1896-003 Chancery Causes. B. W. Hearne vs Henry R. Parker
Dsle of Wight County

other SURNames: Chalmers, HeaRN

This Deed made this 19th day of October one thousand eight hundred and seventy six, between James D. Chalmers and Mary E. his wife of the town of Smithfield of the first part, and Henry R. Parker of the County of Isle of Wight of the second part, Witnesseth, that in consideration of the sum of Twelve Hundred Dollars, the said James D. Chalmers and Mary E. his wife do grant unto the said Henry R. Parker with general warranty all of two certain tracts of land in the county of Isle of Wight, containing two hundred acres more or less and known as the "Chalmers Mill Tract" bounded as follows viz: on the north west, north, north east and east by the lands of Wm G. Norsworthy, on the South east & South by the lands of Claudius T. Minton, on the south west by the lands of Mrs. Mary Sayer, and on the west by the lands of Wm Whitley, this being part of the land assigned to said James D. Chalmers by the commissioners appointed to divide said Chalmers father land, between the heirs.
Witness the following signatures & seals.

James D. Chalmers (seal)
Mary E. Chalmers (seal)

Isle of Wight County to wit:

I R. E. Boykin a commissioner in Chancery for the circuit court for the county aforesaid and state of Virginia do Certify that James D. Chalmers whose name is signed to the writing hereto an-

nexed bearing date on the 19th day of October
A.D. 1876, has acknowledged the same
before me in my said county, and I do
further certify that Mary E. Wife of the
said James D. Chalkley whose name
is signed to the said writing hereto annexed
personally appeared before me in my said
county, and being by me examined
privily and apart from her said husband
and having the writing aforesaid fully
explained to her, she the said Mary E.
acknowledged the said writing to be her
act, and declared that she had willingly
executed the same and does not wish
to retract it.

Given under my hand this 19th day of
October A.D. 1876.

R. E. Boykin

In the clerk's office of Isle of Wight county court
the 30th day of Dec, 1876 this deed from
James D. Chalkley & wife to H. K. Parker
was admitted to record upon the
annexed certificate

Teste A. P. Young clk

A copy

Teste A. P. Young Dep. clk.
for N. P. Young clk

James D. Chalmers & wife
To
Deed
Henry R. Parker

Copy, Ex Exhibit "B"

66 Chalmers
Wm Whitley
Atkinson
70 Whitley
117
332

This Deed, MADE this, the 1st day of March in the year eighteen hundred and eighty-three between A. R. Parker and Fannie N his wife of the county of Isle of Wight in the State of Virginia of the first part, and B. W. Hearn of said county and State of the second part

WITNESSETH, That in consideration of the sum of Two Thousand dollars, the said parties of the first part do grant, with general warranty, unto the said B. W. Hearn the following property, to-wit: That certain tract of land in the county of Isle of Wight and State of Virginia containing two hundred and two acres be the same more or less, bounded by the lands of Thos Griffin, Wm Whitley, Norman Hearn and others and being the same tract of land conveyed to said A. R. Parker by deed from James F. Chalkley and wife which deed is duly recorded in the Clerks office of Isle of Wight County Court.

The said parties of the first part covenant that They are seised in fee of the said land that They have the right to convey the said land to the grantee; that the grantee shall have quiet possession of the said land free from all incumbrances; that They, the said parties of the first part, will execute such further assurances of the said land as may be requisite; and that They have done no act to incumber the said land.

WITNESS the following signatures and seals the day and year first above written.

H. R. Parker [SEAL.]

Fannie L. Parker [SEAL.]

County of Isle of Wight
~~Corporation of the City of Norfolk~~, to wit:

I, K. K. Chapman a Notary Public for the coporation aforesaid, in the State of Virginia, do certify that H. R. Parker whose name signed to the writing above, bearing date on the 1st day of March in the year eighteen hundred and eighty-three has acknowledged the same before me, in my corporation aforesaid.

Given under my hand, this 3rd day of March in the year 1883

K. K. Chapman *Notary Public.*

State of Virginia,
County of Isle of Wight
~~Corporation of the City of Norfolk~~, to wit:

I, K. K. Chapman a Notary Public for the ~~Corporation~~ county of Isle of Wight ~~of the City of Norfolk~~, in the State of Virginia, do certify that Fannie N. Parker the wife of H. R. Parker whose names are signed to the writing above, bearing date on the 1st day of March in the year eighteen hundred and eighty-three personally appeared before me, in the Corporation aforesaid, and being examined by me privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said Fannie N. Parker acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 24 day of March in the year 1883

K. K. Chapman.

Notary Public.

