

1909-002 Chancery Causes, David Daughtrey vs Joseph H. Duck  
Isle of Wight County

---

other surnames; Mitchell,  
Chapman, Pressy, Daughtrey

To the Honorable Robert R. Prentiss, judge of the Circuit Court of Isle-of-wight County.

Complaining sheweth unto the Court, your orator, David Daughtry, that on or about the 25th. day of October 1896 your orator purchased of Joseph H. Duck a certain piece or parcel of land lying, situate and being in Isle-of-wight County, Virginia, containing about 14 acres more or less and bounded as follows: On the north by the lands of John Pressy; On the South by the lands of Sterling Halladay; On the east by the lands of Joseph Mitchell; On the west by the lands of Joseph H. Duck. That the agreement between your orator and the said Joseph H. Duck was in effect as follows: that the said David Daughtry should pay to the said Joseph H. Duck the sum of Seventy dollars ~~of~~ Five dollars per acre for the said land, payments to be made as follows: That is to say Three dollars cash and the remainder on the first day of January 1900.

That the cash payment as required by the said agreement was <sup>in</sup> promptly made by your orator, and that on the first day of January 1900 in accordance with the terms of the agreement your orator tendered the remainder of the agreed purchase price and was entitled to a deed for said property from the said Joseph H. Duck; that he was put in possession of said property by the said Joseph H. Duck and is still in possession of said land; that since he has been in possession of the said land he cleared a great part of it, erected buildings thereon and made other improvements at great cost and expense to your orator, that the said Joseph H. Duck declines to execute a deed; that your orator has always been ready and willing to comply with and perform every part of this agreement and is now ready and willing to perform any and every part of this agreement.

In tender consideration whereof, and forasmuch as your verator is remediless in the premises save by <sup>the aid of</sup> a Court of equity where matters of this kind are alone properly cognizable, your orator prays that the said Joseph H. Duck may be made a party defendant to this bill and required to answer the same, but answer on oath is hereby expressly waived, that he

the said Joseph H. Duck may be required to execute a good and sufficient deed with covenants of general warranty, that proper process may issue, and that all such other, further and general relief may be afforded your orator as the nature of his case may require, or to equity shall seem meet. And your orator will ever pray &c

P. q.

*his*  
David X Daughtry  
*mark*

Southampton County to wit :

This day personally before me the undersigned, a Notary Public for the County aforesaid, David Daughtry, and made oath that he believes that the statements made in the foregoing bill are true. Given under my hand this 6<sup>th</sup> day of October 1900

..... L. R. Edwards .....

Notary Public.

Sam. S. Atkins

110 { *Prison Laundry*

*Sept. 1st*

1st December rules 1901

Bill filed. Sum. returned  
executed. de vice

2nd December rules 1900

Bill taken for confessed  
and case set for hearing

April term 1909. Vacation desu

Dismissed April 9, 1909

R. E. L. WATKINS,  
- - ATTORNEY-AT-LAW, - -  
FRANKLIN, - - VA.

Joseph H. Duck

Ads

David Daughtrey.

The answer of Joseph H. Duck to a bill of complaint exhibited against him in the Circuit Court of Isle of Wight County, by David Daughtrey.

This defendant, saving and reserving to himself a benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and insufficiencies in said bill contained, for answer thereto, or so much thereof as he is advised is material or necessary for him to answer, this defendant answers and says:

That he denies that the complainant on or about the 25th day of October 1896, or at any other time purchased a certain piece or parcel of land from, on the contrary, this respondent says that he never sold the said complainant any land in his life. This respondent says that he did not then and does not now own the land described in the complainant's bill, and that, therefore, he did not have the authority to sell the parcel of land described in said bill.

This respondent denies that the said complainant has erected buildings and made improvements at great cost and expense as alleged in said bill. This respondent utterly denies that <sup>said</sup> David Daughtrey ever paid him any cash payment on the land in the bill mentioned, or on any other land, and he says that the said complainant does not owe him any balance for any land. This respondent utterly denies every allegation in said bill contained to the effect that the complainant ever bought any land from him, or ever paid him anything on any land, or that he is under any obligation to convey any land to the said complainant, just as fully as if said allegation were repeated and categorically denied.

And now having fully answered, this defendant prays to be hence dismissed with his costs in this suit so unreasonably expended.

Wm S. Holland

Joseph H. Duck  
by Wm S. Holland his  
atto.

Jos H. Dusk  
ad 3  
David Doughton

---

Defendant's Answer

---

Filed for 1861

The depositions of J. W. Duck ~~father~~ taken this 19th day of April 1901 at the residence of J. W. Duck by consent of parties, notice is waived, and the presence of a solitary public is also waived; this evidence is to be read in behalf of the plaintiff in a certain suit in equity depending in the Circuit Court of Isle of Wight County, Virginia.

Present R. E. S. Watkins atty. for complainant.

Wm S. Holland atty for defendant.

J. W. Duck, being duly sworn deposes and says:

Ques. 1

State your name, age, residence age, & occupation:

Ans: Name is J. W. Duck, age 86, occupation farmer and reside in Isle of Wight County.

Ques. 2

State whether or not you know anything of the sale of a certain piece of land by Jos. H. Duck to David Daugherty?

Ans. Well, I know that Jos. did agree to sell a piece to David Daugherty. Yes, I do some know some things. That was my land and I had sold to two or three other colored people - and this was a corner next to the road. And I agreed to let them have it.

ques 3

Do you mean by your answer to the last question that the land that Jos. H. Duck agreed to sell to David Daugherty was at that time your property?

Ans - This land ~~is~~ had been mine up to that day and on that day I traded or exchanged land with Jos. H. Duck and I told David Daugherty to pay the money to Jos. H. Duck and not to me.

ques 4

Was the survey or measuring of the land that day done for the purpose of conveying or contracting with David Daugherty for the purpose of selling the land to him?

Ans. If he had had the money I should have sold it to him.

ques 5

Have you ~~ever~~ ever executed a deed to Jos. H. Duck for this land?

(Excepted to be sure the deed if any exist is the best evidence.)

Ans - yes Sir.

### Cross examination.

ques 1

When you speak about trading Comets with Jos. H. Duck, was any deed or writing executed that day between you and him?

Ans. No, I don't think there was that day.

ques 2

You have said in your direct examination that you have conveyed this land to Jos. H. Duck and you said awhile ago, that Wm. S. Holland wrote the deed

Now, I have made Jos. H. Duck only one seed and that is the one.

Ans. Yes.

Je-Linet.

Over 400.

And further This defendant saith not.

Alma

Certificate of Solay wine.

RE: ~~Walter~~ 29  
Mrs. Hoend had

David Daughtry  
at Ingham

Ans. A. Duck

---

Reproduction of A. H. Duck

The Commonwealth of Virginia,

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

WE COMMAND YOU that you summon

Joseph A. Duck

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 1st Monday in December 1900,  
to answer a bill in chancery, exhibited against him in our said court  
for by Mary Daughtrey

And have then there this writ. Witness NATHANIEL F. YOUNG, Clerk of our said court, at  
the court-house, the 23<sup>d</sup> day of November 1900, and in the 126<sup>th</sup>  
year of the Commonwealth.

N. F. Young es.

Navy Daughtry

VS.

{

SUBPOENA  
IN  
CHANCERY.

Joseph H. Duck

R. E. L. Watkins

p. 9

To First December Rules,

Exigent Court.

B 3:119

Executed on 3d Decr.  
by delivering a copy  
of the within notice  
to J. H. Duck, in person

J. A. Johnson, *copy & diff*  
For R. A. Edwards *diff*

+ others.

