

1909-003 Chancery Causes: Virginian Railway Company vs James E. T. Joyner

Isle of Wight County

Folder 1

Plats

other surnames: [Tidewater
Railway Company], Finley, Duck,
Findley, Dupuy, Cox, Carr,
Frasier, Jenkins, Ballard,
English, Rhodes, Harrell,
Pierce, Turner, Babb, Kee,
Dalton, Hill, Johnson

The Virginian Railway
Company

v.
J. E. T. Joyner

Bill

Bill filed

Dec 2nd 1907: Injunction
order entered. Bond Executed
January 6th 1908: Process
issued Returnable to 2nd case
rules 1908

2nd case rules 1908
Process returned executed -
Decree nisi
1st case by rules 1908. Next
step failing to appear, plea
entered in default - taken
for confessed & set for hearing

James H.
~~WILKINSON~~ CORBITT
ATTORNEYS AT LAW
SUFFOLK, VA.

Jewell & Co., Phila.

TO THE HONORABLE R. E. BOYKIN, JUDGE OF THE CIRCUIT
COURT OF ISLE OF WIGHT COUNTY.

Humbly complaining sheweth unto the Court your complainant, The Virginian Railway Company, a corporation, formerly known as the Tidewater Railway Company, a corporation, that the name of the said Tidewater Railway Company, a corporation, has been changed by the Virginia State Corporation Commission to The Virginian Railway Company, a corporation, which said The Virginian Railway Company has all the rights of the said Tidewater Railway Company; that J. E. T. Joyner being or pretending to be seized and possessed of or otherwise well entitled unto a certain parcel of land and the appurtenances thereunto adjoining or belonging, situated in Isle of Wight County, Virginia, and described as hereinafter stated, and the inheritance in fee simple thereto, did on or about the 16th day of May, 1905, enter into an agreement with your complainant, then known as the Tidewater Railway Company, for the sale of said parcel of land to it, which agreement was reduced into writing and signed by the said defendant and his wife, Laura V. Joyner, a copy of which agreement giving a description of said parcel of land is hereunto annexed, marked "Exhibit A," and prayed to be read as a part of this bill.

Your complainant further sheweth unto the Court that on or about the 22nd day of September, 1905, and before the day fixed for the expiration of the rights acquired by your complainant under said agreement, your said complainant, then the Tidewater Railway Company, served a notice in writing upon the said J. E. T. Joyner that the certain optional contract, or agreement above referred to was thereby accepted upon the terms and conditions set out in said written contract subject to the provisions therein contained that the conveyance shall be made

with covenants of general warranty of title, free from encumbrances, a copy of which notice in writing, with the endorsements thereon showing service thereof, marked "Exhibit B" is hereunto annexed, and prayed to be read as a part of this bill; that the said J. E. T. Joyner has delivered up possession of the said purchased parcel of land to your said complainant; that your said complainant has constructed its railroad tracks and other improvements thereon with the knowledge of the said J. E. T. Joyner, who allowed said work to be done and allowed your complainant to expend large sums of money on said improvements; and ^{that} your said complainant is still in possession of said land.

And your complainant further sheweth unto the Court that it hath always been ready and willing and is now ready and willing to perform its part of the said agreement, and, upon having made to it the conveyance with covenants of general warranty of title, free from encumbrances, to pay the purchase money to the said J. E. T. Joyner.

And your complainant hoped that the said J. E. T. Joyner would have specifically performed his part of said agreement, as in justice and equity he ought, but the said J. E. T. Joyner refuses to perform his part of the said agreement, and refuses and declines to make to your said complainant the conveyance with covenants of general warranty of title, free from all encumbrances, notwithstanding your said complainant has requested him so to do, and has offered to pay him the purchase money upon having proper conveyance of the said parcel of land executed to your complainant, its successors and assigns, and the said J. E. T. Joyner has furthermore brought in the Circuit Court of the County of Isle of Wight against your complainant an action of ejectment by means of which action at law he seeks to eject your complainant from the said property which your com-

plainant holds, and which in equity and good conscience it is entitled to hold, a copy of the said declaration in said ejectment, with the statement of damages and notice thereto annexed are herewith filed as "Exhibits C" and prayed to be read as a part of this bill.

And your said complainant charges that the whole of the purchase money for the said parcel of land hath been ready and unproductive in its hands for completing the said purchase from the time it ought to have been completed.

And your complainant further sheweth unto the Court that it is at this time operating over its track over and across the said property daily freight and passenger trains carrying freight, express and passengers, and the possession of the said property is absolutely essential to its complete performance of the public duties required of it, and that the attempt on the part of the said J. E. T. Joyner to dispossess your complainant of said property by means of the said action of ejectment is a matter in which the public is deeply and seriously interested.

And your complainant further charges that the said defendant, J. E. T. Joyner, knowing that your complainant had ^{entire} ~~interest~~ upon the land now in controversy and was engaged in constructing its road thereon, by his conduct in remaining inactive and permitting your complainant to go on and expend large sums in the work, is now estopped from maintaining the said action of ejectment.

All of which actings and doings of the said defendant are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your complainant in the premises, and will cause your complainant irreparable injury and will cause serious interference with the rights of the public to have your complainant's railroad maintained and operated, unless the Court grants an injunction restraining

the said J. E. T. Joyner from the prosecution of said action of ejection.

In tender consideration whereof and forasmuch as your complainant is remediless in the premises save by the aid of a Court of Equity where matters of this nature are alone and properly cognizable and relievable, it prays that J. E. T. Joyner may be made party defendant to this bill and required to answer same, but not under oath, the oath being expressly waived, that the Court decree that the said defendant is estopped from prosecuting the said action of ejection, that injunction be granted your complainant restraining the said defendant from the prosecution of the said action of ejection ^{as} hereinabove set forth, and that your complainant may have such further and other relief in the premises as to the Court may seem meet, and the nature of this case may require.

And your complainant will ever pray, etc.

James H. Corlitt
P. q.

VIRGINIA,
CITY OF NORFOLK.

To-wit:

This day John Kee appeared in person before me, a Notary Public in and for the State and city aforesaid, and made oath that the statements made in the foregoing bill are true.

My commission expires on the 17th of September 1911.

Given under my hand this Fifth day of October, 1907.

Francis W. Russell

Notary Public.

Answers of J. E. T. Joyner.

Virginia Ry. Co.

vs.

J. E. T. Joyner.

Filed March 2nd 1908
Dist. Ct. Johnson. C.

JAMES U. BURGESS,
ATTORNEY AT LAW,
POST OFFICE BUILDING,
SUFFOLK, VA.

11.8.1

IN THE CIRCUIT COURT OF EMILY OF LIGHT COUNTY, VIRGINIA.

J. E. T. Joyner et al.....Defendants.

vs.

Virginian Railway Company, Incorporated,
a corporation.....Complainant.

The answer of J. E. T. Joyner to a bill of complaint exhibited against him in the Circuit Court of Emily of Light County by the Virginian Railway Company, a corporation, which was formerly known as the Tidewater Railway Company, a corporation.

This respondent reserving to himself the benefit of all just exceptions to the said bill of complaint for answer thereto, or to so much thereof as he is advised it is material he should answer, answers and says that sometime about the 15th day of May, 1908, the complainant's agent and attorney, S. J. Finley came to this respondent's house and entered into negotiations for the purchase of a strip of land across his farm to be used as a right-of-way for said Tidewater Railway Company and after several proposals were made and declined your respondent agreed to sell the strip of land described in exhibit "A" which is made a part of complainant's bill for the following considerations:

1st, that \$475.00 was to be paid on the execution and delivery of a deed.

2nd, that where the railroad crosses the fishpond that a trestle or bridge should be built which would rest on piling so as not to interfere with the water and so that the said J. E. T. Joyner might pass and repass under the bridge or trestle in his boat.

3rd, that a depot for loading and unloading freight should be constructed and maintained at the point where the railroad crosses the County road on the land of Tom

Carr about one mile from the respondent's residence.

4th, that said railroad should run at an even grade, or level with the land, through the yard and field of your respondent.

5th, that said stipulations and agreements hereinabove set forth should be incorporated in the option or agreement for sale as well as the deed for said land.

WHEREUPON the said A. J. Finley then and there prepared a paper purporting to be an option or agreement for sale and presented it to your respondent and his wife for their signatures stating that he would read it to them as he doubted they could read his writing; that said A. J. Finley then and there acting as attorney and agent for the complainant falsely and fraudulently read said option or agreement for sale as follows, to-wit:

1st, by omitting to read the words: "together with so much additional land contiguous thereto as may be required for the slopes, cuts and fills, drainage and barrow-pits."

2nd, by reading or stating, as if the same were part of the agreement, words to the effect or meaning that trestle or bridge would be built across the fishpond which would rest on piling so as not to interfere with the water in the fishpond and so that the said J. E. T. Joyner might pass and repass under the bridge with his boat.

3rd, by reading or stating, as if the same were a part of the agreement, words to the effect or meaning that a depot for loading and unloading freight would be constructed and maintained at the point where the railroad crossed the the Suffolk and Franklin road about one mile from respondent's house.

4th, by reading or stating, as if the same were a part of the agreement, words to the effect or meaning that the

railroad would run at even grade or level with his land where it passed through your respondent's yard and field.

Your respondent positively and unequivocally avers that he did not know that said deed contained the clause which granted as much additional land contiguous thereto as might be required for the slopes of cuts and fills, drainage and barrow-pits, and that he believed that said option or agreement contained the clauses in regard to the right-of-way, depot and grade, heretofore set forth as Nos. 2, 3 and 4.

Your respondent avers that he is an uneducated man; that he never attended school but a little over three months in his life; that he is able to read writing with the greatest difficulty and only when it is very plainly written; that the false or fraudulent actions on the part of the said A. J. Finley as above set forth misled and deceived your respondent and he was led to believe, as he had a right to do, that the deed was written as it was read to him; that the said A. J. Finley misread the deed because he knew that your respondent and his wife would not sign the same unless they believed that it contained said provisions.

Your respondent further avers that his wife signed said deed upon the representation of the said A. J. Finley that the same had been correctly read to her; that the said A. J. Finley, acting as attorney or agent for the complainant, knew at the time that said option or agreement was executed that your respondent and his wife believed that the

paper that they signed contained the provisions and only these provisions read to them; and further that these were representations and fraudulent acts were a part of a scheme or plan of said complainant' to obtain by covert means your respondent's and his neighbors' lands.

Your respondent avers that the said A. J. Finley before and after this time but while acquiring similar rights-of-way in your respondent's neighborhood in a like or similar manner defrauded other persons obtaining from them by false and fraudulent means rights-of-way across their lands without compensation upon the express promise and agreement that he would locate a depot at the same point that he represented to your respondent that said depot would be located.

Your respondent further avers that said A. J. Finley at the time of making these representations in regard to said depot knew that they were false and fraudulently made the same for the purpose of defrauding your respondent and his neighbors.

Your respondent admits that he was served with a notice in writing stating that complainant would accept the optional contract but, being assured that the same was not binding upon him by reason of fraud in the factum, declined to recognize the same.

Your respondent denies that he has delivered up the possession of said tract of land to said complainant, but has, on the other hand, at all times protested against their using the same and immediately upon an effort being made to enter upon said premises secured the services of Counsel and asked that his rights be protected at the same time notifying the agent and employees of said

complainant that they were forbidden to enter upon said land.

Your respondent avers that notwithstanding his protests and objections that company, by its agents and attorneys, has gone upon his said farm and that he has suffered great damage and injury therefrom by destruction of his crops; by removing and destroying fences thereby permitting the stock to enter upon his land and destroy his crops; by digging trenches on said land causing stagnant water to remain therein to the great danger of respondent's and his family's health; by constructing its railroad at such close proximity to respondent's house as to render the use thereof dangerous, inconvenient and impracticable; and by destroying a very valuable fishpond belonging to your respondent; and by taking the strip of land above described.

Your respondent prays that this answer may be treated as a cross-bill and that the injunction heretofore awarded against him may be dissolved; that said optional contract be declared void and of no effect by reason of said fraud in the factum so that the action in ejectment instituted by him may proceed, or in the alternative that he be allowed a just compensation for said land and for such other property as has been taken by complainant for its purposes as well as for damage to adjacent and other property of your respondent as well as other damages that may have been suffered by respondent by the wrongful acts of said complainant.

All allegations of the complainant's bill not expressly admitted are hereby expressly denied and strict proof of the same is required at its hands.

And now having fully answered the complainant's bill this respondent prays to be hence dismissed with his reasonable costs by him in this behalf expended.