In the clerk's office of the county court of Isle of Wight county, the 6th day of August 1888. this deed from N. C. Parker & wife to B. W. Hearn was admitted to record on the annexed certificate of N. E. Chapman a Notary Public.

Teste, N. P. Young Clk

N. C. & E. Parker & wife
to
B. W. Hearn
Deed
Dated
78. W. Hearn

Aug. 6 - 1888.
Deed on Exhibit No. 4

Exhibit No 4

Book Deeds-Vol
No 47 - Page - 207

Fee ——— 2.00
Fee 1.20
Comm 3.20

Memorandum of compromise, ~~- - - - -~~ between B.W.Hearn and H. R.Parker,and H.R.Parker and James.F.Chalmers to be filed in the Chancery suit of B.W.Hearn and H.R.Parker,depending in the Circuit Court of the County of Isle of Wight,wherein the said B.W.Hearn is palintiff and the-said H.R.Parker,is defendant.

-----oOo-----

Whereas certain disputes and differences have arisen between B.W.Hearn and H.R.Parker,both of the County of Isleof Wight and State of Virginia,and whereas the said B.W.Hearn on the first April Rules 1894 exhibited his bill in Chancery in the Circuit Court of the County aforesaid,in which it is alleg that H.R.Parker,
-ed,by his deed bearing date March 1st 1883,conveyed to the said B.W.Hearn that certain tract of land in the County aforesaid,in the State of Virginia,containing two hundred and two acres,be the same more or less,bounded by the lands of Thos Griffin,Wm Whitley,Norman Garner and others,being the same land conveyed to the said H.R.Parker by James.F.Chalmers by his deed bearing date Oct 19th 1876,That the name of Thos Griffin was inserted and used by mistake for Alexander Griffin. That upon a survey of the said land so conveyed by the said H. R.Parker to thesaid B.W.Hearne as aforesaid ,it was ascertained and determined that it contained only 92 1/2 acres,instead of two hundred and two acres,as in the said deed alleged,and that hence there was a deficiency in acreage of 107 1/2 acres ,and that in consequence thereof the said B.W.Hearn was entitled to recover from the said H.R. Parkera sum proportioned to the said deficiency,to wit,the sum of $1095.00,with interest thereon from the 1st day of March 1883,unitl paid; and whereas in the event of such recovery,the said James.F.Chalmers might have become liable to the said H.R.Parker for a sum of money

proportioned to the purchase price paid by the said H.R.Parker for the said land; and whereas the said H.R.parker,James.F. Chalmers and B.W.Hearn desireing to compromise adjust and settle the said matters of dispute and difference between,them, the said James.F.Chalmers has contributed the sum of Three Hundred and Thirty Seven Dollars and Fifty Cents,and the said H.R.parker has contributed a like sum and amount,amounting in the whole to the sum of Six Hundred and Seventy Five Dollars, which sum and amount has been paid to the said B.W.Hearn in full compromise,settlement,satisfaction and discharge of any and all claims and demands which the said B.W.Hearn has or ought to have against the said H.R.Parker and James.F.Chalmers or either of them,by the virtue of the said deedsand conveyance aforesaid,or either of them,whether resulting from a deficiency of acreage,breach of covenant and warranty in deed,or otherwise howsoever;and whereas the said H.R.Parker in consideration of the payment by the said James.F.Chalmers of the said sum of $337.50,in part of the said sum paid in compromise as aforesaid,has in like manner released the said James.F.Chalmers from any and all liability to him the said H.R.Parker in any manner arising by virtue of the said deed from the said James.F.Chalmers,to him,the said H.R.Parker.