The depositions of J.H.Duck, the defendant, taken at the Office of Wm.S.Holland, in the county of Isle of Wight, in the state of Virginia, this 29th day of July by consent of parties pursuant to notice agreed upon.

Present Capt. R.E.Watkins, attorney for the plaintiff

Mr. Wm.S.Holland atto. for the defendant,

Jos. H.Duck being duly sworn, deposes and says:

1 *JP*  
State your name, age, residence and occupation:

Jos. H.Duck, 77 yrs. old, occupation a farmer, and live in Isle of Wight county, and I am the defendant in this suit.

Ques. 2 David Daughtry claims that you sold him a piece of land situate in Windsor Dis. in the county of Isle of Wight, in the state of Virginia, and adjoining Sterling Haliday and others, state whether or not you have sold him any land, and if so how much when and other circumstances?

Ans. I never sold David Daughtry any land in my life at any time.

Ques. 3 In the depositions of some of the witnesses it is said that on one occasion David Daughtry paid you three dollars on land and on timber you had sold him; did you get that three dollars, and if so, for what was it paid?

Ans. David Daughtry paid me last February three years ago three dollars for timber I sold him in 1896, that was only a part payment for the timber. This money was paid when I was at home sick at my house, he and Joe Mitchell came there one morning, he paid me three dollars that day and promised to pay the rest soon, but he has never paid me any since that time.

Ques. 4 What sort of timber do you mean you had sold him?

I had sold him some lumber in an old saw-mill shanty or shelter

shelter, it was second hand sawed lumber.

Ques. 5 On what land if you know was he to put or carry this lumber at the time he bought it?

Ans. I do not know what land he was going to put it on, I do not suppose he knew himself. He asked me to sell him some land that day, and I told him I did not have any land to sell him and should not sell him any.

Ques. 6 The land sued for is said to be a part of the "Elijah Place" once owned by your Brother, I.W.Duck, and is said to contain 14 acres, now state when you bargained for this land and when you got a deed for it if you can?

Ans. I bargained for this land in the Fall of 1896 and got a deed in July 1900.

Ques. 7 Bob. Duck colored and some other witness on the other side speak of the time when this land was measured or surveyed or when Halliday's land was measured, and say that you and David Daughtry spoke of the sale that day, Is that so, and if so tell what you and Davy did say on that occasion?

Ans. That is a notorious lie, the day that we surveyed the land David Daughtry was not there, No one there except Bob. Chapman, Joe Mitchell, and I.W.Duck and myself, that all that were there. I never said anything about selling the land to any one.

Ques 8 Does David Daughtrey occupy your land now, and if so, please tell how he got on it if you know?

Ans. He is occupying it, went there of his own free will and accord, he did not ask me any odds, he never asked me to allow him to go on the land, the day we surveyed the land I saw some one had built a small log house, and asked who had done, and was told that David Daughtry was there or had done the work, we went further on the line and after a while I went to the spot and

B 3

saw the small log house knotted up, and about an acre where the underbrush had been cut or moved, and about 20 yds. Square had been grubbed, and I saw a small collard patch there and a small turnip patch there, that was about the last of Oct. 1896 .

Ques.  
Ques 9

Were you told by your brother from whom you bought the land that he sold David any land, or the land where the house was knotted up?

NO, Sir, I asked him how come Davy Daughtry to be on this land, I said to him, my brother, that, I thought all the land on the Southside of the road was mine now, he said no, ~~he~~ Dave had not been authorized by him to build there, said Dave come to him some time ago and told him he wanted to build in the pocosin, that he wanted to get out of Nansemond county, where he was tired of living, he, my brother informed me that he had not sold Davy any land, and he told me all the land left on the South side of the road was mine.

Ques.  
Ques. 10

Some of the witnesses for the plaintiff have said something about Davy Daughtry having offered to pay you for the land in January 1897 , or about that time, and called for a deed? Tell about that if it is true?

Ans.

Ans. Davy Daughtry came to my house in Dec. 1900 and told me he came there to get a deed for his land, and I told him I never sold him any land in my life, I told him I bought the land and had not gotten any deed, I told him I bought the land not to sell but to keep a colony from being built up so near me, he said he bought the land of Mr. Irvin Duck, for four dollars an acre, but he said he heard I had bought the land, I told him yes, I had bargained for it but had gotten no title, well he said he came to buy the land of me and he would give me five dollars and acre, and

I replied by telling him I had no land to sell. I asked him why he wanted to buy the land of so many folks for and he said he herd I had bought the land and he thought he would buy from them all, I told him I had gotton no deed for the land and if I had a deed I did not intend to sellit.

Ques II Have you ever called on him for any rent or to move or anything of that sort?

Ans. Yes, I have notified him two or three times, gave him notice to leave, and to pay rent, In a very short while after I got a deed fro the land I gave him notice.

Ques. I2 Have you by word or deed ~~allowed or authorized~~ authorized or encouraged Davy Daughtry to build or do anything in the way of improvements on your land.

Ans. No Sir, never, he did not recognize it as my land and never said anything to me about building on it.

Ques I3 Is there any special reason why you do not wish to sell this land to any one, if so tell tell it,

Ans. The crowd living near my land are constantly pillaging on on it and I do not want that crowd to increase or get larger. I bought my land and paid for it and do not wish to sell it to Davy Daughtry and never sold him any land and nefer promised to sell it to him anywhere at any time .

Ques I4 Will youmplease recall as best you can the time when David asked you for a deed and told you he would give you five dollarw per acre, and that he bought it of ~~my~~ your brother? Was after you got the deed or before?

Ans It was in Dec. 1902 no it was in Dec. 1899?

Cross Examlnation.

1 Q. Who was present on the day the survey was made?

Ans. myself, brother I.W.Duck, Bob Chapman, Joe Mitchell.  
Is it not a fact that David Daughtry did come up just before your crowd had dispersed?

5  
He never came where we were.

3d Q. How many acres are there in the piece of land sold David Daughtry?

Ans. 143/4 acres.

4th.Q Had not Sterling Halliday and others bought a part of this tract of land, known as the Elijah place, and settled thereon before your brother made you a deed for the land.

Ans. Yes.

5th.Q. On this particular tract there was only 14 acres which had not been sold when your brother made you a deed for it?

Ans. There was none sold.

Q6th. Is it not a fact that you never demanded rent or ordered David Daughtry to vacate the premises until suit had been instituted against you in the circuit court for the purpose of requiring you to specifically perform your contract?

Ans. I have never demanded any rent. I do not recollect ever interfering with the land until after I got a deed for it.

Did you not take possession of the land and begin to exercise authority over this land before you received a deed for it?

Ans. No,

7th.Q. Did you not several years ago sue Robt. Carr for trespassing on this land?

Ans. Yes on that and some other land of mine.

8th.Q. Then as a matter of fact you have been exercising control over this land ever since you bargained with your brother for the exchange.

Ans. No, I never did.

10th. Q. Is it not a fact that this land, or the community in which

in which David Daughtry lives, is settled principally by colored people?

X Ans. Yes, there are four or five colored people living around him.

11th Q. How long had David Daughtry been living on this land before he requested you to make him a deed?

Ans. He moved there in the winter of 1896 and requested me to make him a deed in December 1899.

In what year did he try to bargain with you for the purchase of the land?

Ans. He never came to me at all.

13th Q. Who was with David Daughtry when he paid you the three dollars?

Ans. Joe Mitchell, came with him that morning, do not think he was in the house at that time.

14th Did you not go out in the yard and talk to David Daughtry in the presence of Joe Mitchell on that morning?.

Ans. No, I was not able to get off the bed.

15th Q. What was your objections to building a colored colony on this Pocosin property?