VIRGINIA,

To-wit:

County of _____

J. M. T. Joyner, the respondent named in the foregoing answer, being duly sworn answers and says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be on information he believes them to be true.

Given under my hand this _____ day of March, 1908 .

this _____ day of March, 1908.

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY, VIRGINIA.

J. E. T. Joyner et al.....Defendants.

ads.

Virginian Railway Company, Incorporated,
a corporation.....Complainant.

The answer of J. E. T. Joyner to a bill of complaint exhibited against him in the Circuit Court of Isle of Wight County by the Virginian Railway Company, a corporation, which was formerly known as the Tidewater Railway Company, a corporation.

This respondent reserving to himself the benefit of all just exceptions to the said bill of complaint for answer thereto, or to so much thereof as he is advised it is material he should answer, answers and says that sometime about the 15th day of May, 1905, the complainant's agent and attorney, A. J. Finley came to this respondent's house and entered into negotiations for the purchase of a strip of land across his farm to be used as a right-of-way for said Tidewater Railway Company and after several proposals were made and declined your respondent agreed to sell the strip of land described in exhibit "A", which is made a part of complainant's bill, for the following considerations:

1st, that \$475.00 was to be paid on the execution and delivery of a deed.

2nd, that where the railroad crosses the fishpond that a trestle or bridge should be built which would rest on piling so as not to interfere with the water and so that the said J. E. T. Joyner might pass and repass under the bridge or trestle in his boat.

3rd, that a depot for loading and unloading freight should be constructed and maintained at the point where the railroad crosses the County road on the land of Tom

Carr, about one mile from the respondent's residence.

4th, that said railroad should run at an even grade, or level with the land, through the yard and field of your respondent.

5th, that said stipulations and agreements hereinabove set forth should be incorporated in the option or agreement for sale as well as the deed for said land.

WHEREUPON the said A. J. Finley then and there prepared a paper purporting to be an option or agreement for sale and presented it to your respondent and his wife for their signatures stating that he would read it to them as he doubted they could read his writing; that said A. J. Finley then and there acting as attorney and agent for the complainant falsely and fraudulently read said option or agreement for sale as follows, to-wit:

1st, by omitting to read the words: "together with so much additional land contiguous thereto as ~~may~~ be required for the slopes, cuts and fills, drainage and barrow-pits."

2nd, by reading or stating, as if the same were part of the ~~agreement~~, words to the effect or meaning that ^a trestle or bridge would be built across the fishpond which would rest on piling so as not to interfere with the water in the fishpond and so that the said J. E. T. Joyner might pass and repass under the bridge with his boat.

3rd, by reading or stating, as if the same were a part of the agreement, words to the effect or meaning that a depot for loading and unloading freight would be constructed and maintained at the point where the railroad crosses the the Suffolk and Franklin road about one mile from respondent's house.

4th, by reading or stating, as if the same were a part of the agreement, words to the effect or meaning that the

railroad would run at even grade or level with his land where it passed through your respondent's yard and field.

Your respondent positively and unequivocally avers that he did not know that said deed contained the clause which granted "as much additional land contiguous thereto as might be required for the slopes of cuts and fills, drainage and barrow-pits", and that he believed that said option or agreement contained the clauses in regard to the fishpond, depot and grade, hereinabove set forth as Nos. 2, 3 and 4.

Your respondent avers that he is an uneducated man; that he never attended school but a little over three months in his life; that he is able to read writing with the greatest difficulty and only when it is very plainly written; that the false or fraudulent actions on the part of the said A. J. Finley as above set forth misled and deceived your respondent and he was lead to believe, as he had a right to do, that the deed was written as it was read to him; that the said A. J. Finley misread the deed because he knew that your respondent and his wife would not sign the same unless they believed that it contained said provisions.

Your respondent further avers that his wife signed said deed upon the representation of the said A. J. Finley that the same had been correctly read to her; that the said A. J. Finley, acting as attorney or agent for the complainant, knew at the time that said option or agreement was executed that your respondent and his wife believed that the

paper that they signed contained the provisions and only those provisions read to them; and further that these misrepresentations and fraudulent acts were a part of a scheme or plan of **said complainant**' to obtain by covert means your respondent's and his neighbors' lands.

Your respondent avers that the said A. J. Finley before and after this time but while acquiring similar rights-of-way in your respondent's neighborhood in a like or similar manner defrauded other persons obtaining from them by false and fraudulent means **rights-of-way** across their lands without compensation upon the express promise and agreement that he would locate a depot at the same point that he represented to your respondent that said depot would be located.

Your respondent further avers that said A. J. Finley at the time of making these representations in regard to said depot knew that they were false and fraudulently made the same for the purpose of defrauding your respondent and his neighbors.

Your respondent **admits** that he was served with a notice in writing stating that complainant would accept the the optional contract but, being assured that the same was not binding upon him by reason of fraud in the factum, declined to recognize the same.

Your respondent denies that he has delivered up the possession of said tract of land to said complainant, but has, on the other hand, at all times protested against their using the same and immediately upon an effort being made ^{by complainant} to enter upon said premises secured the services of Counsel and asked that his rights be protected at the same time notifying the agent and employees of said

complainant that they were forbidden to enter upon said land.

Your respondent avers that notwithstanding his protests and objections that ^{said} company, by its agents and attorneys, has gone upon his said farm and that he has suffered great damage and injury therefrom by destruction of his crops; by removing and destroying fences thereby permitting the stock to enter upon his land and destroy his crops; by digging trenches on said land causing stagnant water to remain therein to the great danger of respondent's and his family's health; by constructing its railroad at such close proximity to respondent's house as to render the use thereof dangerous, inconvenient and impracticable; and by destroying a very valuable fishpond belonging to your respondent; and by taking the strip of land above described.

Your respondent prays that this answer may be treated as a cross-bill and that the injunction heretofore awarded against him may be dissolved; that said optional contract be declared void and of no effect by reason of said fraud in the factum so that the action in ejectment instituted by him may proceed, or in the alternative that he be allowed a just compensation for said land and for such other property as has been taken by complainant for its purposes as well as for damage to adjacent and other property of your respondent as well as other damages that may have been suffered by respondent by the wrongful acts of said complainant.

All allegations of the complainant's bill not expressly admitted are hereby expressly denied and strict proof of the same is required at its hands.

And now having fully answered the complainant's bill this respondent prays to be hence dismissed with his reasonable costs by him in this behalf expended.

D. H. Deery
P. D.

J. E. V. Jones

VIRGINIA,

To-wit:

County of Northampton

J. E. T. Joyner, the respondent named in the foregoing answer, being duly sworn answers and says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be on information he believes them to be true.

Given under my hand this 15th day of March, 1908.

James A. Deery
N. J.

Sworn and subscribed before me
this 15th day of March, 1908.

The Virginian Railway Co., Inc.

v.

J. E. T. Joyner

Exceptions of Complainant
to answer of
defendant

McLEMORE & CORBITT
ATTORNEYS AT LAW
SUFFOLK, VA.

Jewell & Co., Phila.

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY,
VIRGINIA.

The Virginian Railway Company, Incorporated,

v.

EXCEPTIONS;

J. E. T. Joyner.

The exceptions of The Virginian Railway Company, Incorporated, complainant, to the answer of J. E. T. Joyner, respondent, filed in the above cause.

The complainant excepts to the answer of the said respondent, and states the following grounds of exception:

First: For that the ^{said} answer goes out of the bill to state matter not material to the defendant's case, for which said reason the said matter is impertinent, and application is now hereby made to the Court to strick out such matter, with costs, the said impertinent matter being shown in italics in the excerpt from the said answer as follows:

"And further that these misrepresentations and fraudulent acts were a part of a scheme or plan of said complainant to obtain by covert means your respondent's AND HIS NEIGHBORS' LANDS.

YOUR RESPONDENT AVERS THAT THE SAID A. J. FINDLEY BEFORE AND AFTER THIS TIME BUT WHILE ACQUIRING SIMILAR RIGHTS OF WAY IN YOUR RESPONDENT'S NEIGHBORHOOD IN A LIKE OR SIMILAR MANNER DE-
THEM
FRAUDED OTHER PERSONS, OBTAINING FROM BY FRAUD OR FRAUDULENT
MEANS RIGHTS OF WAY ACROSS THEIR LANDS WITHOUT COMPENSATION UPON THE EXPRESS PROMISE AND AGREEMENT THAT HE WOULD LOCATE A DEPOT AT THE SAME POINT THAT HE REPRESENTED TO YOUR RESPONDENT THAT SAID DEPOT WOULD BE LOCATED.

Your respondent further avers that said A. J. Findley at the time of making these representations in regard to said depot knew that they were false and fraudulently made the same for the purpose of defrauding your respondent AND HIS NEIGHBORS."

Second: For that the said answer is insufficient in that if the averments of the said answer are sustained by proof they constitute no defense to the complainant's demand for an injunction, and the injunction prayed for in the original bill should be made perpetual as more clearly appears from the following:

1. Defendant admits he made an agreement with the complainant through its agent for the sale of the property in dispute, and admits he signed the contract, copy of which marked "Exhibit A" is filed as part of the complainant's bill, and if his signature thereto were gotten by a fraud as claimed by defendant he has no adequate remedy at law, and the action of ejectionment should be perpetually enjoined.

2. Defendant admits he made an agreement with the complainant through its agent for the sale of the property in dispute and admits he signed the contract, copy of which marked "Exhibit A" is filed as a part of complainant's bill, and if the said contract contains ^{terms} he did not know it contained, and does not contain terms he believed it contained he has no adequate remedy at law, and the action of ejectionment should be perpetually enjoined.

3. Defendant admits he made an agreement with the complainant through its agent for the sale of the property in dispute and admits he signed the contract, copy of which marked "Exhibit A" is filed as a part of complainant's bill, and admits that the complainant has constructed its railroad tracks and other improvements on said land in dispute with defendant's knowledge, and defendant is now estopped from ousting the complainant by ejectionment, and the action of ejectionment should be perpetually enjoined.

*James H. Orlett,
Counsel.*

*The Virginian Railway Company, Inc.
by James H. Orlett, Counsel*

The Virginian Railway Co., Inc.

v.

J. E. T. Joyner

Demurrer of Complainant
to Cross bill of
defendant.

James H.
McLEMORE & CORBITT
ATTORNEYS AT LAW
SUFFOLK, VA.

Jewell & Co., Phila.

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY,
VIRGINIA.

The Virginian Railway Company, Incorporated,

v.

DEMURRER:

J. E. T. Joyner.

The demurrer of The Virginian Railway Company, Incorporated, complainant, to the answer treated as a cross-bill of J. E. T. Joyner, respondent, filed in the above cause.

The said complainant says that the answer treated as a cross-bill in this suit is not sufficient in law and states the grounds of demurrer relied on to said cross-bill to be as follows:

First: The cross bill admits that Joyner and wife signed the contract set forth in the original bill, it shows that J. E. T. Joyner could read, it does not show that his wife could not read, it does not show that there were any fiduciary or confidential relations between A. J. Findley and J. E. T. Joyner, or between A. J. Findley and Laura V. Joyner, the wife of the said J. E. T. Joyner, on the contrary it shows they were dealing at arms length, wherefore the statement, if made by Findley as claimed in cross-bill, that "He would read it (the contract) to them as he doubted they could read his writing" was not sufficient to excuse Joyner from either trying to read the contract before signing, or having it read ⁱⁿ for him by someone, ~~whom~~ he had a right to place confidence.

Second: The cross-bill admits that Joyner and wife signed the contract set forth in the original bill, it admits that Joyner could read, it does not claim any relations of trust or confidence existing between A. J. Findley and J. E. T. Joyner, or between A. J. Findley and Laura V. Joyner, the wife of the said J. E. T. Joyner, on the contrary it shows they were

dealing at arms length, it does not claim that Joyner could not have read the contract if he had chosen to read it, it does not show that Joyner had no opportunity to read it, it does not show that Joyner had no opportunity to have it read for him by someone in whom he had a right to place confidence, it shows that Joyner's failure to read it himself, or to have it read for him by someone in whom he had a right to place confidence was due to his neglect, whether arising from indifference or credulity,, and he should now be estopped from saying that he did not read said contract and did not know everything it contained before he signed same.

*James H. Barrett, Counsel
for The Virginian Ry. Co. Inc.*

The Virginia Railway Co., Inc.

v.

J. E. P. Joyner

Answer of Complainant
to Cross bill of defendant

James H.
~~McLEMORE~~ & CORBITT
ATTORNEYS AT LAW
SUFFOLK, VA.