Now therefore this agreement witnesseth,that the said B.W.Hearn,for and in consideration of the sum of Six Hundred and Seventy Five Dollars,to him cash in hand paid the receipt whereof is hereby acknowledged,which is received in full compromise,satisfaction,settlement and discharge of any and all claims and demands,which the said B.W.Hearn has,or ought to have against the said H.R.Parker and James.F.Chalmers,or

either of them,by virtue of the said deed and conveyance as aforesaid,or either of them,whether resulting from a defieiency in acreage,breach of covenant and warranty in deed or otherwise howsoever,whether in law or in equity,have released and and discharged,and by these presents doth release and discharge the said H.R.Parker and James.F.Chalmers from any and all liability to him the said B.W.Hearn in any manner whatsoever arising under and by virtue of the deeds and conveyance of said land as aforesaid,as fully effectually and to all intents and purposes as if the said deed had not have been madeand the said land had not have been conveyed to the said B.W.Hearn.

The said H.R.Parker,for and in consideration of the amount so contributed and paid by the said James.F.Chalmers to the said B.W.Hearn doth release and discharge the said James.F. Chalmers from any and all liablility to him,the said H.R. Parker,as fully effectually,as he,thesaid H.R.Parker,is now and hereby released from liability by the said B.W.Hearn.

Witness the following signatures.

B. W. Hearn
by R. S. Thomas
atty
H. R. Parker by
R. E. Boykin
his atty

B.W.Hearn .

Vs. In the Circuit Court of the County of Isle of Wight.

H.R.Parker.

This cause cameon this day to be again heard on the papers formerly read; and it being suggested,and appearing to the defendant in this cause—
the court,that since the last decree herein,H.R.Parker, and Jas F.Chalmers,who conveyed the tracts of land in the bill and proceedings of this suit mentioned,to the said H.R.Parker,by a deed from himself and wife,bearing date October 19th 1876, jointly have paid to the said B.W.Hearn the sum of Six Hundred and Seventy Five Dollars,in full satisfaction,compromise,settlement and discharge,of the matter and differences,which are the subject of this suit,and of all claims and demands,of every kind,nature and description whatsoever,whether in law or in equity of the said B.W.Hearn upon the said H.R.Parker,whether resulting from a deficiency in acreage,breach of covenants or otherwise howsoever,arising under and by virtue of the deed from the said H.R.Parker to the said B.W.Hearn,bearing date March 1st 1883,and duly recorded in the Clerks Office of the County Court of the County aforesaid in Deed Book 47 page 207,conveying to the said B.W.Hearn that certain tract of land,set forth and described in said deed as follows;to wit, "that certain tract of land in the County of Isle of Wight and State of Virginia,containing two hundred and two acres,be the same more or less,bounded by thelands of Thos Griffin(properly Alexander Griffin as id alleged in thecomplainants bill)Wm Whitley,Norman Garner and others,and being the same land conveyed to the said H.R.Parker by deed from James.F.Chalmers and wife,and duly recorded in the Clerks Office of Isle of Wight County Court."or arising under and by virtue of the said deed

from the said James .F.Chalmers to the said H.R.Parker bearing date October 19th 1876; and that the said B.W.Hearn has,in con-sideration of the payment aforesaid released and discharged the said H.R.Parker,and the said James.F.Chalmers,from any and all liability,whether in law or in quity,in any manner arising or resulting under from or by virtue of the said deeds or either of them,and the conveyance of the said lands thereby; and the said H.R.Parker having in the like manner released and discharged the said James.F.Chalmers from any and all liablitly, whether in law or in equity arising or resulting under and by vistue of the said deed from the said James.F. Chalmers to the said H.R.Parker; the court doth adjudge order and decree that the said agreement of compromise between the said H.R.Parker and the said B.W.Hearn be and the same is hereby confirmed, rendered stable and binding between the said parties. And nothing further remaining to be done herein it is ordered that this suit be dismissed from the docket.

B.W.Hearn.

Vs. In Chancery.

H.R.Parker.

Rough Decree April 27th 1896.

To be entered.

Robert S. Ellis

We consent to this decree

R.E. Boykin atty for
H.R. Parker
R.S. Thomas
atty for
B.W. Hearn

Entered #2

B.W.Hearn

To. Agreement of Compromise.

H.R.Parker and James.F.Chalmers.

X

Burton W. Hearn

vs.