Ans. Because I had land there and I did not want my land pillaged.

16th. Q. You never objected to David Daughtry occupying the land, erecting buildings, or clearing the land during the time you were waiting for a deed from your brother or any other time did you?.

Ans. It was not my land/

17th Q. You seem to have claimed this land when Robt Carr took

lightwood and removed top soil, why did you not exercise authority over the part occupied by David Daughtry?

Ans.

Because I did not have a deed for it.

Re-examination.

Do I understand you to say you did have a warrant against Bon Carr for trespass and that he had been trespassing on the Elijah land and the other lands of yours, do you now know whether or not the Elijah Place land was mentioned in the Bob Carr warrant?

Ans. I cannot say about that, it commenced ~~xxx~~ on my other land first.

Ques. 2 In speaking of the negro colony do you mean to say that the colored men you have named ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~  
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

Ans.

are the only people who live in that neighborhood?  
No, other people live there.

And further <sup>is</sup> the deponent saith not.

Joseph L. Duck

Jno. L. Lawrence a witness of lawful age being duly sworn deposes and says-

That he was called upon by Mr. J.H. Duck to go on the land now occupied by David Daughtry and I did so in company with Jno. M. Ballard, and we thought the land and buildings all together worth about \$225.00 and that if Davy had never

~~gone on the land at all, but that the land and buildings were now up just as the buildings and that it would be worth, say, \$250.00 or even more than~~

4

not gone on the land, and had left it to grow up in timber it would be worth about as much or even more than by having the improvements made by David, I would give more for it if Davy had not touched it, I suppose the houses built by Davy costs about one hundred dollars. I know nothing whatever of any bargain between any of them. Mr. Ballard is <sup>an</sup> member of the Board of Supervisors of the county, and practically agreed with me. Cross. examined.

Ques. I. What is the character of the soil?

Ans. Two thirds or about is medium soil and the rest is swamp land.

How much is cleared

Ans. Barely one half of it.

About how many thousand feet of timber on that part not cleared ?

Ten or 12 thousand

About what size?

Ans. An average of 16 or 17 inches in diameter?

What sort of timber?

Ans Pine

How many buildings on the place, I mean erections?

Ans-one building and two or three shanties, I mean the kitchen and dwelling in one, as the one building.

Ques. What size of the main dwelling?

about 18 ft by 20 ft.

How many thousand feet in that building

Ans ~~XXXXXXXXXXXXXXX~~feet ~~XXXXXXXXXXXXXXX~~over

About two to three thousand feet of timber and it cost about \$14 to \$21

Is the cleared land in a good state of cultivation ?

No.

*And further this deponent says with oath,  
Jno. V. Fawcett*

Ans

Turnips had been sowed, some cutting  
down, timber had been hewed &  
on that day shingles were being  
hauled - ~~except had had been~~

Ques 5-

Then say Dugley had rented or  
bought before the day it was  
run off?

Ans

There must have been some bargain  
before - it did not seem that  
a man would go on smoothers  
but end common cutting down  
and preparing to haul without  
some authority.

Ques 6

How many times did Day buy this  
land and how many flocks did  
he buy it from?

Ans

I do not know. what I have  
told you is all I know

Ques 7

You seem to feel sure he had  
bought before it was run off and  
now do I understand he bought  
it again that day

Ans

I have just that part of the account  
as I have just told you - the  
running off before Xmas and  
the day after Xmas we were  
at his house -

Ques 9 If they had made a contract before  
it was run off why were they  
making another contract the  
day the first was run off?

Ans-10 He asked me ~~if~~ you asked  
me - what I knew about the  
contract and I told you must  
have been - that was the first  
that run off - I am not able  
to tell you, why they made only  
he asked for another year -  
I am not prepared to give anything  
more than I had told - nothing  
else - no correction to make.

Ques 11 Do you know who sold them other  
people too?

Who Robt Chapman, myself & Perry  
Sterling Hoadley -  
Mr. Irvin Duck was the man.

Ques 11 Did not Irvin Duck sell to  
Day Doughty?

I do not know sir -

Ques 12 Do you know who did sell  
to Day Doughty?

Ans. Nothing more than I first told  
you.

ques 13 do you know where Dany Doughty  
got all his timber to build  
the houses you say he has  
built?

Ans He sold him 2050 shingles that  
came off of the Beoles land. I  
do not know about the rest.

ques 14 Tell all who were present at the  
sawing or running off and  
what time did Dany Doughty  
come.

Dany Doughty made second load  
of shingles from the Beoles swamp  
and that left Mr. Joe Duke Mr.  
Tom Duke, Robt Chapman,  
Dany Doughty & Joe Mitchell.  
I could not tell exactly what  
time of day it was. I could  
not tell whether Dany came  
before dinner or after dinner.  
I do not know what time it  
was.

Ques 15 - How far did Davy go for the shingles?

I do not know Sir, but for it was any one here can tell better than I am - Mr. Beale can -

Ques. 16 How far are you not travelled for ~~for~~ Mr. Beales jump to Davy Doughtys many times?

I have travelled that path for the last 10 yrs many times but I am a poor judge of distances - the time is about -

Ques 17 You say that you can not tell exactly the distance, estimate as nearly as you can?

Ans - Mr. Hallam it is hard to do. It is about  $3/4$  of a mile -

Ques 18 Tell the date when you heard the contract as nearly as you can?

Ans

I can't tell - it was in the fall when the land was run off and after Xmas when they met and talked & that money was paid at long covered house at Mr. Joe Dukes

Ques 19 Don you say what year?

Ans Wet year - when was in 92  
was it. I

Ques 20 Has it ben 20 yrs?

No Sir -

Ques 21 Has it ben 10 yrs.

No Sir -

Ques 22 Has it ben 5 yrs.

It was the wet year in the fall  
when they run the cut off and  
after X mrs when I memory was  
passed

Ques 23 You has said several times about the  
wet year, so that all you  
can say as to date?

I do not know whether it was  
96 or 97. It was either 1896  
or 1897. I mean the wet year  
one of them?

Ques 24 How is it that you can tell the  
my words Joe Buck said, J.W.  
Buck & Jay said?

Ans Because I know what I heard -  
that I see I see & that I  
know.

Ques 25 Can you tell any anniversary word  
for word you heard during the  
wet year?

ans

I am Tell all my business  
transactions - I heard in  
heap of idle talk during that  
year?

ques 26

Was that one of your business transac-  
tions?

That was one of the things that I  
remember.

ques 27

Do you not know that Joe  
Duck did not own a foot  
of land in that location  
at the time you say?

No sir - I did not know it -

ques 28

Did not Davy owe Mr. Joe  
Duck money other than on  
land?

ans

I do not know sir.

### Re-Examination

Q 1.

Did Jos. H. Duck represent, pretend or  
state to Davy Daughtry in your  
presence that he did own the  
land at the time that the \$3<sup>00</sup> was  
paid to him?

Question objected to because leading and  
because this fact is not brought

to correct a fraud, but to secure title to land which belonged to Jos. H. Duck and which it is alleged he sold to David Houghton.

A. 1 He told him to pay for it in 3 yrs and he would make him a title to it.

Re answer on anti-

1 Why did you wait till now to tell this?

~~Just~~ yes. Tell all Mr. Duck did say?

~~He~~ Mr. Duck told him that any he would grant him three years if he did pay in 3 yrs it would be all he did but the land was dead, that he had rather sell the piece of land over the big rock than not to sell it, that if he left now there would be a pillage over it - say safely asked Mr. Duck to give him

a raft. ~~And~~ also fix up  
business about the land & Mr.  
Duck said he could not see  
without his spectacles so he had  
no paper in his pocket, my  
for the land it would be  
all right he seemed to like  
him a little to it. This  
all he said that day morning  
the morning between he & Henry  
Doughty. I went on to my  
work.