Jewell & Co., Phila.

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY,
VIRGINIA.

Virginian Railway Company, Incorporated,
(a corporation)

v.

J. E. T. Joyner.

The answer of the Virginian Railway Company (a corporation) to the answer of the said defendant, J. E. T. Joyner, prayed by him to be treated as a cross-bill and exhibited by him against it in the Circuit Court of Isle of Wight County, Virginia.

This respondent, reserving to itself the benefit of all just exceptions to the said cross-bill, for answer thereto, or to so much thereof as it is advised it is material it should answer, answers and says, that, save and except the admissions made by the said Joyner of the allegations in this respondent's bill, it denies all the allegations set up and made by the said J. E. T. Joyner and demands strict proof of same, and especially denies that there has been any fraud practiced upon, or misrepresentation made to the said J. E. T. Joyner or his wife or to anyone else by the respondent, or its agents, and denies that the said J. E. T. Joyner or his wife or anyone else has ^{been} in any way deceived by the respondent or its agents, and denies that the said contract of option was in any particular tainted with fraud. This respondent also denies that the said J. E. T. Joyner has suffered any wrong or injury at this respondent's hands.

This respondent further answering says, that the said J. E. T. Joyner did in fact surrender the possession of the said property to this respondent and, with the knowledge of all

the facts claimed by him as giving him the right to repudiate the contract, allowed this respondent to erect valuable improvements thereon and for a long time acquiesced in this respondent's possession of the property, and not until a long time after the possession of the said property was surrendered to this respondent did the said Joyner attempt to dispossess this respondent of said property by the action of ejectment in the original bill mentioned, and that the said Joyner should not now in equity be permitted to prosecute such proceedings, or in any way whatsoever interfere with the possession by this respondent or to attempt to repudiate the said contract.

And now, having fully answered the cross-bill of the said J. E. T. Joyner, this respondent prays to be hence dismissed with its reasonable costs by it in this behalf expended.

p. q.

STATE OF VIRGINIA,
CITY OF NORFOLK.

To-wit:

This day John Kee appeared in person before me, _____
_____, a Notary Public in and for the State and City aforesaid, and made oath that the statements made in the foregoing answer are true.

My commission expires on _____

Given under my hand this _____ day of October, 1908.

Notary Public.

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY,
VIRGINIA.

The Virginian Railway Company, Incorporated,
(a corporation)

v.

J. E. T. Joyner.

The answer of the Virginian Railway Company (a corporation) to the answer of the said defendant, J. E. T. Joyner, prayed by him to be treated as a cross-bill and exhibited by him against it in the Circuit Court of Isle of Wight County, Virginia.

This respondent, reserving to itself the benefit of all just exceptions to the said cross-bill, for answer thereto, or to so much thereof as it is advised it is material it should answer, answers and says, that, save and except the admissions made by the said Joyner of the allegations in this respondent's bill, it denies all the allegations set up and made by the said J. E. T. Joyner and demands strict proof of same, and especially denies that there has been any fraud practiced upon, or misrepresentation made to the said J. E. T. Joyner or his wife or to anyone else by the respondent, or its agents, and denies that the said J. E. T. Joyner or his wife or anyone else has been in any way deceived by the respondent or its agents, and denies that the said contract of option was in any particular tainted with fraud; and this respondent says that the said J. E. T. Joyner and Laura V. Joyner, his wife, made and entered into the said agreement, a copy of which is filed as a part of this ^{respondent's} bill and known as "Exhibit A", and affixed their signatures to the same with full knowledge of all the terms thereof, and knowing that the said paper contained the entire agreement between the parties thereto. This respondent also denies that the said J. E. T. Joyner has suffered any wrong or injury at this respondent's hands.

This respondent further answering says, that the said J. E. T. Joyner did in fact surrender the possession of the said property to this respondent, and that ^{with} the knowledge of all the facts claimed by him as giving him the right to repudiate the contract, allowed this respondent to erect valuable improvements thereon and for a long time acquiesced in this respondent's possession of the property, and not until a long time after the possession of the said property was surrendered to this respondent did the said Joyner attempt to dispossess this respondent of said property by the action of ejectment in the original bill mentioned, and that the said Joyner should not now in equity be permitted to prosecute such proceedings, or in any way whatsoever interfere with the possession by this respondent or to attempt to repudiate the said contract.

And now, having fully answered the cross-bill of the said J. E. T. Joyner, this respondent prays to be hence dismissed with its reasonable costs by it in this behalf expended.

Witness the corporate signature of The Virginian Railway Company by Raymond Duguy, its Vice-President and General Manager and one of its Directors, and its corporate seal attested by

By _____

Vice-President, General Manager
and one of its Directors.

Attest: _____ Secretary.

STATE OF VIRGINIA,
CITY OF NORFOLK. To-wit;

Raymond Dupuy, being duly sworn, says that he is the Vice President and General Manager of The Virginian Railway Company, and one of its Directors; that he has read the foregoing answer and that the statements therein contained, of which he has knowledge, are true and that all other matters therein contained he believes to be true.

Taken, sworn to and subscribed before me _____,
a Notary Public of and for the City and State aforesaid, in my
City aforesaid this _____ day of October, 1908.

Notary Public.

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY,
VIRGINIA.

The Virginian Railway Company, Incorporated,
(a corporation)

v.

J. E. T. Joyner.

The answer of The Virginian Railway Company (a corporation) to the answer of the said defendant, J. E. T. Joyner, prayed by him to be treated as a cross-bill and exhibited by him against it in the Circuit Court of Isle of Wight County, Virginia.

This respondent, reserving to itself the benefit of all just exceptions to the said cross-bill, for answer thereto, or to so much thereof as it is advised it is material it should answer, answers and says, that, save and except the admissions made by the said Joyner of the allegations in this respondent's bill, it denies all the allegations set up and made by the said J. E. T. Joyner and demands strict proof of same, and especially denies that there has been any fraud practiced upon, or misrepresentation made to the said J. E. T. Joyner or his wife or to anyone else by the respondent, or its agents, and denies that the said J. E. T. Joyner or his wife or anyone else has been in any way deceived by the respondent or its agents, and denies that the said contract of option was in any particular tainted with fraud; and this respondent says that the said J. E. T. Joyner and Laura V. Joyner, his wife, made and entered into the said agreement, a copy of which is filed as a part of this ^{respondent's} bill and known as "Exhibit A", and affixed their signatures to the same with full knowledge of all the terms thereof, and knowing that the said paper contained the entire agreement between the parties thereto. This respondent also denies that the said J. E. T. Joyner has suffered any wrong or injury at this respondent's hands.

This respondent further answering says, that the said J. E. T. Joyner did in fact surrender the possession of the said property to this respondent, and that ^{with} the knowledge of all the facts claimed by him as giving him the right to repudiate the contract, allowed this respondent to erect valuable improvements thereon and for a long time acquiesced in this respondent's possession of the property, and not until a long time after the possession of the said property was surrendered to this respondent did the said Joyner attempt to dispossess this respondent of said property by the action of ejectment in the original bill mentioned, and that the said Joyner should not now in equity be permitted to prosecute such proceedings, or in any way whatsoever interfere with the possession by this respondent or to attempt to repudiate the said contract.

And now, having fully answered the cross-bill of the said J. E. T. Joyner, this respondent prays to be hence dismissed with its reasonable costs by it in this behalf expended.

Witness the corporate signature of The Virginian Railway Company by Raymond Dupuy, its Vice-President and General Manager and one of its Directors, and its corporate seal attested by *its*
Assistant Secretary.

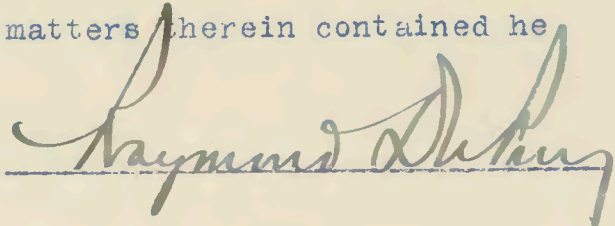
James H. Conlitt,
Counsel

The Virginian Railway Company
By *Raymond Dupuy*
Vice-President, General Manager
and one of its Directors.

Attest: *John H. Hume* *Assistant* Secretary.

STATE OF VIRGINIA,
CITY OF NORFOLK. To-wit;

Raymond Dupuy, being duly sworn, says that he is the Vice President and General Manager of The Virginian Railway Company, and one of its Directors; that he has read the foregoing answer and that the statements therein contained, of which he has knowledge, are true and that all other matters therein contained he believes to be true.



Taken, sworn to and subscribed before me Meade R. Sutherland,
a Notary Public of and for the City and State aforesaid, in my
City aforesaid this 22nd day of October, 1908.



Notary Public.

My commission expires
February 11, 1911.

The Commonwealth of Virginia,

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

WE COMMAND YOU that you summon J. E. T. Joyner,

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 3rd. Monday in January 1908, to answer a bill in chancery, exhibited against him in our said court for by The Virginian Railway Company, a Corporation, formerly known as the Tidewater Railway Company,

And have then there this writ. Witness ~~NATHANIEL H. YOUNG~~ ^{A. S. Johnson,} Clerk of our said court, at the court-house, the 6th. day of January, 1908, and in the 12th 13th 2nd. year of the Commonwealth.

Teste,  C.C.

The Virginian Railway Company, a corporation, formerly known as the Tidewater Railway Company.

vs)
J. E. T. Joyner;

"On motion of the complainant an injunction is granted it in accordance with the prayers of the said bill, enjoining and restraining J. E. T. Joyner, his agents and attorneys from prosecuting the said action of ejectment recently brought in the Circuit Court of Isle of Wight County by the said J. E. T. Joyner against the Virginian Railway Company and the Tidewater Railway Company and the Tidewater Railway Company until the further order of this Court".

A copy,
Teste, [Signature] C.C.

The Virginian Railway Co., etc.

vs. }
SUBPOENA
IN
CHANCERY.

J. E. T. Joyner.

J. E. Corbitt, p. q

To Third January Rules,

Circuit Court.

1908.

B 3119

May 8 - 1908.

*Rec, legal and sufficient and service of the
within process is this day accepted -
J. E. T. Joyner
W. H. Burgess
his attorney*

(11)

Memorandum Radiograph
No - Appear to view
J. E. F. Jones

JAMES U. BURGESS
ATTORNEY AT LAW
SUFFOLK, VA.

(The above question objected to upon the ground that it deals with a transaction entirely separate and distinct from the one at issue, and for the reason that any evidence the witness may give as to sales made by him would be irrelevant and immaterial.)

(It is agreed by Counsel that this objection is made to all similar questions.)

A.. He come to my house right from Carrsville and he said that he had come there to get a right-of-way. We went out at the corner of the road lying back of my place. He said "I have come here to get a right-of-way". He said "I have gotten rights-of-way from Mr. Carr and Mr. English and others." He says it will run through you place right along here. I said "Mr. Finley, I can't sell you my right-of-way for less than \$700.00. I will have all my buildings to move." And he said "I can't give you \$700.00. I am going to have a depot right near your land and you can sell off your land and make some money. It is going to be a great help to you people here in this community." He went on to the house. That is about all he said about it. He said he was going to give us a depot. He said you can make money by selling off lots.

Q. Did the fact that he guaranteed to locate a depot at the point named influence you in making the sale at all?

A. He said it would add to my place about \$2000.00 by having a depot at the County road.

Q. Who came to you with the option paper?

A. Mr. Finley.

Q. Did you sign it?

A. Yes sir.

Q. Was there anything in it about the depot?

A. No sir nothing about the depot in it.

Q. Did you talk to him at the time the depot was signed about the depot?

A. Yes sir.

Q. And he promised you then that there would be a depot there?

A. Yes sir if I would sell him my right-of-way.

Q. But you did not require him to put it in the paper?

A. I took him to be a man of his word and a perfect gentleman. I had never laid my eyes on him before that day. I shook hands with him. I signed the paper on the ground that there was to be a depot.

Q. Did he tell you that any parties had given rights-of-way?

A. Yes sir. Tom Carr, whose land adjoins me, had given him sufficient land for a depot and a side track. Right at the County road.

Q. And upon this statement you thought the depot would be put there, did you not?

A. Yes sir.

Cross-examination.

By Mr. Corbitt.

Q. How much did Mr. Finley give you for the right-of-way?

A. \$350.00.

Q. How many acres of land?

A. I don't know how many. He never told me. It has ruined my farm. I have had to move all my buildings, dwelling house and all. It went right through my orchard and cut down sixty trees, 5 pair trees, etc.