Henry R. Parker

This cause coming on this day to be heard on the bill and exhibits, and on the demurrer to the said bill in which the plaintiff joined, and was argued by counsel: On consideration whereof the Court doth adjudge, order and decree that the said demurrer be and the same is hereby overruled: and thereupon the said defendant filed his answer to said bill to which the plaintiff replied generally

Hearn B. W.
vs. Mitchell, Decree
Parker S. R.

To be entered.
May 14th 1895.
B. A. H.

Entered

Hearne.

Vs. In the Circuit Court of the County of Isle of Wight.

Parker.

On motion of the defendant leave is given him to file his demurrer to the complinants bill,which demurrer is accordingly filed,and on like motion of the defendant leave is given him to file his answer within ninety days,and for all other purposes this cause is continued.

Hearne.

Vs. In Chancery.

Parker.

Rough Decree, April Term 1894

To be entered.

C M H

Apl 20 1894

Entered #17

Everett Waddey Co.,
Stationers and Printers,
Richmond, Va.
Form No. 300.

The Commonwealth of Virginia,

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

WE COMMAND YOU, That you summon W. R. Parker

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 first Monday in April, 1894, to answer a bill in Chancery, exhibited against them in our said court by Burton C. Heard

And have then there this writ. Witness, N. P. Young Clerk of our said Court, at the court-house, the 7th day of March, 1894, and in the 118th year of the Commonwealth.

N. P. Young Clk

Hearn B. & W.

vs. { SUBPŒNA IN CHANCERY.

Parker & R.

R. S. Thomas p q.

To first April *Rules,*

1894, Circuit *Court.*

Executed in the within named A. R. Parker, Nov 29th 1894

Jno A. Edwards

Sh'ff

T.W.Hearne.

Vs : In Chancery.In the Circuit Court of Isle of Wight County

W.R.Parker.

The answer of W.R.Parker to the bill of complaint of said Complainant exhibited by T.W.Hearne against him.

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

This defendant admits to be true that by his deed bearing date March 1st 1893 he conveyed to the said T.W.Hearne the tract of land in the complainants bill mentioned,which tract of land was conveyed to this defendant by James .W.Chalmers and wife by their deed bearing date Oct 10th 1892,and that the said T.W. Hearne paid to this defendant the sum of $2000.00, the purchase price thereof on the date of the said deed,the time of the delivery thereof. Said deeds are duly recorded in the clerks office of the Cou'y Court of the said County,official copies thereof,Marked respectively A and B are filed with the complainants bill,and prayed to be read as a part of this answer.

This defendant admits to be true that his deed to the said tract contained a covenant of general warranty and the usual covenants of title,and that the entire purchase price of the said land,to wit,the sum of $2000.00 was paid by the said T.W. Hearne to this defendant at the time of the delivery of the said deed.

This defendant denies and does not admit that he represented to the said T.W.Hearne that the said land contained 20 acres or that the said was so,on the contrary this defendant

avers that he made no representation to the said F.W.Hearne as to the number of acres in the said land,that it was distinctly understood that it was a sale in gross and not parcels,but as heasrd,and by the boundaries,it being fully understood and agreed between the said F.W.Hearne and this defendant that he bought and this defendant sold,the tract of land purchased by this defendant from the said James.F.Chalmers and none other. This defendant admits that at the time of the sale the said F. W.Hearne was engaged in the lumber business and he avers that the said F.W.Hearne for many years had been cutting logs and manufacturing the same into lumber,that he was familiar with the said land and the timber thereon,had been frequently thereon,and had more frequent and better opportunities of observation,and had a more familiar acquaintance with the said land and the timber thereon than did this defendant,who had been on the same but infrequently.

And further answering this defendant says,that prior to his purchase and with a view to the same the said F.W.Hearne went in and upon and around the said land,made estimates of the number of feet of timber thereon,going around the boundaries thereof for the said purpose,and actually purchased the land for the timber thereon,the land without the timber being of but little value,but the timber thereon was very valuable, being in the main original first growth pine,superior to any timber in the vicinity.