- (3) who first gave me Henry Doughty in  
possession or unchanged him  
to work on this land.  
Ans. out of my hands to tell

And further this agreement south yet?

Joseph M. Mitchell

The witness Robt Chapman being sworn deposes as follows:

Q 1 States your name age occupation and residence.

A 1 Robt Chapman age 55, Isle of Wight County and not related to any of the parties to this suit.

Q 2 Do you know the parties to this suit.

A. Yes. David Daughtry and Jos H. Duck.

Q 3 State whether or not you are familiar with the land in the bill mentioned in this suit?

A. 3 Yes.

State whether or not you know of any contract between Jos. H. Duck & David Daughtry with reference to this land. If so what?

A. Yes. Sir, I bargained to buy 50 acres of land from Mr. Brown Duck. The 50 acres of land after I bargained for it, I let my son-in-law take 25 acres of it. And when I went to get a deed for my land I only <sup>got</sup> a deed for 25 acres.

When the land was run off  
 myself, Joe Mitchell, Mr Joe Duck,  
 and Mr. Isaac Duck hope run  
 it off. When they run off mine -  
 then they run off the other 25  
 acres - meaning the 25 acres of  
 my son-in-law - Then Mr. Isaac  
 Duck - told me that the remainder  
 of that land - went to Mr. Joe  
 Duck - said that he and Mr  
 Joe Duck had traded land - a  
 piece on Blackwater. the John  
 Carr track. And he told me that  
 he and his brother had traded  
 land and the remainder - for the  
 56 acres were taken out, went  
 to his brother. When he got through  
 running off my son-in-law's  
 land then they taken a line  
 and measured it two sides and  
 after they measured it they estimated  
 then - 14 acres and something. And  
 David Daughton bargained with Mr  
 Joe Duck to sell him the remainder,  
 meaning the 14 acres and something -  
 Mr Duck promised to let him have  
 it at \$5<sup>00</sup> per acre.



of each and every interest.

Q. 5. Do you own a part of the same  
 — truck in this suit mentioned. If  
 — so from whom did you purchase?

A. 5. Yes, I purchased it from Mr.  
 Irwin Duck,

Objected to for reasons appearing on  
 — its face.

Q. 6. Do you know when David Daugtry  
 was first placed in possession of the  
 land?

— Gives Mr. Joe Duck because they  
 had done <sup>when the land was run off.</sup> and traded, because Mr  
 Irwin Duck said so, I think it  
 was about 4 years ago. more or  
 — less

Q. 7. State whether or not there are  
 any buildings on the land upon  
 which David Daugtry resides, which  
 is the land in this suit mentioned, and  
 if so what is their value?

A. 7. Yes. Now I should say, about  
 \$150<sup>00</sup> and that is low.

## Cross Examination

Ques 1

At time the land was run off how long  
had David <sup>Daugherty</sup> been working on the  
land?

Ans

I was not interested - I had no right  
to keep time -

Ques 2

was it one year or as much as three  
years?

Can't say -

Ques. 2

You mean to say that at <sup>the</sup> time the land  
was run off and you heard Mr.  
Joe Deak offer to sell it for  
\$5 per acre on 3 yrs time,  
you can't tell whether or not  
Davy had been there as much  
as three years?

Ans

I do not know really whether the time  
was out - he had just got possession  
of it that day - at that day  
he got possession - I can't  
say whether or not it was three  
years before it <sup>was</sup> run off or not  
when Davy Daugherty went to  
work on it. It was not run off  
when he went there. When he went  
there he went on these terms  
He went on it on three years. When  
Joe Deak told him he could

get the bal. of the remainder after deducting 50 acres - Mr. Joe Duck told me there was really more than 50 acres was I said Mr. Joe Duck I did not think there was much more than that. This was before it was run off & Dary Doughty was already there, You has said that Mr. Irvin Duck would not sell to Dary and would not let him go the land, how you not?

ans

{ I have not said it, but I am saying it, and I do say now.

ques 4

Did Dary <sup>explicitly</sup> say by the way it was run off? Had bargained before it was run off - he done & living there then -

ques 5

What was the first bargain? I do not say know. I do not think I was present -

ques 6

What the bargain which you say was made before it was off?

I told you I never heard any bargain before it was run off.

Q 7 Man has said Dory was living on the land when it was run off? Is that correct?  
 Yes Sir.

Ques 8 Living there as a buyer or renter?  
 Ans. He had bought it.

Ques 9 What was the bargain?  
 Ans. \$5 per acre. It has just come to me - he was not living there when it was run off but was hauling bricks or shingles that day - he had hauled a possel of mess there before that day.

Ques 10 Do you know how he got the right to haul there before it was run off?

Ans. Mr. Joe Duck said word by me before it was run off that he would sell it to Dory Dafty - Dory had <sup>not</sup> been to see Mr. Duck. I do not know what bargain they made. Mr. Joe Duck did not mention any price but told me to tell Dory to come to see him.

Ques 11 You say Mr. Joe offered to sell on three years time.

Said let me. Yes he said so the day it was run off.

Ques 12 Who else heard it?

His brother Iron Duck, Joe Mitchell & myself ~~and~~ I can't say <sup>about</sup> others.

Ques 12 ~~at~~ How <sup>much</sup> was he to pay?

I think it was estimated to come to \$70 - I told you just now I was not there when they made the bargain and I can not answer that question?

Ques 14 Then you did not hear the bargain?

So Sir,

Ques 15 Was not two years mentioned?  
You can't do no business like that - I do not know whether it was one, two or  $2\frac{1}{2}$  yrs.

Ques. 16 How could say to Mr. Watkins say he three years?  
Davy told me that. I did not tell Mr. Joe Duck anything about that.

Ques 17 When it was run off in the presence of Joe Mitchell did Mr. Duck

7  
15

24.

Ques 17 tell Dory in your hearing and in  
Joe Mitchell's hearing that  
that he was giving him 3 yrs?  
Ans I have just now told you I did  
not hear him say one year, 2  
yrs or a half of one. I  
do not know anything about it  
no how? I have nothing of the  
terms at all. I think all  
I ever heard about time came from  
Bro. Daugherty there.

Ques 18 If Joe Mitchell says three years  
he is mistaken, is he not? I  
mean the day had was run off?  
Ans I am just answering for myself.

Ques 19 Joe Mitchell says that Joe Duck  
gave him two years and that  
you were present on day it was  
run off and heard it, is that  
correct?  
If it was so I have forgotten it.  
It was none of my business  
and it was not concerning me;

Ques 20 it has been some four years ago  
and it was none of your business  
now of course you remember  
any of it correctly? I can

25

remember what I said. If I had  
not remembered I could not  
have told it.

And further this defendant said  
not?

Robt <sup>hus</sup> X Chapman  
man

The witness John Passy being duly sworn deposes as follows:

Q1 Give your name, age occupation and residence?

A1 John Passy age 41, Farmer Isle of Wight County.

Q2 Do you know the parties to this suit and are you related to either of them?

A2 Yes. I am not related to either.

Q3 Do you know anything of contract between Mr. Jos H. Duck and David Daughtry with reference to the purchasing of a piece of land upon which David Daughtry now resides, if so state what?