Q. What is your nearest depot on the Tidewater Ry.

A. Two and a half or three miles.

Q. What is the name of it?

A. Burdette.

Q. Re-direct examination.

By Mr. Burges.

Q. How far around the road is it from your house to the depot?

A. About ten miles.

Q. Why is it that it is so far around the road and so near

on the railroad?

A. ~~Be~~ cause it is a round about way. There are several streams of water to cross. It is about ten miles around that way to the depot.

Q. How far from you is the nearest depot on the Seaboard Railway?

A. Five and a half miles.

Q. At which depot do you get the most of your produce?

A. I have been getting it from Carrsville. It is seven miles to Windsor, and nine miles to Franklin and Mr. Finley told me it was the best and proper^{est} place for a depot. Right in the center. I don't believe Mr. Finley can look me straight in the face and tell me he did not make these promises. He shook hands with me and said you will have a depot. Furthermore than this Mr. Burnside come to take up the deed with Mr. Eustace Clements, a Notary Public. When I signed that paper I said "Mr. Burnside you tell Mr. Finley (he is the man I bargained with) when you go back if he don't put this depot here as he promised the people he better never put his face in this country again." Mr. Burnside said "I believe you will get a depot." Mr. Eustace said "If you don't you will have to get a sheepskin and tallow the railroad."

And further this deponent saith not. Counsel for plaintiffs reserving the right to recall him for re-cross examination, to which Counsel for defendants assents.

E. T. Carr, being duly sworn, testified as follows:

By Mr. Burges.

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

A. E. T. Carr, 38, farmer, Isle of Wight County, and I know Mr. and Mrs. Joyner.

Q. Do you own some land lying near the farm of Mr. J. E. T. Joyner?

A. Yes sir, near him.

Q. About what time did you sell an option for a right-of-way to the Tidewater Railway Company across your land?

(The above question objected to upon the ground that it deals with a transaction entirely separate and distinct from the one at issue, and for the reason that any evidence the witness may give as to sales made by him would be irrelevant and immaterial.)

(It is agreed by Counsel that this objection is made to all similar questions.)

A. I gave the right-of-way for the depot.

Q. Tell in your own words just what conversations took place between you and the representative, who came to see you.

A. I was plowing and he ^(Fulley) come up and spoke to my wife on the porch. When I come up he said "Good morning you are blessed to live here at this place. You are going to have a depot at the County road, at the corner of your field. I have been to see D. H. Carr and Joe English and they have given their rights-of-way for a depot. Will you be willing to do the same." I told him if he was sure we would have a depot I would. He said "You will certainly have a depot and the railroad will run at a level with your land". I gave him land sufficient for a depot.

Q. Did you mark out the place where the depot was to be?

A. Not more than the County road.

Q. Did he put that in the option?

A. No sir. The land sufficient for the depot is not in the option.

Q. Did you read the option?

A. No sir.

Q. Did he read it to you?

A. Yes sir he read it. But it did not read like it did when

Mr. John Johnson read the deed. He did not read the option, but the deed.

Q. How did the option read?

A. I could not tell you.

Q. About the land for the depot?

A. "Land sufficient for the depot."

(Question and answer objected to on the ground that the option is the best evidence.)

(Mr. Burges: This option should be in the possession of the Virginian Railway Company and I call upon Counsel for plaintiffs to produce this option and file it among the papers in this cause.)

Q. How did the deed read about the depot?

A. It read "land sufficient for a depot" but towards the last it said "where we see fit to put a depot". I objected to signing the deed and Mr. Burnside said that they could force me to sign it.

Q. Why did he say they could force you to sign it?

A. I could not tell you that.

Q. Did he have the option paper there?

A. I did not ask him.

Q. Have you ever seen the option paper since the day you signed it?

A. No sir.

Q. As I understand you it was only read to you?

A. Yes sir.

Q. And when read to you there were no words in there saying that the railroad company could put the depot or not just as they saw fit?

A. Not in the option, but when the deed was read it had these words.

Q. Mr. Burnside had told you that they could force you to sign it?

A. That is the reason I signed the deed.

Q. How far is the nearest depot to you on the Tidewater around the road?

A. I suppose around the road about ten miles. I have never measured it. We have got to go a long way to get there.

Q. Do you use this depot at all?

A. So sir, never have.

Q. Where do you haul your produce?

A. To Carrsville.

Q. How far is Carrsville from you?

A. On the County road about five or six miles.

Q. Now Mr. Carr I want a fair statement from you of what you think the right-of-way across your land was worth.

In other words if there was no depot nearer than the one at the present location what would you charge for a right-of-way as now located?

(The above question objected to upon the ground that it deals with a transaction entirely separate and distinct from the one at issue, and for the reason that any evidence the witness may give as to sales made by him would be irrelevant and immaterial.)

(It is agreed by Counsel that this objection is made to all similar questions).

A. As land is now not less than \$400.00.

Q. What would you have charged on the day the option was given?

A. I was going to charge \$300.00.

Q. And instead of charging \$300.00?

A. I gave it for the depot. Me and my wife was talking about it. Tatt told me the next day.

Q. Did you ever see Mr. Finley after the deed was executed?

A. I never seen him since the day he took the option.

Cross-examination.

By Mr. Corbitt.

Q. How many acres of land?

A. About three acres so the surveyors said.

Q. I understood from what you said a while ago that you took

Mr. Finley's word that they would put a depot there?

A. Yes sir.

Q. And the option did not say they had to put a depot there?

A. I did not require them to put that in the option. He said that if I gave land sufficient for a depot that they would put the depot there. So I did that.

Q. So your option then simply gave them the right-of-way for land sufficient for a depot?

A. Yes sir for a depot.

Q. And nothing was said in the option about company's being obliged to put depot there?

A. He said it would hold them when I gave land sufficient.

Q. And you understood at the time the option was given that the option did not read that they were obliged to put the depot there?

A. Not more than land sufficient for a depot.

Q. Are you related to Mr. Joyner?

A. Yes sir.

Q. How near?

A. Second cousin.

Q. Live near him?

A. Yes sir.

Q. Did you ever consult any body about ~~whether~~ you should the deed?

A. No sir.

Q. When it was brought to you you signed it?

A. I objected to it but Mr. Burnside said that they could force me to sign it and I signed it.

Q. Who was present?

A. J. Albert Johnson and Benj. Gay.

Q. Who took the ~~acknowledgment~~ acknowledgment?

A. Jim Johnson.

Re-direct examination.

By Mr. Burges.

Q. When Mr. Johnson took the acknowledgment did you remark to him any differences between the two papers?

A. I told him the first paper did not read like that. The paper Mr. Finley read did not read like that.

Q. In what particular? I mean about the depot.

A. Nothing particular about the depot more than that.

I did not say anything to Mr. Johnson about the depot.

Q. Is there any difference in the option as read to you and in the deed? If so, please say what it was?

A. By taking so much land. So much an acre. That was not in the option when he read it to me.

Q. What did the deed say about so much per acre?

A. \$50.00 so much an acre.

Q. What did the option say?

A. I could not tell you now as long as that is. Mr. Johnson did not read that in the deed.

Q. Is it in the deed?

A. I think it is in the deed. Something like that.

Q. Then if I understand you you think the deed gave them the right to put it there whether or not?

A. Yes sir.

Q. Did Mr. Johnson read the deed to you?

A. Yes sir.

And further this deponent saith not. Counsel for plaintiffs reserving the right to recall him for re-cross examination, to which Counsel for defendants assents.

L. H. Carr, being duly sworn, testified as follows:

By Mr. Burges.

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

A. L. H. Carr, 51, Isle of Wight County, farmer, and I know Mr. and Mrs. Joyner.

Q. Did you give a right-of-way across your land?

(The above question objected to upon the ground that it deals with a transaction entirely separate and distinct from the one at issue, and for the reason that any evidence the witness may give as to sales made by him would be irrelevant and immaterial.)

(It is agreed by Counsel that this objection is made to all similar questions.)

A. I gave it away.

Q. When was it that you gave it away?

A. About the 16th of May.

Q? Was it the same day that Mr. Joyner sold his?

A. I sold mine before Mr. Joyner sold his. Mr. Joyner come to my house and he and Mr. Finley could not tie horses.

Q. Why did you give your right-of-way?

A. We had a long way to ~~gax~~ go to get to a depot and Mr. Finley promised a depot at the County road. I thought if he would put a depot there I would give the right-of-way.

Q. Did he tell you any provisions had been made for a depot?

A. He said we would get a depot at the County road.

Q. Tell in your own words just what ~~take~~ took place between you and Mr. Finley the day you gave him the option?

A. He come to my house with Mr. Joyner and said I have come ~~has~~ here to take an option for a right-of-way. He said we have got two lines to run and this is the one we want and we are going to give you a depot ~~down there~~ and you will be ~~blissed~~ blessed. Then he asked me how much I charged for the piece of land and I said I would give it for the depot. He then written the contract and me and my wife

signed it. /

Q. Did you read it?

A. No sir. He read it to me. I cannot read much.

Q. Did he say anything in this contract about a depot?

A. No sir. Only he told me there would be a depot there at the County road.

Q. Who came to get you to sign the deed?

A. Mr. Burnside.

Q. Who came with him?

A. Mr. J. Johnson.

Q. Did you say anything to him about the depot?

A. No sir.

Q. When did you first find that they would not locate a depot there?

A. I don't really know when that was. It was after I signed the deed.

Q. How far do you live from Mr. S. T. Carr?

A. About half a mile.

Q. How far is the nearest depot to you?

A. The others have gotten it down fine. but I think it is about twelve or thirteen miles.

Q. Where do you haul your produce?

A. I haul it to Carrsville.

Q. How much would you have charged for the right-of-way had the depot not been promised you?

A. Not over \$50.00. It just crosses a small part of my land.

Q. Would you have given it to them if they had not promised the depot?

A. I don't think I would.

Cross-examination.

By Mr. Corbitt.

Q. You do not say you would not?

A. I don't say I would not.

Q. I understood you to say that when Mr. Finley read the option to you he never said anything in there about the depot?

A. Not in the option, No sir.

Q. He never pretended it was in there?

A. No sir. He told me that we would certainly get a depot.

Q. Are you related to Mr. Joyner?

A. Yes sir?

Q. How near?

A. Not as near as I am to you. He is my third cousin and you are my second.

Q. How near is the nearest depot from you?

A. About twelve or thirteen miles.

Q. Is there not a short way?

A. I have never seen it. They tell me there is a short way across the river. I have worked up and down the river for twelve years but I have never seen it.

Q. Who took your acknowledgment to the deed?

A. ~~Mr.~~ J. Johnson?

Q. Who read the deed to you?

A. Mr. Burnside?

Q. Mr. Burnside did not have anything in the deed about the depot did he?

A. No sir. I took their word for it.

And further this deponent saith not. Counsel for plaintiffs reserving the right to recall him for re-cross examination, to which Counsel for defendants assents.

The taking of this testimony is adjourned until ~~Friday~~, February 28th, 1908.

R. J. Cox, being duly sworn, deposes as follows:

By Mr. Burges.

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

A. R. J. Cox, 57, Isle of Wight County, Virginia, farmer, and I know the parties to this suit.

Q. Are you the owner of some land lying near the land of J. E. T. Joyner?

A. Yes sir not so very far from him.

Q. Did you sell a right-of-way to the Tidewater Railway Company across your land and if so to whom?

A. I sold a right-of-way to Mr. Finley.

(The above question and answer objected ^{to} upon the ground that it deals with a transaction entirely separate and distinct from the one at issue, and for the reason that any evidence the witness may give as to sales made by him would be irrelevant and immaterial.)

(It is agreed by Counsel that this objection is made to all similar questions without copying same in the record.)

Q. Was this about the same time that Mr. Joyner sold to Mr. Finley?

A. About the time he went there.

(Question objected to as not being shown that witness knew when Mr. Joyner sold.)

Q. About what time did Mr. Joyner sign the option paper with Mr. Finley?

A. 1855.

Q. Don't you know the year? About how many years ago and was it in the spring or fall?

A. In the spring of the year. Three or four years ago.

Q. You heard Mr. Joyner and the people around there talking about selling rights-of-way did you not?

A. Yes sir.

Q. Tell in your own words exactly what took place and what conversation you had with Mr. Finley?

examine this paper and tell me if you ever saw it before.

A. I never read the paper.

Q. Did Mr. Finley ever deliver or give you any paper demanding a deed?

A. No sir he never gave me a paper demanding a deed. He come to my house one day and said that he had come to settle up with me and that day I was standing in my front porch and I walked through to the dining room. I told him I had nothing to say that I had gotten Mr. Wm. S. Holland to attend to it for me and he would have to go to Mr. Holland and I told him that I would not sign any paper at all. He could go to Mr. Holland.