This defendant did not represent to the said F.W.Hearn that there was 202 acres of land in the said tract,on the contrary nothing was said as to the acreage as the said F.W.Hearne was perfectly familiar with the said land,knew that this defendant was selling him the "Chalmers Tract"and none other and was

the same land bought by him from James.F.Chalmers and none other,and that it was a sale by the tract,in gross,at hazard and not per acre,that he purchased the land for the timber thereon solely and exclusively,and that he had inspected the said timber frequently and had made his estimates,without any representation whatever as to the acreage made by this defendant,it was alleged in the deed that the land contained 202 acres,more or less,solely and alone because such was the number of acres designated in the deed from Chalmers to this defendant. That the said B.W.Hearne was not misled or deceived by the insertion of the acreage in said deed,he purchasing on his estimates of the timber on the said land,after actual examination and inspection,and having for many years carried on the lumber business in that vicinity,buying adajacent timber or timber near there and cutting the same from the lands,he was familiar with the tract of land in question,and possessed greater and better opportunities for a correct understanding of the boundaries of the said land than did this defendant or any person whatsoever,and was in fact fully and perfectly acquainted therewith,and well knew what he was buying and that which the defendant was selling.

This defendant denies that the said B.W.Hearne would not have purchased the said land,had he been aware of the deficiency alleged in the said land,on the contrary this defendant avers that the said land,notwithstanding any deficiency,if such there be,with the timber thereon,was of the full value of $2000.00,and but a fair and reasonable price therefor,considering the character of the timber thereon,and that the said B. Hearne made a large profit by reason of the purchase of the

said land and the sale of the timber therefrom.

This defendant denies that the said B.W.Hearne was,at the time of the said purchase and until 1898 or 1899 engaged in the saw-mill business in another and distant part of the county,on the contrary during that period,or the greater portion thereof he was cutting timber or his mill was located,within a comparatively short distance of this very tract of land,and that he went upon the same with comparative frequency.

This defendant denies that the said B.W.Hearne discovered for the first time,the alleged deficiency ~~for the first time~~ in 1899,when he cut the timber thereon,on the contrery this defendant avers,that the said B.W.Hearne was aware of the alleged deficiency long before he cut the said timber,but being satisfied with the said purchase,with the amount of timber thereon, it fully equalling his estimates made before the purchase,he cut the same,with full knowledge of the alleged deficiency,and well knowing that by his contract of hazard with this defendant,and his purchase by the tract he had no demand upon this defendant by reason of the deficiency in acreage if such there be.

This defendant denies that the deficiency of acreage,if such there be,is much less than claimed in the complainants bill, that the survey made by E?M?Morrison,alleged to be County Surveyor,is not binding upon this defendant,and this defendant in fact says,that the said E.M.Morrison has made a more recent survey,and has ascertained that there is an error in the former survey filed with the complainants bill.

This defendant avers that even if it be true,which he denies and does not admit,that the sale aforesaid to the said B.W. Hearne was a sale by the acre and not in gross,that the said

B.W.Hearne is estopped by his laches in demanding compensatio. from this defendant,and is precluded thereby from maintaining this suit.

This defendant denies that there is any mistake in the boundaries of the said land as described in the deed to the said B.W.Hearne.

And further answering this defendant says,that if it be true that upon a survey of the said land directed by the said B.W. Hearne,there is the deficiency of acreage in the land surveyed that such deficiency was occasioned by the failure of the said B.W.Hearne to point out to the said Surveyor all of the land conveyed by said deed.

This defendant is informed and so charges,that the said land originally consisted of two tracts,as will appear from the deed from Jas?F?Chalmers to this defendant,filed with the complainants bill,marked B,and that the said B.W.Hearne had surveyed but one of said tracts of land,and but a part of the land conveyed by this defendant by his deed aforesaid,that the other of said tracts of land,this defendant is informed and and so charges believes,is in possession of the said B.W.Hearne ,who is wrong -fully claiming the same under a pretended title by virtue of a deed from R.P.Prentis Comr in the suit of Whitehead vs Whit -head and others,when in truth and in fact his title is derived under the deed from this defendant,and any asserted title otherwise derived is invalid,imperfect and defective,and this defendant in fact sayeth that there is no such defienc, in land acreage of the said as in the complainants bill alleged,on the contrary this defendant avers that by virtue of his conveyance aforesaid,the said B.W.Hearne is seised in fee simple and is in lawful possession of the land conveyed by the said deed

without any deficiency of acreage,of if there be any deficiency it is so small and immaterial,that the complainant would not be entitled to an abatement of the purchase price,or to compensation even in the event that the said land had been conveyed by the acre and not in gross.