A3 Yes. Mr. Duck told me that he had sold a piece of land to David Daughtry. He tried to sell it to me first. And I did not see where I could pay it like he wanted and I flaged. He offered to sell it to me in the first of 1896. He told me

probably about a month or a couple of months after he had offered to sell it to me that he had sold it to David

2)

Daughter and that I had lost the  
place. I asked him what he  
got for it and he told me he got  
\$5<sup>00</sup>/<sub>100</sub> per acre. This conversation occurred  
in the County, near Mr. Joe Duck's  
house. About 2 yrs ago this coming  
Christmas I went with Daughter to  
Mr. Joe Duck's house but not for  
this business, and he told Mr. Duck  
that he had come over there to get  
a deed for that land, that he was  
ready to pay for it. Mr. Joe Duck  
told him that he had not sold  
him any land. Daughter asked  
why hadn't he sold him land,  
he said because he had not, and  
did not have any land to sell.  
If you haven't said any what,  
will you do? Mr. Joe Duck said  
I will be over to your house  
and tell you next Sunday and  
tell you. I spoke then and said  
Sunday ain't no day to do business,  
24 Did you, at that time remind Mr  
Duck of the conversation held with  
you on the public road with reference  
to the sale of this land?

A4 Yes I told him at the time that he offered to sell it to me at one time -

Q5 What was the condition of the land at the time that David Daughtry moved on it? Was cleared - woodland? and what is the condition of it now?

A5 It was woodland - nothing there but the trees - Now it is cleared - one half of it.

Q6 Are there any buildings on it?

A6 Yes, buildings worth over \$100<sup>00</sup> there are - House, kitchen, barn and stables - Smokehouse & chicken house -

Q7 State about the size of the house he lives in?

A7 18 X 20 - Something like it.

Q8 Is it a log or frame building?

A8 The house & kitchen are frame with one brick chimney - The barn and other houses are made of logs or poles.

Q 9

About how long has David  
Daughter been living on this  
land?

A 9

5 yrs this coming Christmas, I think.

### Gross Examination -

Ques

~~There~~ Tell all of these  
Conversations?

He charged me \$1 per acre, cash all -  
that is why I did not buy because he  
wanted all cash - he did tell me he  
gave Daughter two years to pay for  
it - Davy showed no money but  
<sup>Mr. Duck</sup> told he could get it whenever he  
could give him a deed for it - Davy  
told him Joe Duck any time when  
he make a deed he could get the  
money. Davy said 2 years 2 yrs  
if you have not sold him any but  
will you sell. <sup>now</sup> Joe Duck told  
him he wanted go over next Sunday  
and let him know - I do not know  
whether he went or not. I do not know  
whether Davy wanted buy or not. After  
Mr. Duck told him he wanted come  
over next Sunday & let him know  
he said no more <sup>about this land</sup>  
and further this defendant said not. John <sup>Daughter</sup>

The further taking of these depositions is resumed at Corvallis this 10<sup>th</sup> day of January 1902 pursuant to adjournment.

Present R. L. Mattis for the Plaintiff  
 Wm. S. Mallard for the Defendant.

The witness David Daughton being sworn deposes as follows:

Q Do you know the Plaintiff in this suit?

A Yes.

Q State what contract you had with J. H. Duck with reference to purchasing the land in the bill described?

A Well sir, I went to Mr. Edwin Duck first place and ask him about buying this land and he says it is not mine. He said it was his brother J. H. Duck's land. And he says I can't go to run it off. We and him have traded the "John Carr tract".

2 A Co.

31  
 when ~~it was~~<sup>he runs</sup> it off. Said  
 that he was not able to run it  
 off then but he would run it  
 off as soon as he got able.  
 In 1896 he came down and  
 run it off - meaning the John  
 Carr Tract. Well I made an  
 answer to him. saying I wanted  
 to buy the remainder on the other  
 side of the path. He said it was  
 all Joe's. Maybe you can buy  
 it from Joe. I says I don't  
 know whether I can buy it  
 from him or not. I comes on  
 home by Bob Chapman's. I  
 was telling Bob about the Trade.  
 Bob went over the next day to  
 Mr. Joe Ducks and ask Mr  
 Joe Duck about this. Mr Duck  
 told Bob Chapman to tell me to  
 come to see him, that he,  
 JN Duck would sell him the  
 land. He told Bob Chapman  
 that I might have the land  
 for five dollars per acre. I did  
 not know that he had a flock  
 of land to sell before he sent me

2 A Con.

word. I went to J. H. Duck on Monday morning and when I went then I told him my business. The answer he gave me was, yes, I will sell you the land. What do you ask for it Mr. Duck? Five dollars per acre. Tell Mr. Duck why do you charge five dollars an acre and your brother did not charge but four dollars per acre for his? Because it is better land, said the reply. How much land do you want David? they on his very words, I said I want about 4 or 5 acres, O, that is no land, Well, then will be about 15 or 20 acres in that little corner and I shall expect you to take it all, I do not want it. Tell your mother make some arrangements to take it all - get some one to go in with you I do not want it. Then I agreed to take the whole lot there for what they might in the price.

Well then the agreement was made  
that the land was in my charge.  
Then I said that I did not want  
the interest to start until I  
moved on there - He agreed.  
Then David I have an old shelter  
that I will sell you with the  
land to build you a house out  
of. Well I says Mr. Duck we  
will not talk about the shelter  
just now, how much time  
will you give me on this  
land? Says he, how much time  
do you want? Well, I says I  
want two years well, I reckon  
you can pay for it in two  
years, how many children have  
you got? I have twelve children.  
Why, you can pay for it directly -  
Is they all living David, Yes,  
Sir, they are all living, but  
that you had 5 dead -  
He says, you could soon pay  
for that piece of land, if all of  
your children would come  
together - I said to him, the children  
are working out for their selves,

51

34

and I shall have to look out for  
mine - They are all married.  
That fact, his brother, Mr. L. M. Duck  
Came and run the land off.  
I was hauling shingles on the  
place at the time. When they  
had about finished up I came  
up with a load. Mr. Irwin  
Duck was sitting down by  
a stump on the side of the  
path. He says, is that your  
David? I say yes, sir. Hold  
on here. They have gone down  
the path to John Preser's line  
to see what is in this piece,  
meaning the piece that I bought,  
when they came up. Mr. Irwin  
Duck ask Mr. Joe Duck how  
much was in the piece - He  
worked it out and said there  
was 14 acres and a little over,  
Mr. Joe Duck said David you  
may have it for \$700.00 dollars.  
~~When~~ are you going to move  
here - I am coming to get there  
New Year's day - Get me up, said  
Mr. Joe Duck, all of the money

6 -

35

that you can. I said well, I will  
come and bring you some if  
I can. Soon as I can move.  
I want you to come over blood  
and fix up business.

I finished moving on the place  
New Year's day. In the course of  
4 days I went over to see him.  
Joe Mitchell was at Mr. Duck's  
when I went there - moving shingles.  
He went with me - I gave Mr.  
Duck three dollars. I ask him  
for a receipt and he said that  
he could not see how to  
write. "There is Joe Mitchell, said  
Mr. Duck, Joe Mitchell is  
equally as good as writing. I  
said Mr. Duck suppose Joe  
Mitchell or me was to die, ~~well~~  
he said we will have that  
risk to run. I says well you  
will not give me any receipt,  
well Mr. Duck you gave me  
two years when you and I talked.  
I have had a mighty hard time  
Mr. Duck about building. I wish  
you would please give me

another year or more in three  
years. Well, yes David, I will  
give you another year and  
more in that year, and if  
you do not come up exactly  
at that time I will lengthen  
the time out. At the end of  
the three years I went to him  
and ask him for a deed. He  
says to me deed is out of date.  
How come it out Mr. Duck?  
Well I have not said you any  
land. Who said it to me Mr.  
Duck? Buddie said it to  
you. I said Mr. Duck, he did not.  
I wanted not dispute his word  
any more. Says I, whenever you  
get ready to make your deed  
I am ready to pay you.  
Can you, brother make any deed?  
No, he says, it is my land.  
Well you are the man that sold  
it to me. Well, he says, I am  
coming over there in a few days.  
When are you coming Mr. Duck?  
Well I will be along over  
there, Saturday or Sunday.