Q. Then he did not give you or any one, or leave any paper at your house?

A. He was in my front porch. I walked through to the dining room. I went to dining room to eat my dinner. He said "here is the paper, you have got to have it." As he said this I took a chair and would have stove it at him if he had not gotten out of there. He stove it at me. It struck the wall, just like this, and fell back out on the floor.

Q. Is that the paper?

A. I never seen the paper. I never read it in my life.

Q. How did I get this paper?

A. Why Ernest Stevens gave it to you the day you were at my house. He took it up and put it in his trunk. The day you were there he took it out of his trunk and gave it to you.

Q. Did you have any dealings with one A. J. Finley representing the Tidewater Railway Company in regard to the sale of a part of your farm to him for a right-of-way, if so, tell us all you know about it.

A. Yes I did. On the 15th day of May, 1905, about 5 o'clock in the afternoon Mr. A. J. Finley come to my residence and said he would like to secure an option paper from me which he had filled out or written a few minutes before.

Q. Had you had any conversation with him before that time in regard to the right-of-way?

A. Yes sir. We had been talking all day since that morning.

Q. When is the first time you ever saw him?

A. On the 15th day of May, 1905, near light down.

Q. Did he say anything to you on that day about buying a right-of-way across your farm?

A. No sir.

Q. When did he first mention to you that he wanted to buy a right-of-way?

A. Next morning. About eight o'clock.

Q. About what time did you reach any kind of an agreement?

A. Between four and five o'clock in the afternoon.

Q. What agreement did you reach?

A. We reached this. That he was

(Counsel for plaintiffs objects to oral testimony with reference to what the agreement was. The written agreement itself being the best evidence.)

"The agreement between Mr. Finley and myself was. We were going to Mr. Joe English's from my house and Mr. Finley wanted to know why I was so hard. He said the others had given their right-of-way. Going on we got into a conversation and Mr. Finley said "Mr. Joyner, are you going to be the hardest man I have struck to-day"? He said: "I have been talking with you all day, except when I was over yonder talking with some others, and you heard me." I said "Mr. Finley there is one thing sure if you will agree not to interfere with my fish-pond and agree to give me the depot at the road down there where the railroad crosses the County road at Tom Carr's place I will agree to take what

you say".

Q. What did he say he wanted?

(Counsel for plaintiffs not only objects to oral testimony as to what agreement was finally entered into, the agreement itself being the best evidence, but also objects to testimony with reference to negotiations which were finally closed by the written agreement.)

(It is to be understood that this objection is noted to all similar questions.)

(To this, Counsel for defendants, here agrees.)

Q. You said if he would not interfere with your fish-pond and would put a depot at Tom Carr's where the County road crosses the railroad you would accept his offer. Now what did he want?

A. He wanted a strip of land a hundred feet wide, or fifty feet from the center line, which he called the right-of-way.

Q. Did he say anything to you about whether there would be any cuts or whether the road would run at grade?

A. No sir he did not mentioned cuts or barrow-pits in the paper when he bargained with me.

Q. Was there anything said as to whether or not the railroad would cross your land at grade?

A. Yes sir. He said the railroad would run across the land at grade with the other land of mine. He had a paper. He called it a plat or something like that. He said it was a plat the surveyors gave him of my farm. The highest thing I could compare it to would be a long stem pipe. He said "that mark along there is where the railroad will cross your land. Don't it look to you like it is straight? This little point down here is your fish-pond."

Q. Did he say how the railroad would cross your fish-pond?

A. Yes sir. He said it would cross the fish-pond by building a bridge or trestle which would rest on piling so as not to interfere with the water in the pond and that the said J. E. T. Joyner might pass and re-pass under the railroad with his boat. That is the way he said he

would cross the fish-pond.

Q. Then after you told Mr. Finley you would accept his proposition he prepared an option paper?

A. Yes sir.

Q. Where was this paper prepared?

A. At my house.

Q. What did he say when he brought it to you?

A. He said "here is an option paper I wrote a few minutes ago. I want you to sign it. I will read it to you. I think I can read it better than you can."

Q. Did you or your wife attempt to read it?

A. We did not. Mr. Finley said he could read it better than we could.

Q. Do you read well?

A. No sir. I am a man with no education. Never had the chance to go to school but 117 days when I was a mighty little boy.

Q. I will now read you the option. I want you to stop me if I read anything that was not in the paper read to you.

(Mr. Burges then read option down to this: "to so much additional land" the paper reading as follows:)

"Together with so much additional land contiguous thereto as may be required for the slopes of cuts, and fills, drainage and barrow-pits"

A. That was not in option paper read to me.

Q. Nothing was said about slopes?

A. No sir.

Q. Cuts?

A. No sir.

Q. Fills?

A. No sir.

Q. Drainage?

A. No sir.

Q. Borrow-pits?

A. No sir.

Q. I have now read you all of the contract and you have only stopped me once I, therefore, understand that he read to you everything in the contract except at the point, at which you stopped me?

A. Yes sir.

Q. Did he read you anything more than I read you?

A. He did.

Q. Tell me what this was.

A. Well in the first place he read that where the railroad crossed the fish-pond of said J. B. T. Joyner that a trestle or bridge should be built, which would rest on piling so as not to interfere with the water in the pond and so that the said J. B. T. Joyner might pass and re-pass under the railroad with his boat.

Q. Did he read anything else that I have not read to you?

A. Yes sir.

Q. What was it?

A. He read that where the railroad crosses the County road, the Smithfield and Franklin road, that a depot would be built for loading and unloading freight on the land of Tom Carr.

Q. How far would this railroad be from your house?

A. It is one mile. According to the measurement on the railroad track. I have never measured it.

Q. Are you sure that he read this about the fishpond and depot as being a part of the option?

A. I am.

Q. When Mr. Finley read this contract to you who was present?

A. My wife.

Q. Was anyone else present? A. No, sir.

Q. When did you next hear of this option paper?

A. It was in September, I do not remember what day. About five or six or seven days after Mr. Finley left Mr. James A. Johnson came.

Q. What did Mr. Johnson do?

A. He come there and went to the kitchen where my wife^{and I} was, and took a paper out of his pocket and says I got a paper here with your name to it. Then she said (Mr. Corbitt here objects to question and witness instructed not to tell what she says, and Mr. Burges says tell only what Mr. Johnson said and what you said). Jim said here is the paper Mr. Finley gave me; I suppose you signed it." Both said yes, we thought it was the same paper Mr. Finley gave us. We did not ask him to read it.

Q. Did you know Mr. Johnson well?

A. Yes, sir, we were raised together.

Q. Did you have confidence in Mr. Johnson?

A. Yes, sir.

Q. What happened next, I mean when did you next hear of this paper.

A. Not until Mr. Hill came there in September and after the deed.

Q. Who was Mr. Hill?

A. A lawyer, and he says Mr. Joyner I have come to settle with you today. I says all right. I says Mr. Hill read the deed before I sign it. He took it out and began to read, and the first place he struck that had not been read to me before was about so much additional as may be required for slopes, cuts, fills, borrow pits, etc., and I told Mr. Hill there was nothing like that read to me and I wasn't going to sign any such paper. Mr. Hill said he reckoned that

was the paper I signed. I said I would not sign it. He says "why," and I said because it was not like the paper Mr. Finley read to me. He took from his satchel a paper and read it to me. He took from his satchel a paper and read it to me and said it was a better paper ^{than} I had signed before when Mr. Finley came along. I told him I would not sign the deed to save his life. Mr. Hill left.

Q. And that ended your negotiations with them?

A. Yes, sir.

Q. When did you find out that there was nothing in the deed about the fish pond and the depot?

A. That day Mr. Hill read that deed to me. That was the first time I knew anything about it.

Q. Did Mr. Hill read all of the option paper to you?

A. Yes, sir, he said he did.

Q. When he finished reading you did not hear anything about the depot?

A. No, sir, and nothing about crossing the fish pond.

Q. Did the paper that Mr. Finley read to you say anything about how the railroad would cross your land?

A. It did. It read that where the railroad crossed my lane and field would be even grade level with the land when it passed through there.

Q. Was there anything in the paper that Mr. Hill read to you about a crossing the lane at grade?

A. No, sir, not a word.

Q. Mr. Joyner you claim damages for destroying crops growing upon your land and preventing cultivation of same since the railroad took possession. What damage was done to your crops the first year?

A. I suppose he took a pea patch, that was fifty bushels of peas, the first year. (Counsel for plaintiff objects to introduction of testimony with reference to damages suffered by defendant by reason

that no damages have been set up by defendant in the pleadings). Then he went over my cotton patch and of course destroyed that, he did not take a very small piece, worth not over \$10.00; then through my cornfield, it was in roasting ears. You could eat it, and I had to eat it. I suppose the damages was \$25.00 on that crop.

Q. Now tell us about taking and removing dirt from the land?

A. I could not tell you how large the holes are, Mr. Burges. They are there to show for themselves.

Q. About how large are they?

A. On the strip of land ~~xxxxx~~ or outside of the strip of land?

Q. Tell us first about outside of the strip of land 100 feet wide?

A. I could not exactly tell you, Mr. Burges, I have not measured the piece of land. There was a piece in there I suppose larger than this room (indicating the larger room of Mr. Burges suite of offices over R. L. Brewer's jewelry store, Suffolk, Virginia), that they ~~xxxx~~ dug down clean ~~down~~ over the 100 foot strip, 25 x 30 feet, I should say, I have not measured it.

Q. How much do you consider that the digging of this dirt off the right of way damages you?

A. I could say it damaged my farm \$50.00 .(Mr. Corbitt makes same objection as preceding one to all these questions of damages).

Q. How much were you damaged by the removal of fences upon the land? I mean by stock being permitted to enter the land by reason of the removal of these fences?

A. Not any for that year, Mr. Burges. They put the fences back up.

Q. How much since that time?

A. Well, in 1906, they came through there laying rails, some time in May, about the middle, and tore my fences down, turning the stock right in my field. It stood so until about the 20th of June. They put in some old wooden cattle guards there, but it did not

stop the stock one bit in the world. Finally I kept after them, and they did not pay any attention to it in the world. So I went out there and made a pair of bars and put them up down the back part of my field, and got the stock out of the field. That night when the Captain came along there up the line he stopped and wanted to know what it meant. I told him. He told me to get a lawyer and go after them for damages. I told him after that was gone it was too late to make any more. He said he had to come back about two o'clock that night. He promised if I would not put them bars up that night that he would phone to both ends of the line next morning and that he would guarantee he would have some men there before night to attend to that thing. So I went into the house then and left them down. Next morning they came there with wire, digging holes, putting up posts, and kept a boy at the crossing to keep the cattle out, and done so until they could get it fenced in.

Q. What was your damage done that ~~night~~ year to your crops?

A. \$100.00 (Mr. Corbitt makes same objection as preceding to all questions and answers, and for the further reason that proper basis of damages has not been taken).

Q. How much damage was done in the year 1907, if any?

A. None in 1907, they had it fenced in. When it comes to my yard, that is all the time. The cattle guards that they got there was not any good at all. They don't stop hogs, horses, cows, nor anything else in this world. The damage to my yard and lot, tearing it to pieces, is \$50.00, every cent of it. (Mr. Corbitt here makes same objection as preceding).

Q. What damage, if any did you suffer from digging trenches?

A. Well, sir, I had to stay there and take this stagnated water off the South side of my yard.

Q. Why did you have to remove this stagnated water from the South

side of your yard?

A. On account of my health. Dr. Rawls told me it would kill me with that water standing there like that.

Q. Was there any odor to this water?

A. Yes, sir, it was just as green over the top as ever you saw a duck hole around a lot.

Q. How far was it from your house?

A. About 90 yards.

Q. How far is the railroad track from your house?

A. I have never measured it. It is about 90 or 95 yards from my porch to the track.

Q. Is it between your house and your gate?

A. Near agin the house as it is to the gate. My cow lots and things are all on the other side of the railroad in front of my house.

Q. How much were you damaged by throwing an embankment across your fish pond?

A. Well, sir, I dont know what other people would think it. I would not take \$500.00 for it. It was a thing I always wanted and I made it for a pleasure trip. I could go down there any time in the world that I wanted, set a half a dozen nets, and next morning go to them and have all the fish I wanted for breakfast. I considered it a great pleasure to me. I don't know what other people would think it worth to them.