This defendant denies the allegation in the said bill,"that immediately after the the ascertainment that the said tract of land contained only 92 1/2 acres,the said complainant made a demand upon this defendant to correct the said deficiency",on the contrary this defendant avers that long prior to the cutting of the said timber,the complainant was fully aware of the said deficiency,if such there be,and cut the timber with full knowledge thereof.

And further answering this defendant says,that though the said land was sold in gross and not per acre,and there was in fact no obligation whatever upon him so to do,yet if the complainant had have informed him of any dissatisfaction with his said purchase,he would gladly have refunded the purchase price of said land and taken a conveyance therefor from the said complainant,as the said land with the timber thereon was of a greater value that the sum of $2000.00,the purchase price aforesaid.

This defendant denies that there were any negotiations between the complainant and this defendant looking to compensation from this defendant for any deficiency of acreage,or that this defendant in any manner admitted his liability therefor. This defendant admits that believing that the complainant was in error in alleging that there was only 92 1/2 acres in the said land,he went around the same with the complainant,and he

charges that the said complainant then and there conceded that the tract of land, which he did not include in the said survey because he was of the impression that he derived the same under a deed from R.E.Prentis Comr, was in truth and in fact a part of the land conveyed to him by this defendant, and that the title thereto was derived from him and not from the said commissioner.

This defendant avers that he has never in any manner admitted his liability to the complainant's demand.

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 he prays hence to be dismissed, with his costs in this behalf most unreasonably expended.

H. R. Purkins

Boykin p. d.

Pearce, F.W.

Vs : In Chancery.

Pearce, M.D.

Defendant's Answer

Filed 1894.

In the Circuit Court of the County of Isle of Wight.

Hearne.

Vs. In Chcy.

Parker.

The demurrer of H.R.Parker to the Bill of Complaint in said court exhibited by Bertin.W.Hearne against him.

This defendant by protestation,not confessing or acknowledging all or any of the matters and things,in the said complainants bill contained,to be true in such manner and form as the same are therein and thereby set forth and alleged,doth demur to the said bill,and for cause of demurrer sayeth,that the said bill is not sufficient in law,and that the complainant has not by his said bill made such a case as entitles him in a court of equity to any relief against him as to the matters contained in the said bill,or any of such matters: wherefore,and for divers other good causes of demurrer appearing in the said bill,this defendant doth demur thereto,and he prays judgment of the court,whether he shall be compelled to make any further or other answer to the said bill;and he prays hence to be dismissed with his reasonable costs in this behalf sustained.

Boykin.p.q.

Hearne.

Vs. In Chcy.

Parker.

Demurrer.

To the Hon C. W. Hill
Judge of the Circuit-Court of
Isle of Wight-County.

Humbly complaining, your complainant, B. W. Hearne shews unto your honor the following case.
That H. R. Parker and Fannie his wife, in consideration of the sum of Two Thousand ($2000) dollars paid to the said H. R Parker, conveyed unto your complainant a tract of land situated in the said county, which, in their deed bearing date on the first day of March 1883, and herewith filed, marked "A" as a part of this bill is described as follows, to-wit: "that certain tract of land in the county of Isle of Wight and state of Virginia, containing two hundred and two acres be the same more or less, bounded by the lands of Thomas Griffin, Wm Whitley, Norman Garner and others, and being the same tract of land conveyed to the said H. R Parker by deed from James F. Chalmers and wife, which is duly recorded in the clerks office of Isle of Wight-County court". The said land in the said deed of James F. Chalmers and Mary E. his wife, to the said H. R. Parker bearing date on the 19th day of October 1876 is described as follows, to-wit, "all of two certain tracts

of Land in the County of Isle of Wight, containing two hundred acres more or less, and known as the Chalmers Mill Tract, bounded as follows, viz, on the North West, North, North East, and East by the lands of Wm. G. Farrow, on the South East and South by the lands of Claudius T. Minton, on the South West by the lands of Mary Garner, and on the West by the lands of William Whitley, this being part of the land assigned to the said James F. Chalmers by the commissioners appointed to divide said Chalmers' factors land between the heirs", as will more fully appear by reference to the said Deed, herewith filed, marked "B", as a part of this bill. The said land was conveyed to the said complainant by the said Deed of A. R. Parker and wife with the usual covenants of title, as will fully appear by reference to the said Deed. In the said deed the name of Thomas Griffin was used by mistake for Alexander Griffin. At the time of the execution of the said Deed of Parker and wife to said complainant, the said Alex Griffin owned the lands formerly belonging to W. G. Farrow and Claudius T. Minton and Norman Garner owned the land for-