Come Saturday I said, don't come Sunday. He never come at all. I went to him three times for a deed - Mr. Irwin Duck told me to go to him - it was his land and they going to him. I said Mr. Irwin Duck of words and I told him that, Mr. J. H. Duck would give me no deed. He says, really I don't know what makes you do so. I don't see any other but what you will leave me to force.

The defendant excepts to so much of the above answer as is not responsive to the question, and all that of the talks and conversations between the witness and Joe Mitchell and Irwin Duck or Irwin H. Duck, in the absence of J. H. Duck. Did you state for what the three dollars was when you paid it to J. H. Duck in the presence of Joe Mitchell? When I paid him the three dollars it was all the land and the lumber.

3<sup>d</sup> Q.

- 4 Q Did Mr. Duck, Joe Duck place you in possession of this land?
- 4 A Yes, Mr. Joe did it.
- 5 Q Has he ever demanded rent for the use of the land?
- 5 A No.
- 6 Q Has he ever ordered you to vacate the premises, if so when?
- 6 A Yes he sent me notice June 1901.
- 7 Q Did he ever order you to leave before you brought Duck to obtain a deed from him for the land?
- 7 A No Sir.
- 8 Q What did the buildings, which you have erected on the place cost you?
- 8 A About \$250.<sup>00</sup>
- 9 Q How much of the land have you cleared?
- 9 A - Somewhere about 6 or 7 acres.

10 Q

When did you first move on the land?

10 A.

New Year's day 1877.

11 Q.

Are you prepared to comply with your contract with M. Jos H. Swan at this time?

11 A.

Yes.

12 Q

What is, in your opinion, a fair value for this property now?

12 A.

What I have done there land and all is worth \$5000 dollars to me.

### Press Examination.

Q 1

How much were you to pay for the shelter and timber?

\$7

Q 2

How much for the land

\$70 -

June 3 \$77 in all?

Yes Sir,

yes

was that the bargain Joe Mitchell

40

heard?

Q-4 He heard when I paid the \$3  
who did did hear the bargain?

Joe Mitchell

Q-5 Any one else

no one else.

Q-6

When was the bargain made?

About 4 days after new years day,  
day 1897 - About 4 days after  
Jan. 1st 1897.

Q-7

Is that the bargain you are trying  
to make Mr. Duck keep on  
his part?

Yes Sir -

Q-8

Then you you moved on the land,  
had shingles and built house  
before you made the  
bargain?

Yes Sir, Me & him made the bargain  
first - after me & he made the  
bargain we were alone and  
when it is was finished up  
here & he & Joe Mitchell done  
it - finished it up. He  
called Joe for a witness.

Ques. What was the out-<sup>of</sup> money to be paid when you & Mr. Decker were alone.

Ques. 12 ~~Ans. No sum was named as to how much was to be paid.~~  
 Tell me what that means -  
 There would be no money - no money was to be passed - no out-  
 was made till the land was run off -

Ques. 13 - when did you first bargain for the old house or shelter?  
 Ans. When the day I went to see him to buy the land - no one heard that - that was before I knew them - when we ran the land off he told me what all would cost, it was 70 \$ and 7 \$ on top of it.

Ques. 14 ~~then~~  
 Was that the first time you knew what all would cost?  
 From him - certainly - I knew before he told me and counted it up what it was

yes, 15<sup>th</sup> was the day the land was run  
off the first time J. H. Duck  
had told you the price of  
the land and shelter?

So Sir, it was not - he told me  
what the price of the home was  
now you see when he sold  
me the home it was \$7 I  
will sell you the land with  
the home - when the land was  
run off he told me what  
was in the ground & he  
told me what it came  
to -

My son has said too about running off  
the land, said you were here since  
Hughes & saw J. H. & J. W.  
Duck & others, now had  
J. H. Duck sold you any  
shelter before that day?

yes <sup>we</sup> ~~the~~ made a bargain, when  
he spoke of the home he  
spoke of the land - said  
he well buy - we did not  
then buy any more to day

Ques. ~~Did~~ Did you not say a while ago to Mr. Watkins that four days after new years day in 1877 <sup>when you or</sup> ~~was at his place~~ Joe Mitchell, he offered to sell you a shelter and you told him not bother about the shelter that it was the land you wanted to talk about?

Ans. So Sir,

You have said in a low voice you cared by what was said till it please?

Ques. Well. I asked him - ~~the~~ He told me he would sell me the land & shed shelter when I went to see him - that was before I commenced working on the place. He told me I cared him the land for \$5 an acre. In August before I ~~went~~ <sup>when</sup> we went to look at the house - that was Bob Decker told me ~~the~~ <sup>he</sup> what J. H. Decker said -

Bob Duck told me that Joe  
Duck told him to tell me  
he wanted sell me the land -  
why it was his land

1st page - Jan 30, 1902

The witness David Daughtry

Pursuant to adjournment the further taking of these depositions is resumed at same place and between the same hours

David Daughtry further crosses and

1 State at what <sup>place</sup> or places you and J. H. Duck made the bargain about this land?

Ans. At his house and at no other place.

2 Who was present?

I and him first and no one else that time, well he sent for me, sent by Bob. Chapman - I did not know he had a lot of land to sell until Bob. Chapman told me. I went up to see him about it and no one was present except he & Duck. Next time land was talked about Joe Mitchell and Bob. Chapman and Mr. Irvin Duck. I drove up to Mr. Irvin Duck <sup>was</sup> in the woods

2, page July 30-1902

where where they were measuring  
the land, told me to hold on  
they were gone down the  
path - said they will be back  
here presently and we  
will find out what is in  
the piece of land - When he  
came up he told his brother,  
there was 14 acres and a little  
the rise. Then Mr. Joe said  
to me Dory I want you  
to bring me some money,  
just as soon as you can,  
and I told him I would try  
to get him some later I  
bought. I shall aim to move  
in New Year's day - I  
want to come then for you  
to give me some writings,  
all right Dory I will give  
you writings, well I went  
to him as I promised and  
I counted him \$3.00. I packed  
up to him and I gave him \$3.00  
and he says to me, I asked  
him for my receipt for the  
money and land - He said  
he could not see how

B, Jay 30-1902

to write and had no paper.  
He called on Joe Mitchell  
as a witness, equally as  
good as writing. Then  
Mr. Irving Duck told me  
to pay the money to J.B.  
Deed for it was not  
his but -

Answer excepted as irrelevant  
and all that part which gives  
the statements of J.W. Deed  
are objected to because  
hearsay.

3

Have you given me the names  
of all who were present at  
the bargain mentioned?

Yes sir.

4

Have you told <sup>me</sup> <sup>that was</sup> all, <sup>said</sup>  
about the bargain as you  
now recollect it, or have  
you not left out a part?

I have told all the names and  
only one thing left out and  
that is as to limit of time.

4 July 30-1902

5 when Mr. Duck told you he  
could not see and had no  
paper was he not at his  
house?

Ans He was near his buggy house  
about 75 yards from his  
dwelling.

A

Examination  
State please by what name (the  
track or end of which  
you purchased is fresh, is  
known in your neighborhood,

A.  
—

The Elijah Place.

Ans further this defendant  
saith not.