Q. What effect did the construction of this embankment through your fish pond have upon it?

A. They went across kinder slant ways, the deepest part there was in the pond, and the dirt slipping from the embankment just filled it up.

Q. Is there any pond there now?

A. There is a little water on the upper side. When they came

along they put piping up in the embankment and of course what water was up on the other side of the pond runs through these pipes.

Q. Can you keep any fish in this pond now?

A. No, sir.

Q. What do you consider to be the rental value per year of the land taken and destroyed other than the fish pond?

A. It is worth \$100.00 a year to me. I dont know what it is worth to anybody else. (Mr. Corbitt here makes same objection as preceding one).

Q. Mr. Joyner, you mentioned just now something about the location of a depot about a mile from your house. Why were you interested in the location of this depot?

A. To haul ~~my~~ fertilizer and produce that was raised there on the farm.

Q. How far is the nearest depot on any other road to you other than the Tidewater Railway depot?

A. Six and a half miles.

Q. How far is the nearest Tidewater Railway depot to you at this time?

A. The nearest one, by private way, that you can get across down below my house about, I suppose, two and a half miles. Something like it.

Q. Can you get that way with a cart?

A. Yes, sir, you can go that way but it is one terrible way.

Q. Is it a public road?

A. No, sir.

Q. Over whose lands does it cross?

A. It crosses the land of I. W. Duck, deceased, Mary E. Johnson, Jos. Johnson, and of course the land over the other side of the river; I dont know whose land that is.

Q. What river is it between you and this depot?

A. Blackwater River.

Q. What kind of bridge is across this river?

A. I have never seen it since it was about half way across. It is drove on piles.

Q. Who built this bridge?

A. Mr. Pretlow, I think, built it. Who paid for it I dont know.

Q. How far is this depot from you by the County Road?

A. Ten miles.

Q. Could you haul fertilizers from the nearest depot on the Tidewater to your house over the road that you mentioned as being 2-1/2 miles in length?

A. Yes, sir, I could haul some by putting in about half a load.

Q. At the point mentioned by you as being on the road leading to Smithfield on Mr. Tom Cross's land, how near would this depot have been to your house?

A. About a mile and a half.

Q. What kind of road is this?

A. Good, nice road, no bridge, not even a branch.

Q. Then that depot would have been on your side of the Blackwater River?

A. Yes, sir, in Isle of Wight.

Q. What is the difference in value to you of a depot on the Smithfield road, and a depot as now located, per year?

A. Mr. Burges, it is a big difference to me, even take it as private property, if the people would allow me to get across there. It would be worth \$50.00 a year more to have it at Tom Cross' than across the river. (Mr. Corbitt: Question objected to as not material to the issue in this suit, and is not on the proper basis as to make damage).

Q. Did you object to the borrow pits and to giving them so much additional land as might be needed for slopes and fills?

A. Just this, Mr. Burges: The way that man read that deed, he had the right to take my whole plantation if he wanted it. He did not

say take some and stop. It said take just as much land as he wanted. I would never have known when they got done taking land.

Q. When is the last time they dug any dirt off your land, or made any cuts in it?

A. That was 1906; they did not take any off there in 1907.

Q. How does the railroad cross your land; is it a fill or a cut?

A. It is a fill about 3-1/2 feet high.

Q. Why do you object to this?

A. Because it knocks off my front view when you come to my house, even in a buggy. I just can glimpse the top of the buggy.

Q. Does it affect the size of the loads that you can haul in your yard?

A. It does greatly affect it, Mr. Burges.

Q. Is there any doubt in your mind about the fact that the option that ~~xx~~ I read you differs from the option which Mr. Finley read?

A. There is. The difference was in the option that Mr. Finley read to me and the option that you read to me, the difference comes in that where the railroad crossed my fish pond that there should be a bridge or trestle built which would rest on piling, and a depot and about the railroad running even grade level with the land.

Q. Are you sure that Mr. Finley read these things as being written in the paper?

A. I am sure that is exactly what he read to me.

Cross examination:

By Mr. Corbitt.

Q. How long had you known Mr. Finley when this option was signed by you?

A. I met him the night before about daylight down, the 15th.

Q. Your wife can read, I believe you said?

A. She is sort of like myself, very poor hand at reading, very

poor education she has; she can read ~~print~~ print. (Counsel for Defendant here calls upon counsel for plaintiff to file in evidence the original paper signed by Mr. and Mrs. Joyner).

Q. She can read writing with pen and ink, can she not?

A. Some hands she can read and some she can't, just according to how it is wrote.

Q. I understood you to say that neither she nor you tried to read this option until it was signed?

A. No, sir, we did not try to read it. We relied wholly and solely upon what Mr. Finley read to us, and believe he read it as it was written.

Q. You can also read writing with pen and ink?

A. No, sir, mighty few hands I can read with pen and ink. But I can some hands, but it must be somebody I am mighty used to seeing their writing if I make out any word of it.

Q. If it is somebody who writes a very plain hand, then you can read it?

A. Yes, sir, I can read some of it.

Q. Did either you or Mrs. Joyner, your wife, ask Mr. Johnson to read this agreement to you when he brought it several days thereafter?

A. No, sir. He had our names to that paper and he asked us if we signed it. We told him that we did; we though that was sufficient.

Q. Do you believe that he would have read it to you if you had asked him?

A. Yes, sir, I do.

Q. It is my understanding, then, that you first met Mr. Finley late in the evening before the day you signed the agreement?

A. Yes, sir, about daylight down, near as I can get it.

Q. You had never seen him before that time?

A. No, sir, I had never seen him anywhere in the world.

Q. Had you ever heard of him?

A. I heard that there was a man in Southampton coming along through getting rights of ways, but who it was I did not know.

Q. You knew when Mr. Finley came to see you that he was representing the Tidewater Railway, of course?

A. He told me so next morning. He wanted to stay all night, that was the first thing he said to me.

Q. He said nothing when at night when he first came, about making the agreement.

A. No, sir, not one word. He did not tell what his business was. Said he wanted me to take care of him that night.

Q. Who at that time was your attorney?

A. Nobody at all. I had never been in a lawsuit before in my life.

Q. Had you never employed an attorney for representing you in your business?

A. No, sir.

Q. Never paid a lawyer a dollar before in your life?

A. No, sir, I have never used a lawyer. I never got in but one scrape and that was settled by a Magistrate.

Q. What time next morning did Mr. Finley take up this question?

A. About 8 o'clock, after all had finished breakfast and the surveyors had gone off to their work.

Q. What time was the agreement signed?

A. About five o'clock in the afternoon.

Q. I believe you stated that neither you nor your wife asked Mr. Finley to let you read the agreement?

A. No, sir, he told us in the beginning that he did not think we could read it, that he could read it better than we could. I knew at first that I could not read it.

Q. You state, too, that you did not try to read it?

A. No, sir, I did not.

Q. You understood, of course, that Mr. Finley was representing the Tidewater Railway?

A. Yes, sir, that is what he told me that morning.

Q. Who next came to your house, Mr. Hill or Mr. Finley?

A. Mr. Burnside came next, but I was not at home. Mr. Hill was then the next one came to see me. I don't know his name except Hill.

Q. Mr. Hill came and asked for a deed?

A. Yes, sir, and said he had come to get my deed and pay my money. He sat down and commenced reading it in my porch.

Q. It was after that that Mr. Finley came?

A. Yes, sir, one time.

Q. When was it that Mr. Finley served upon you this notice?

Mr. Corbitt, I don't think I can tell exactly the day he come there and chunked me that paper. I could if I were at home. Miss Rpsaa Gay, the school teached, got married and sent me and my family a ticket to her wedding. I have that at home. That was the very day Mr. Finley came.

Q. This visit of Mr. Finley's was after the visit of Mr. Hill?

A. Yes, sir.

Q. You say this paper was given to you by Mr. Finley?

A. He chunked me with it, Mr. Corbitt. He told me he wanted me to take that paper and I said I should not do it, and he hauled off and chunked me with it, and in chunking it it struck the posts of the porch and fell back down in the yard. He attempted to pick it up, and I grabbed me a chair and was going to put it on him if he had not gotten away from there. I talked with Mr. L. Finley as reasonably as I could. I told him that I had employed Mr. Wm. S. Holland and go to Mr. Holland and any agreement he could make with Mr. Holland would be satisfactory to me. His reply to me was that he had no business with William S. Holland, his business was with me

Q. You picked up this notice?

A. No sir I did not Ernest Stevens picked it up.

Q. Who was Ernest Stevens?

A. A man I had employed there. He got up from the table and went towards the door. Mr. Finley went out and Ernest picked the paper up. I did not want it and I did not touch it. He put it in his trunk.

Q. In whose house?

A. In his house.

Q. In your yard?

A. Yes sir.

Q. Have you a very good memory?

A. No sir I have not a very good memory.

Q. Memory is very poor?

A. Well, of course, anything I can talk about I can remember.

Q. You may forget some things connected with things?

A. Of course I may forget some things. I am not perfect.

Q. You gave a while ago the words you said Mr. Finley read to you. How was it that you remembered these words so well?

A. Because I remember when I told him that evening when we were bargaining that I would take such price as he offered me provided he would put these things in that paper. He told me he would.

Q. You did not know whether Mr. Finley was a rascal or a gentleman?

A. No sir I did not I took him for a gentleman.

Q. You have made some statements with reference to certain damages. I understood from you that you were simply stating, in a general way, about what your idea the damage was to you.

A. To the crops and things you mean or to the whole farm?

Q. The crops and land and all?

A. I don't know whether I understand you or not. To my crops and the land they have taken away from me. I did not know that was for me to say. I know what I charged them for it.

Q. You know what you charged them for it?

A. Yes sir.

Q. Is there any stagnant water there?

A. There is. It only dried up one time last fall when that dry time come.

Q. How many acres of land did the Company take?

A. 9-2/3 acres. The surveyor told me he measured it and found it to be that. I don't know anything about surveying land.

Q. Have you since the Company has been operating its trains dug any dirt from their right-of-way?

A. No sir because they have none.

Q. Have you hauled any from the right-of-way?

A. Yes sir.

Q. How much?

A. I have hauled about thirty-five loads. Out there was where I fattened my hogs.

Q. Is that all that you have done?

A. Yes sir.

Q. Where was that gotten?

A. On the lower part of my field, down in the woods part.

Q: How far from the ties did you dig?

A. About thirty-five or forty feet.

And further this deponent saith not. Counsel for plaintiffs reserving the right to recall him for re-cross examination, to which Counsel for defendants assents.

VIRGINIAN RAILWAY COMPANY, a corporation,
and
TIDEWATER RAILWAY COMPANY, a corporation.....Plaintiffs.

versus

J. E. T. Joyner and Laura V. Joyner.....Defendants.

The depositions of J. E. T. Joyner, R. J. Cox,
S. T. Carr and others taken before me, F. W. Lloyd, a Notary
Public in and for the County of Nansemond, in the State of
Virginia, pursuant to notice, at the office of James U.
Burges, in the town of Suffolk, Virginia, on the 21st day of
February, 1908, between the hours of nine A. M. and six P. M.
to be read as evidence on behalf of J. E. T. Joyner and Laura
V. Joyner in a certain suit of action depending in the Circuit
Court of Isle of Wight County, in the State of Virginia,
wherein J. E. T. Joyner and Laura V. Joyner are defendants
and the Virginian Railway Company, a corporation, and the
Tidewater Railway Company, a corporation, are plaintiffs.

PRESENT: James H. Corbitt,

Counsel for plaintiffs.

James U. Burges,

Counsel for defendants.

-----oooOooo-----

Examined by Mr. Burges.

Q. Mr. Joyner, please state your name, age, residence, and
occupation and do you know the parties to this suit?

A. J. E. T. Joyner, 58, farmer, Isle of Wight County, and I am
one of the defendants.

(Counsel for plaintiffs hereby objects to the taking of
any testimony on the part of the defendant until said
defendant has demurred, answered and plead to said bill.)

Q. I now hand you a notice addressed to J. E. T. Joyner and
Laura V. Joyner and signed A. J. Finley, agent, and which
is filed herewith marked exhibit "1". Will you please

(2)

Virginia Code
N. S. Deposition
J. E. T. Jones.

JAMES U. BURGESS
ATTORNEY AT LAW
SUFFOLK, VA.

acre taking it through and through than yours?

A. Yes sir.

Q. You think it would be worth about \$25.00 per acre I should say?

A. I don't know sir I am not prepared to say.

And further this deponent saith not.

Cross-examination

By Mr. Corbitt.