-merly belonging to Mary Garner
That - at - the time of the purchase of the said land, the said complainant was engaged in the saw-milling business. The said H. R. Parker, in order to induce the said complainant to purchase the said land, represented to him that the said tract of land contained two hundred and two acres of land well timbered land, and the said complainant, trusting and confiding in the said representation that the said tract of land contained two hundred and two acres, was induced thereby to purchase the said land, and to pay therefor the sum of two thousand dollars which he did in a final payment on the delivery of the said deed, fully believing at the time of the said purchase and final payment and afterwards until May 16, '89 that the said tract of land contained two hundred and two acres, and knowing nothing to the contrary.

That - at - the time of the said purchase and thereafter until 1888 or 1889 he was engaged in the said mill business in and near Carter, Land - of the County. In 1889 he cut the timber off of the said land, and then discovered, for the first time, that the said tract of land did not contain (202) two hundred and two acres, and upon

the survey thereof, made by E. M. Morrison, County Surveyor November 16th, 1889, a copy of which is herewith filed marked "C" as a part of this bill, the said tract of land was ascertained to contain only 92½ acres. Immediately upon the ascertainment that the said tract of land contained only 92½ acres, the said complainant made a demand upon the said H. R. Parker to correct the said deficiency, of which he was then notified, and negotiations for the settlement of the said demand have continued, with the hope of adjustment, from that time until very recently, when the said H. R. Parker positively refused to settle for the said deficiency, and to refund a proportionate part of the said purchase money corresponding with the said deficiency of acreage.

That the said complainant would not have paid $2000 - two thousand dollars for the said tract of land, and he would not have bought it at all, if he had known, at the time of the said purchase, that the said land contained only 92½ acres. He bought the said tract of land by the acre, and not in gross, or at hazard, and upon the representations made to him by the said H. R. Parker, that the tract of land did

contain 202 acres on which representation alone the complainant relied and was induced by it to make the said purchase, the pay the said sum of (#2000-) Two thousand dollars and which, upon such representation and belief, he would never have done to accept the said Deed of the said Parker and Wife.

The said representation was a mistake. The said tract of land does not contain 202 acres. It contains only 92½ acres. He would not have paid the said #2000, and he would not have accepted the said Deed of the said Parker and Wife if he had known this fact and had not relied wholly upon the statements of the said H.R. Parker.

The said complainant is entitled to have the said mistake corrected and rectified and to have refunded to him by the said H. R. Parker the proportionate part of the said (#2000-00) Two thousand dollars of purchase money corresponding to the said deficiency with interest thereon from the said first day of March 1883 to-wit; the sum of (#1095.00) One thousand and Ninety Five dollars, with interest from March 1st. 1883 as aforesaid which he hereby claims.

In tender consideration whereof and for as much as your complainant is without remedy save in a Court of Equity where matters of this kind are alone and properly cognizable and relievable, to the end that justice may be done he prays that H. R. Parker may be made a party defendant

to this bill, and be required to answer the same, but - an answer on oath is waived, that the Court will correct the error and relieve the said mistake and deficiency in the said land and that the said H. R. Parker may be required to refund and repay to your said complainant a proportionate part of the said ($2000-00) Two Thousand Dollars of purchase money corresponding to the said deficiency in the acreage as aforesaid, with interest thereon from March 1st 1883 till paid, to-wit, the sum of One Thousand and Ninety-Five Dollars ($1095.00) with interest from the 1st of March 1883 until paid as aforesaid, and that he may have and receive all such other and further relief in the premises as the nature of his case may require, or to Equity shall seem meet to grant. And he will ever pray &c

R-S. Thomas S.C.

Hearn B. W

v z Bill

Parker H. R

1894.

First Appl. recvd. Bill sustd, filed, Summs. exd & de. rtd

Second Appl. recvd.

April Term 1894

De granting leave to file answer &c.

April Term 1896

De. confg. agreement of Serial