David <sup>his</sup> ~~meek~~ Daughton

Then the plaintiff introduces a  
certified copy of a paper purporting  
to be a deed from Jos. H. Duck  
to J. H. Duck dated the 10<sup>th</sup> day  
of July 1900, as evidence of the  
title of the land being asserted in the

I hereby certify that the  
forbearing depositions of  
Jor Michell Robt. Chapman  
John Bussey and David Daughtey.  
were taken, subscribed and  
sworn to before me at  
the time and at the  
place mentioned in the  
caption.

Witness my hand this 30<sup>th</sup> day  
of 1902.

Jas. A. Johnson J.P.

David Daughtey.

v.s.

J. H. Daugh.

1902  
Jan 30<sup>th</sup> 20<sup>th</sup> The plaintiff David Daughtey  
Jas. A. Johnson J.P. Dr  
" Taking depositions in  
this case \$ 10<sup>00</sup>/<sub>100</sub>

Wanghins

vs.

Wack

Deposition filed April

14, 1902

The depositions of Joe Mitchell and others, taken before me J. A. Johnson a Justice of the Peace for the County of Isle of Wight pursuant to notice hereto annexed, at Carversville in Isle of Wight County on the 17<sup>th</sup> day of December 1901 between the hours of 6 am and 6 p.m. to be read as evidence in behalf of David Naughton in a certain suit in equity depending in the Circuit Court of Isle of Wight County wherein Jos H. Wuerk is Defendant and David Naughton is Plaintiff.

Present Wm S. Halland Attorney  
for the Defendant

R. E. A. Mitchell's Attorney for the Plaintiff.

The witness Joe Mitchell being duly sworn deposes and Says:

1 Q. State your name age, occupation and residence and do you know the parties to this suit?

A. Joe. M. Mitchell, age 40 years, Farmer, Isle of Wight County, I know the parties to this suit.

2<sup>d</sup> Q. Are you related to either of the parties?

A. No.

3<sup>d</sup> Q. State whether or not you are familiar with the land in the bill in this suit mentioned?

A. What do you mean?

4<sup>th</sup> Q. The land upon which David Daughtry now resides.

A. Yes.

5<sup>th</sup> Q. State whether or not you know of any contract with reference to this land between J. H. Black & David Daughtry and if so, state what you so know?

This question and any answer there to is excepted to be cause there is no proper or sufficient evidence that the defendant ever owned the land in the bill mentioned at or before the time it is alleged he sold it to the plaintiff and the defendants asks for record evidence of the title to the land.

It is agreed that this exception may be raised against each and every question and answer of each and every witness as if it should be properly

repeated. The defendant wishes to raise the point that he did not own the land and calls for the best proof and objects to all evidence till it is proved.

A Yes. All the bargain must have been made before. On the day that Mr Irwin Duck run off - said to be 25 acres of land for Roth. Chapman, that he now lives on. and Sterling Halliday, said to be 25 acres ~~from~~ him - some of the three either Mr Jos. H. Duck, Irwin Duck or Roth Chapman. I don't know which one, sent for me to come and help run the land off - then we finished up the last line on Sterling Halliday's land coming up to the big path that leads through the woods, then Mr Joe Duck taken the line from the branch to the big path - there they stopped and disputes some over a corner line. One wanted a corner on one line and one on the other.

A. &c. Then Mr. Joe Duck authorized me and Bob Chapman to take the line and go down the big path to the land of Sarah H. Pusey, then we come on back to where Mr. Irwin Duck was standing at his buggy and then stood David Daughtry and Mr. Irwin Duck talking to one another. Then he told David I have run this piece of land off for you David - He asked him then - how much was there in it. Mr. Joe Duck told him that there was something over 14 acres and he expected him to take it all. Then David Daughtry asked him what would the price of land come to? Mr. Joe Duck told him that the 14 acres @ \$5 would come to \$70 and the fraction in proportion to what that was. Then we all parted and nothing more was said after that day as I heard.

2 State whether or not you heard anything after this between Mr. Duck and ~~Joseph~~ David Daughtry

with reference to a contract  
for the sale of this land. If so  
what?

A.

Some time after Christmas I was at  
work over at Mr. Duck's. My usual  
way there is right through David  
Daughtry's yard. He went on over  
to Mr. Duck with me. He met  
Mr. Duck over there at a house  
where the long doors are. He told  
him that he <sup>David Daughtry</sup> had come to pay him  
a little money and fix up these  
business and ask him to grow  
him another year more than  
they had talked over at first. He  
<sup>David Daughtry</sup> told him that he wanted to fix  
up papers that morning and that  
he wanted him to give him another  
year. It seems that they had decided  
on three years. That it had taken  
everything that he had most to  
build when he was at - and he  
David Daughtry, handed Mr. Duck  
three dollars and ask him for a  
receipt. Mr. Joe Duck told him  
he could not write without his

speaks and he had no paper. That it would be all right, anyway. That he would rather see that little piece of land over there when he was there now. That if he left it ~~over~~ over there that people would fence over it and get what there was off of it any way. That he could look out for <sup>butts</sup> ~~ch~~ if it was well on the side of that ~~big~~ patch. To go ahead and pay for it in three years if he could. It will be all right any way. Joe, here, meaning Mitchell, hears our bargain. I went on to my work then and if there was any more said I did not hear it.

6 Q. State whether or not there have been any buildings erected on this land by David Daugherty and if so of what value are they, in your opinion?

A. There has been a house built up there - his dwelling house. He has got some outhouses or barns - a cook room to the house -

Con. A- I don't know what the building  
is worth -

~~And further this defendant said~~  
~~that~~

crop examined without answer

ques 1 You have spoken of Mr. Irvin Decker  
who is he?

ans I reckon it is Mr. Joe Decker's  
brother -

ques 2 You say you suppose the bargain was  
made ~~with~~ before the day the land  
was run off - was it made with  
Irvin Decker or Joe Decker?

ans Must have been, because Mr. Irvin Decker  
had nothing to with it. I  
do not know anything about who  
it was made before land

ques 3 How long had Dory Daughly been  
there? He.

ans. He had not moved there but had  
been there at work before hand,  
before day land was run off -  
now understand me. There was no  
time chopped on big pocosin tract.  
ques 4 What had Dory done before the  
land was run off?

To Joseph .H. Duck,

Take notice that that I shall on the 17th day of December 1901 the office of Jas. A. Johnson in the village of Carrsville Isle of Wight County, Virginia, between the hours of 6 a.m. and 6 p.m. of that day proceed to take the depositions of Joe Mitchell and others, to be read as evidence in my behalf in a certain suit in equity depending in the Circuit Court of the County of Isle of Wight, wherein I am plaintiff and you are defendant, 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 from day to day or from time to time, at the same place and between the same hours until the same shall be completed.

Very respectfully,

David Daughtry

By *R. E. Williams*  
his Attorney

The taking of depositions in a certain suit in equity depending in the Circuit Court of Isle of Wight County wherein J. H. Duck is Defendant and David Daughtry is plaintiff ~~was~~ Continued to January 10<sup>th</sup> 1902. to be taken between the hours of 6 A.M. and 6 P.M. of that day at Carrsville V<sup>h</sup>.

Given under my hand this 14<sup>th</sup> day of Decr. 1901. Jas. A. Johnson, J.P.

The taking of depositions in a certain suit in equity depending in the Circuit Court of Isle of Wight County wherein J. H. Duck is Defendant and David Daughtry is plaintiff is Continued to January 30<sup>th</sup> 1902. to be taken between the hours of 6 A.M. and 6 P.M. of that day at Carrsville V<sup>h</sup>.

Given under my hand this 10<sup>th</sup> day of Jan'y 1902  
Jas. A. Johnson J.P.