Q. You can read cannot you Mr. English?

A. Yes sir a little.

Q. I understood from you that Mr. Finley told you that there would be a depot there near you but that was not a part of your option.

A. Yes sir but that was not in the option.

Q. You understood that?

A. Yes sir.

Q. Was that land of yours good farming land through which the railroad went.

A. Two acres was in cultivation the rest was woodland.

Q. You said it went through as fine land as you had?

A. I was speaking of woodland.

Q. Is the land that you had in cultivation as good land as you had?

A. No sir.

Q. What do you consider your land worth per acre exclusive of ~~the xxxxx~~ buildings?

A. I suppose about \$15.00 or \$20.00 per acre.

Q. I understand that taking your land through and through, open and woodland, and all, at this time it is worth between \$15.00 and \$20.00 per acre?

A. I don't wish you to understand me to say that would be the value of it when I give this option.

Q. How many acres have you on this farm?

A. I bought it for 100 acres.

Q. If I mistake not there is some testimony here that your land and Mr. Carr's land are not as good as Mr. Joyner's.

A. No sir. I don't know about Mr. Carr's land but mine is not as good as Mr. Joyner's for mine is sandy land.

Q. Mr. Joyner's land then should be worth something more per

Examined by Mr. Burges.

J. H. English, being duly sworn, deposes and says as follows:

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

A. J. H. English, 57, Isle of Wight, farmer and I know the defendants to this suit.

Q. Mr. English did you sell a right of way to Mr. A. J. Finley for the Tidewater railway across your land?

A. ~~YES SIR~~. No sir.

Q. How did he get it then?

A. I gave it to him.

Q. Why did you give it to him?

A. Because he promised to put a station in my neighborhood.

Q. About how far from you?

A. About half a mile.

Q. Was that the only consideration that you required for your land?

A. Yes sir.

Q. How much land did you give him?

A. I gave him a right of way one hundred feet wide and ten acres deep.

Q. About what would you have charged for that land had he not promised to put a depot?

A. I am not prepared to say sir. I do not know. It was right through the middle of my best land and my land was not for sale.

Q. Are the depots as now located on the Tidewater Ry. any service to you?

A. None in the world sir.

Q. What depot do you use?

A. For shipping purposes?

Q. Yes.

A. No special. Carrsville is generally my nearest depot.

He said there would be a depot there. He read in the option paper that there would be a depot there.

Q. He read that out of that paper?

A. Yes sir he read it out of the same. He had that paper in his hand reading it.

Cross-examination

By Mr. Corbitt.

Q. Mrs. Joyner what did Mr. Finley read about the depot?

A. He read there would be a depot down here about a mile and a quarter from here on Tom Carr's land. That was what I understood it to be he read to me.

Q. State as near as you can the words used by Mr. Finley as read by him in the option paper about the depot and about the fishpond and about the railroad coming through level?

A. Well he read that where the railroad crossed the fishpond there would be a bridge resting on piling so as not to interfere with the water in the pond and the said J. E. T. Joyner might pass and repass in his boat. And that there would be a depot about a mile and a quarter at the land of Tom Carr.

Q. Did he say that the railroad coming bound itself to put a depot there?

A. He read in that option that there would be a depot there.

Q. What do you considered the worse feature of this breach of contract. The fact that no depot was established do you not Mrs. Joyner?

A. I consider it all, the depot, the fishpond and not running level.

Q. If the depot had been established however you would not made any complaint would you?

A. Yes sir I would have made complaint because the option was not as he read it to me.

And further this deponent saith not.

A: No sir I took him to be an all right ~~man~~ man and thought he would read the paper as it was.

Q. When did you next see that paper Mrs. Joyner?

A. I did not see it until Mr. Hill read it to us when he come to have us sign the deed. I think that was September.

Q. Did not Mr. James Albert Johnson bring the paper to you?

A. Yes sir.

Q. How long was this after you signed it?

A. I think about a week.

Q. Did he read it to you?

A. No sir he did not.

Q. Did you ask him to read it?

A. No sir I did not ask him to read it. He held the paper up to me and asked me if I signed it for Finley about the railroad right-of-way and I said yes.

Q. How long have you known Mr. Johnson?

A. Ever since I have been knowing anybody we were children together about the same age.

Q. You believe do you not that Mr. Johnson would have read the paper for you had you asked him?

A. Yes sir I believe he would.

Q. Why is it that you remember^{ed} the day of the month so well Mrs. Joyner?

A. Because I can remember. I have got something to remember. Can't you remember it?

Q. You don't know what impressed it upon you at that time do you?

A. No sir nothing special only that was the day I signed the contract.

Q. Did not Mr. Finley in talking about that option say to you and Mr. Joyner that he thought there would be a depot down there.

A. No sir he did not say anything about that to me.

I told him that if he could put up with staying with some one else in the room I could accom^modate him.

Q. When was the first time he said anything to you about the contract or his business?

A. At the dinner table he said he had been trying to bargain with Mr. Joyner but could not make any bargain with him.

He took dinner here next day on the 16th day of May.

Q. I understood you to say that you did not read the contract?

A. No sir.

Q. You can read?

A. Yes sir I can read some if it is written very plain but if it ^{is} not I can't.

Q. You can read print all right. You can read writing if it ^{is} written plain.

At if ^{is} written plain I can pick up any sort of writing and read it right along.

Q. I understood Mr. Joyner to say and I believe you said that you did not offer to read this at all.

A. No sir I did not attempt to read this because he said he could read it to us as he might read it better than we could.

Q. So you don't know whether you could have read this or not because you did not try?

A. No sir I do not. I did not try.

Q. I understood you to say that you never saw Mr. Finley before the night he came to your house and that this paper was signed the following afternoon?

A. No sir. The following afternoon he came on the 15th and on the 16th the following afternoon the paper was signed.

Q. Did you have much to say to Mr. Finley while he was at your house?

A. No sir only while he was at meals.

Q. There was no reason why you should have put any confidence in him was there?

along.

Q. When you signed that did you think that was in the contract?

A. Yes sir I certainly did. I did not read the contract but I thought he was reading it right along.

Q. Had Mr. Joyner told you before that time what would be in the contract?

A. No sir he only said he had bargained for a certain amount of money?

Q. You knew however that they had talked about the fishpond did you not?

A. No sir I did not know anything about there bargain.

Q. Had you heard any talk about the depot?

A. No sir he did not talk anything where I was only at meals while he was home.

Q. When Mr. Finley came to you with the paper did he offer it to you to read?

A. No sir he did not offer it to me. Said he could read it better than we could. That we might not understand it.

Q. And so after he had read it to you you signed it?

A. Yes sir. He told me where to put my name and I put it there.

Cross-examination

By Mr. Corbitt.

Q. When did you first know Mr. Finley?

A. The night before on the 15th day of May 1905. He come here the first time I ever saw him. He told me his name was Finley.

Q. Did he tell you his business?

A. No he said he wanted to see Mr. Joyner.

Q. Did he tell you his business that night at all?

A. No sir he never said a word. He told me he was going to the fishtrap and it would be dark when he got back?

Q. Did he spend the night at your house?

A. Yes sir. Asked me if I could take care of him all night.

Examined by Mr. Burges.

Mrs. Laura V. Joyner, being duly sworn, deposes and says as follows:

Q. Please state your name, age, residence, and occupation and are you one of the parties to this suit?

A. Laura V. Joyner, Isle of Wight County, house-keeper, and I am the wife of J. E. T. Joyner.

Q. Mrs. Joyner as I understand you did not hear any of the bargain between your husband and Mr. Finley?

A. No.

Q. Did Mr. Finley come to you with a paper to sign?

A. Yes sir.

Q. What was this paper?

A. An option he said for a railroad right-of-way?

Q. Mrs. Joyner I now read this option to you, if I read anything that you do not remember in the option I want you to stop me.

(Mr. Burges reads option.)

~~X~~ At the point "cuts, fills, etc" Mrs. Joyner interposes saying "therewont nothing said about that".

Q. Mrs. Joyner I have now read you all the paper signed by you. Do you remember whether Mr. Finley read anything as being put in that paper that I have not read to you?

A. Yes sir.

Q. What was it about?

~~X~~ A. Well he read about the fishpond. He said that bridge would be built over that and he further read that there would be a depot about a mile and a half on the lands of Tom Carr.

Q. Do you remember whether he read anything to you about whether the railroad would be put above the ground or on a level with the ground as it crosses the yard?

A. He said it would be level with this ground.

Q. Are you sure that he read that as a part of the contract?

A. Yes sir he was reading the contract and he read that right

it was killed by a railroad, 2/3 of it sold afterwards. He said he told me that he got more out of that 1/3 that was killed by the railroad than by the other 2/3 that was sold afterwards. I said well Mr. Finley hereafter I shall keep plenty of cows for you and they shall be Jersey cows. And further this deponent saith not.

A. I reckon Mr. Joyner's and mine are about the same taking it all through, ~~swamp~~ and all. Of course, the swamp is good for its timber.

Q. What then would you say Mr. Joyner's farm would now be worth per acre, taking it through and through?

A. I would not like to say about that because I have not been over Mr. Joyner's farm. I have just passed through. Some one else can tell you better. I have only been over a portion of it.

Q. So you then do not know what Mr. Joyner's land would be worth through and through but it is your opinion that land taken through and through in this vicinity is worth \$10.00 or \$15.00 per acre?

A. Yes sir but some of it is worth three times as much as the other.

Q. Mr. Ballard you can read, can you not?

A. Yes sir.

Q. Read pretty well can't you?

A. Tolerable.

Q. Did Mr. Finley take an option from you.

A. Yessir.

Q. Did you read it?

A. No sir.

Q. You did not read it?

A. Yes sir He did the reading.

Q. Did the option say anything about the depot?

A. No sir it did not say anything about the depot.

He told me that. He ~~said~~ ~~that~~ stayed with me about half a day but we did not come on any terms. Then he come back you know. Of course he has told me what they would do and all those things and I told him about what trouble I would have about cattle and all those things. Well I ~~ssid~~ we will get some killed. He said let me tell you a man had a passel of stock 1/3 of

Q. How about the location of the railroad as to the house?

A. It is right smart damage to the house. So close; cannot turn out anything. I would be afraid to let a horse out here.

Q. How about young children?

A. Dangerous. Then you send off some one in a cart, they are liable to get on the track and get knocked off and killed.

Q. Are you familiar with the fishpond? If so, tell us how much this pond has been damaged?

A. Damaged, all ~~erax kxxd~~ been ruined, filled up by railroad ~~dkkxkxomixgxxkwwk~~ water coming down and washing dirt in.

Part I mean has been filled up.

Q. What would you have valued the fish pond before it was filled up?

A. If it was mine and fixed up like it was I would not have taken \$150.00 for it.

Cross-examination

By Mr. Corbitt.

Q. What do you consider your land worth per acre taking it through and through now?

A. Well I think it is worth \$20.00 per acre through.

Q. Now.

A. Yes sir. Of course I have some acres that are worth four times as much as some others. Of course swamp is not like other land.

Q. What is land in this vicinity just a short distance from the railroad worth per acre taken through and through?

A. Take it all the way through, good, bad and all \$10.00 or \$15.00 per acre for everything.

Q. Is your land better than this land of Mr. Joyner's or about the same land?

A. You mean the open field or the woods.

Q. I mean take the farm through?

Q. Did Mr. Finley promise you as a certainty that the depot would be located at this point. Or did he say that it was probable or possible that it would be there?

A. He told me it would not be more than a mile from me if it was not on my place.

Q. Did you tell him that the erection of this depot was part of the consideration for the sale of the right of way.

A. Yes sir that was part of the consideration. Because I would not have let him come through there anyway.

Q. Did you tell Mr. Finley that that was part of the consideration?

A. Well I told him it would be terrible to me and he said it will be so much ^{now} convenient for you. And under that consideration I did not charge him as much as I would have charged him because I thought if I could save two miles in hauling ~~that~~ the distance would be worth something to me.

Q. You are a farmer ~~are~~ you not and familiar with lands in this vicinity?

A. Yes sir.

Q. What is the difference in the value of this farm belonging to Mr. Joyner and now. In other words how much has the farm been damaged by the railroad.

A. I think it has been damaged half; not worth more than half what it was before.

Q. What would be your objection to living there now?

A. One reason, suppose you are plowing out there in that field. You get there and you have to go way around here and go to a crossing to get on that other side. Sometimes you have scarcely ~~by~~ horses, trains get right up on you, he runs way and might kill you or the horses. Lot of short rows. Some I mean, three hills long. I have got some on my place now three hills long you can jump from one end to the other.

