmers

101 ft 7' 6" Parings on Chalmers

101 ft 7' 6" Parings on Chalmers

101 ft 7' 6" Parings on Chalmers

101 ft 7' 6" Parings on Chalmers

101 ft 7' 6" Parings on Chalmers

101 ft 7' 6" Parings on Chalmers

101 ft 7' 6" Parings on Chalmers

101 ft 7' 6" Parings on Chalmers

101 ft 7' 6" Parings on Chalmers

The distance 7' 6" & 2' 6" 7' 6" marked a 2" on plot -
not plotted according to the scale but -
enlarged to show proportions more clearly.

Mason Street

Exhibit "H."

3000 3000





I hereby Certify that this
is a true copy of a plot in
the Clerk's office of the County
Court of Isle of Wight. Rev. Sec.
Upon which is the following
writing to wit:

"A. Plan of the Town of Smithfield
in Isle of Wight. County laid off
by London Thomas, late Surveyor
of said County"

Given under my hand this 18th day
of Dec. 1890

E. M. Morrison
Co. Surveyor

Exhibit "X"