Entered on file  
the 6. 1901 on person  
mention on face  
of this who is  
Joseph Smith

W. F. Bradshaw  
S. M. T.

Exhibit "B"

THIS DEED, made this 10th. day of July, 1900, between Joseph. H. Duck, party of the first part, and I. W. Duck, party of the second part-  
WITNESSETH: That for and in consideration of mutual conveyances herein made the said Jos. H. Duck doth grant unto the said I. W. Duck the following tract of land situate in Isle of Wight County in the State of Virginia containing 150 acres, more or less, conveyance in gross and not by the acre, and which adjoins the lands of Robert Bland, J. E. T. Joyner, and others and adjoins Blackwater River, known as the "John Carr Place." And the said I. W. Duck, in consideration of the above named conveyance to him by Jos. H. Duck, doth grant unto the said Jos. H. Duck the following tract of land, situate in said Isle of Wight County in the State of Virginia, containing 200 acres, more or less, sale in gross and not by the acre, and which is bounded by the County road leading from Suffolk to Courtland on the North; on the East by the lands of John Presson and wife colored, Joe Mitchell, colored, Sterling Jones colored, Bob Chapman colored, and Henry Pruden; on the South by Henry Pruden and by the home place on which said Jos. H. Duck now lives; and on the West by the County road leading from Smithfield to South Quay Church, it being a part of the "Elijah Place" and all the lands of I. W. Duck on the South side of said County road leading from Suffolk to Courtland.

Each party mutually warrants the title to the respective tracts of land hereby conveyed.

Witness the following signatures and seals.

|                         |                 |        |
|-------------------------|-----------------|--------|
|                         | Joseph H. Duck, | (SEAL) |
| Witness, J. M. Ballard. | I. W. Duck,     | (SEAL) |

State of Virginia, County of Isle of Wight, to-wit:  
I, Wm. S. Holland, a Commissioner in Chancery of the Circuit Court of the County aforesaid in the State of Virginia, do certify that Jos. H. Duck and I. W. Duck, whose names are signed to the within writing bearing date on the 10th. day of July, 1900, have acknowledged the same before me in my County aforesaid.

Given under my hand this 10th. day of July, 1900.

Wm. S. Holland, Comr. in Chancery.

In the Clerk's Office of Isle of Wight County Court 13th. day of July  
1900, this deed was received and with the certificate annexed, admit-  
ted to record.

Teste, N. F. Young, C.C.

By J. R. Latimer, D.C.

U.S.Int. Revenue amounting to \$1.00 affixed and cancelled.

A Copy, Teste, A. J. Young Clerk.

Exhibit "B"

WM. S. HOLLAND,  
ATTORNEY-AT-LAW.

.....  
us.  
.....

No.....

*Windsor Station, Va.,* Oct. 17, 1905

Messrs. Vaughan & Co., Bankers,  
Franklin, Va.,

Gentlemen:-

At the request of Capt. R. E. L. Watkins I am sending you a draft on him and a deed from Joseph H. Duck to Davy Daughtry, Col'd. The draft is for \$175.71, and Capt. Watkins is to pay all your charges and you to send me a certified check for the amount or place the same to my credit in your bank and send me a certificate thereof and one of your blank checks so I may draw it out. When this money is paid you are authorized to deliver to him for Davy Daughtry the enclosed deed.

Thanking you in advance, I am,

Very truly yours,

Daughtrey vs. Duck.----- Bill of costs.

|                            |              |
|----------------------------|--------------|
| Clerk's fees,.....         | \$4.01       |
| Sheriff's fees,.....       | 50           |
| Attorney's taxed fee,..... | <u>15.00</u> |

*Depts. for defendants*

\$19.51

10.00

29.51

*See other side*

|              |
|--------------|
| 175.71       |
| <u>29.51</u> |
| 146.20       |

for billers.  
Michaelson

Principal and his tubew  
Lut.  
Paid solely by Duke  
costs  
Lexes

80.00  
49.20  
5.00  
29.51

---

165.71

16

---

175.71

Received Sept. 22, 1906  
from W. S. Holland  
ten and no <sup>100</sup> Dollars  
For taking depositions in  
suit of Daugherty vs. Duck.

\$ 10<sup>xx</sup> / 00

Jas A Johnson Jr



THE SPACE ABOVE IS RESERVED FOR POSTAGE

# POSTAL CARD

THE SPACE BELOW IS FOR THE ADDRESS ONLY.

Mr. Wm S. Holland,  
Hudson,  
N.J.

Fauquier, Va  
Oct 16/05

Dear Sir,

I would thank you  
and dad for Naughty to Vaughan  
Geo. Bonkers, Fauquier, Va; to be held  
in eserew. I am notified  
Naughty and expect him to  
be back Monday. ready this week.  
Yours Truly  
R. E. Smith

David Daughtrey, Col.

Vs

Joseph H. Duck.

By consent of the parties entered of record in open Court, it is ordered that the papers in this cause may be submitted to the Judge of this Court ~~in vacation~~ *herein, in vacation,* for such decision and decree <sup>as</sup> might be made and entered in the term.

On motion of the defendant, leave is given him to file a demurrer and an answer within sixty days from the rising of the Court.

David Daughtrey

Vs

Joseph H. Duck.

---

D E C R E E .

To be entered

April 22, 1901.

*Robert H. Smith*

= We consent to this

decree.

*R. H. Smith*  
*Att'y for Plaintiff*  
*W. S. Hall*

DAVID DAUGHTREY     )  
                              )  
vs.                        )  
                              )  
JOSEPH H. DUCK.         )

                    This cause came on this day to be heard on the bill of complaint, on answer of the defendant with general replication thereto, and on the depositions of witnesses filed with the papers and was argued by counsel.

                    On consideration whereof the Court being of opinion that the allegations of the bill are not sustained by the testimony according to law in such cases, doth adjudge, order and decree that the bill be dismissed and that the plaintiff pay to the defendant his cost in this behalf expended.

---

DAVID DAUGHTREY

vs.

JOSEPH H. DUCK.

---

DECREE.

To be entered

June 6th 1904.

Circuit Court of Isle of Wight County.

Davy Daughtrey

v.

Joseph H. Duck

This cause came on this day to be further heard upon the bill of complaint, the answer of the defendant with general replication thereto, the depositions of witnesses, and was argued by counsel.

On consideration whereof, the court <sup>being</sup> ~~being~~ of the opinion that the complainant has failed to establish the terms of the agreement between himself and the defendant by clear and convincing evidence <sup>at this time</sup> declines to decree specific performance of the said agreement, <sup>and reserves that question for further consideration</sup> but it further appearing from the evidence that there was an agreement between the complainant and the defendant, on the faith of which with the knowledge and consent of the defendant, the complainant has remained in possession of the land referred to in the bill, cleared a part of it and made permanent improvements thereon by the erection of buildings and otherwise, and the court being of the opinion <sup>in any event,</sup> that the defendant is entitled to just compensation for the present value thereof, therefore it is adjudged ordered and decreed that this cause be referred to one of the Commissioners of this court, who is directed to take state and report the present value of such permanent improvements, and a fair rental value of such land in its unimproved condition during the period it has been occupied by the complainant under such agreement; together with any other matter deemed pertinent by the Commissioner or required by any of the parties to be stated.

Daisy Daughtrey

11  
Jos. H. Duck

Entered Oct 3, 1904  
Robert R. Reents

Daughter  
v.

Jos. H. Duck.

Altho, specific execution  
of a parol contract  
may be refused still  
compensation for perma-  
nent improvements made  
by vendor may be  
decreed.

Anthony v. Leitch 3 Rand. 238

Stearns v. Boekham 31 Hall

421 & seq.  
Iccab cited

Walliker v. Harman

101 Va. 27