Examined by Mr. Burges.

J. M. Ballará, being duly sworn, deposes and says as follows:

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

A. J. M. Ballard, 54, Isle of Wight, farmer and I know Mr. and Mrs. Joyner.

Q. Mr. Ballard in talking to you just now you told me of a conversation you had with Mr. Finley the agent or attorney for Tidewater Ry. Co. Will you tell me what Mr. Finley said to you about that time and when it was?

A. About the next day ~~he~~ reckon he come from Mr. Joyner's to my place and come to see me about my place. I told Mr. Finley, he made me an offer. I told Mr. Finley the railroad would not be any benefit to me unless they had a station here close. If they run along here and I have to go to Carrsville I said the railroad would be no benefit to me. Well he says the station will be within a mile or two if not on your place. And did not come on terms that day about the right-of-way. He left and stayed about a week and came back again and finally I told him what I would do. I charged him \$385.00 for the woodland, I did not want that much, the field was the part I was charging for. I told him I ~~was~~ was damaged so much. He said I will put up cattle guards up there?

Q. I mean especially with reference to the depot?

A. Yes sir. He told me that it would be within a mile or two from my place if not on the place.

Q. What was the consideration to cause you to sell Mr. Finley your right of way?

A. Because I thought that I could get my stuff to market in a mile or two and it would be a whole heap more convenient than going four miles. I would have charged him three times as much had I known that I would not be ~~so~~ convenient to the railroad. So he fooled me that such.

A/ No sir. Knew where it was but never have known much about it.

And further this deponent saith not.

Examined by Mr. Eutges.

Irvin Jenkins being duly sworn deposes and says as follows:

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

A. Irvin Jenkins, 68, Windsor, Va., farmer, and I know Mr. and Mrs. Joyner.

Q. Mr. Jenkins what was the value of Mr. Joyner's farm before the railroad was constructed through it?

A. According to the way land was selling I think \$6000.00. I understood he was offered \$7000.00 for it but that was more than I would have wished to give.

Q. What would you have given for it after the road was constructed through it?

A. For my use I would give anything for it because I would not have wanted to come here to live/

Q. Just tell me why you would not have given anything for it.

A. Because the railroad is so near the house. It is within a hundred and seven yards. And for that reason I would not like to live as near the railroad as that on account of my children and stock. Another reason would be whenever you ~~xxxx~~ hire labor now when railroads are passing your places your teams are rearing and tearing up your stock for that reason I would not want the farm at any price at the present time. Another reason that I would have to haul my produce just as far to the railroad now as before this one was built. Everything is a disadvantage for the farm nothing is an advantage for produce of any kind. Another is that when we made our crops and were ~~xxxx~~ ~~xxxx~~ hauling them from the ~~xxxx~~ fields we would have to stand with our team loaded half our time before we could get to the house with it. And perhaps they might run away with us and kill us before we ever did get there. That is about all.

Q. Are you familiar with his fishpond before the railroad was built?

A. Yes sir.

Q. Then you will change your answer that you made a moment ago when you say it is the rule to cultivate it in one piece?

A. The answer that I give to that I said just this. They do not want a little piece of peas there, a little corn here and ab ut, that is the sum and substances of that.

Q. In other words if he is going to plant peanuts he would select one piece of land for his peanuts, and if corn another piece for corn, and if cotton another piece for cotton, etc.

A. Yes sir I suppose that would be right.

Q. Now have you efer made an accurate of Mr. Joyner's property here.

A. No sir.

Q. Do you know then Mr. Frasier really whether or not it would be much more trouble for Mr. Joyner to haul his produce, peanuts, ~~haxax~~ now than it was before?

A. Well sir it would depend upon what portion of the field he was making that crop in?

Q. Can you carry any load at all on that path from here to Burdette?

A. Well sir so far as carrying a load I have been down there with my horse and it was up to the axles. I havenot been there in six or eight months.

And further this deponent saith not.

Q: Anybody else there you remember?

A. There might have been some one else but I can't remember.

Q. Who took the acknowledgement?

A. James Albert Johnson.

Q. Did it ever occur to you Mr. Fraiser that ~~roads~~^{rows} may be run the same way that the railroad runs and not run up the railroad track?

A. Of course they can but it depends upon how the land would be then.

Q. So then it depends upon the way the row~~s~~ runs upon how many times you have to turn around.

A. Some land you probably could not cultivate that way.

It is just the way the lands lay that you can do it.

Q. How far have you lived from the railroad before this one was built?

A. Well I lived at Isle of Wight Courthouse several years.

Q. What I was trying to get out was how near you had lived?

A. Of course I lived near a railroad for years, but for the last ten years, seven or eight miles, or something like that.

Q. You say that land is better cultivated in one piece?

A. Sometimes it is or sometimes ~~it is not~~ it cannot be cultivated in one piece.

Q. Suppose there is ^{no} ~~any~~ ditch do they generally cultivate in one piece?

A. They generally do it. If they got a patch of peas they plant a patch of peas and cultivate it there with corn they plant it on the other side or next to it.

Q. Suppose there was a 100 acres in one field and no ditch is it the rule to run your rows full length of that field?

A. It depends what you are going to plant it in first.

Q. Does it not depend a good deal upon the size of land you are going to plant, whether you are going to plant it in one piece or not?

Q. Why do they do this?

A. They save time not having to turn so much in the rows.

Q. Looking at the railroad as you see it from here, is it convenient now for Mr. Joyner to haul crops, fertilizer, etc.

~~across~~ his field and across the railroad track as it would prior to the time the railroad was constructed?

A. Of course he has just got a certain place to cross. He can not cross the field as he use to.

Q. Do you know wherein the construction of this road as it is has benefited Mr. Joyner's place in any way?

A. I do not see where it has.

Q. As the depots are now located are they any more accessible to the railroad by him as ~~he was~~ ^{they were} prior to the construction of this road.

A. No sir. Unless you built a County road to Burdette. There is a bridge built there but there is a terrible place down there.

Q. Is that a free public road or across private property?

A. Private property no public road around there.

Q. What is the nearest depot to him from public road?

A. I think Carrsville on the Seaboard.

Q. Have you ever gone over this private path that you talk of.

A. Yes sir.

Q. Is that path fit for hauling fertilizers or produce?

A. No sir.

Q. Could Mr. Joyner repair this road without the consent of the property owners?

A. No sir.

RE-CROSS EXAMINATION.

By Mr. Corbitt,

Q. Mr. Frasier who was present when the option of Mr. English was signed.

A. Mr. and Mrs. English were present and I believe my wife was there. I don't know who else was there.

A. Yes sir it was that day. Whatever day that was that will state.

Q. When you stated that Joyner was damaged to the extent of \$3000. you took into consideration other things other than the value of the land actually taken by the road did you not?

A. Yes sir.

Q. Why do you take into consideration the depreciation in value of other lands?

A. Which other lands?

Q. The lands that are taken by the railroad company.

A. You cannot turn out any stock here or I suppose they will be killed by the railroad company. They damaged his farm because they come ~~trigh~~t across there. I don't know whether the railway company is going to keep up the fences or not.

Q. How about the cultivation of land crossed by railroad.

A. Well you certainly you could ^{not} cultivate this land as good as you could before the railroad was here.

Q. About what would be the difference in cost of cultivated 40 acres of peanuts in one lot and 40 acres divided in half by a railroad?

A. That is a right smart question to answer.

Q. I mean this when a lot of land is divided by a railroad it would be necessary to cultivate two short rows insted of one long one. And is it not a fact that you would be plowing two separate piece instead of one single piece?

A. If this is a fact about that, but to make the difference do not know of course; horses have to turn around twice in going from one field to another; I know that ~~two~~.

I don't know how to figure that. That is a question I cannot fully solve. I owned a farm enough for that.

Q. Do the ordinary farmers divide their crops into small lots or generally cultivate them in one piece?

A. They generally cultivate them in one piece.

Q. Do then these two instances that you stated alone impress upon you that it was the 16th day of May?

A. Yes sir. I told you the reason why when ~~the~~^a man invests any money in anything he is not apt to forget you know.

Q. Was your investment made on that day?

A. No sir on the next day. I got after him for it and he asked a \$100. for it and the next day agreed to take \$50.00 for it, the 18th.

Q. When was your deed dated?

A. I don't know sir two or three months after it. I could not tell you the date. The deed is at home.

Q. Why did you remember the date that you talked with Finley and don't remember the date of the deed?

A. Well simply I don't know how long it was before I got a deed. He wrote the deed and I don't know how long he kept it before I got it. I know I got after him several times for it.

Q. Was not the deed dated?

A. Yes sir, of course it was dated. But I don't suppose the deed was written three or four months afterwards. I had paid Carr sometime before I got the deed.

Q. I am just trying to test your memory to see why it was you should recollect so distinctly the 16th of May?

A. Well sir I pretty well satisfied that that was the day.

Q. You then *are* not positive now that it was the 16th of May?

A. Well of course such a thing as that might ~~slip~~ slip a ~~man's~~ man's memory you know. I said on or about that I am pretty well satisfied it was too.

REDIRECT EXAMINATION

by Mr. Burges.

Q. Whatever date it was Mr. Fraiser it was the same day Mr. English signed the option?

time. And a little farm when you build buildings on it it counts right much.

Q. ~~xxxxxxx~~ So Mr. Carr's land you think then would be worth \$20.00 without the buildings.

A. Yes sir since the railroad has been put through there.

Q. You think then that Mr. Cox' land would be worth as I understand about the same?

A. Yes sir.

Q. Did I understand you to say that Mr. Joyner's land was a little better than the Carr land?

A. Yes sir because that is a very light land and subject to wash.

Q. The Carr land?

A. Yes sir and so is the Cox land too. I think that cuts 4 of 5 feet ~~of xxxxx~~ wider at the top now than when it was put there, washed Carr's land.

Q. If then Mr. Carr's land and Mr. Cox land exclusive of the buildings are worth now you think about \$20.00 per acre, what would you think the land of J. E. T. Joyner would be worth per acre exclusive of buildings.

A. Well we will put that at \$20.00 per acre, or something like that. But still Joyner's land is worth more than others in proportion. It is not subject to wash and is better cultivated.

Q. Well then it would be worth more than \$20.00 per acre, would it not?

A. Yes sir. But I just merely say that.

Q. Why is it that you remember so well the date you heard Mr. Finley talking with Mr. English?

A. When they took an option Mrs. English could not write and I wrote her name there and she signed it and this is one reason for it. The other reason is because simply I got after Tom to buy that piece of land from him. That is the reason I did not make a bar gain that day but made it the next day.

Cut a place through there from 15 to 20 feet. I think that damaged it some.

Q. My question was meant to learn from you what you think Mr. Cox' farm is worth per acre now?

A. I reckon it is worth \$20.00 per acre now. He has built a new house there since the railroad was built there. He has enhanced the value by putting buildings on it.

Q. It goes through his farm in a very deep cut don't it?

A. Yes sir and a portion of Mr. Carrs' also in a very deep cut 15 or 20 feet.

Q. Is the farm of Mr. Carr taking it through and through as good as the farm of J. E. T. Joyner?

A. No sir I don't think it is. I am satisfied it aint.

Q. Well if the ^{of} farm/ Mr. Carr taking it through and through is worth now about \$25.00 per acre what-----

A. I did not say now I said it was worth that. They built a new house on Mr. Carr's land which enhances the value of it. Got a house 18 x 36 got two stories to it. It cost right smart now to build a house like that.

Q. I understood that this new building was on the land of Cox's.

A. One on Mr. Carr's too sir.

Q. Both have built houses?

A. Yes sir.

Q. In assessing land, being a tax collector, you are thoroughly familiar where if the land is assessed without the building and then the buildings are assessed.

A. Yes sir.

Q. What would you say that Mr. Carr's land would be worth without the buildings? I don't mean what they would be assessed for taxes?

A. You mean the cash value of the land without the buildings. I think about \$20.00 per acre without the buildings but you will remember I said there was some buildings built there all the

A. Yes sir. That on that side was. The land that I bought from Mr. Carr was really a piece of land on this side. If you undertook to cultivate it it would ~~run~~ right in the swamp.

Q. When did you buy this additional piece of land Mr. Frasier?

A. I don't know exactly when I bought it. I think I bought it about 10 or 12 months after I bought the other, something like that.

Q. Had the railroad been built at that time?

A. Yes sir the railroad had been built. I don't think the track had been ~~laid~~ laid. I know they was ~~dumping~~ dumping dirt on the land I bought. The contractors asked me if they could put some dirt there and I told them to put as much there as they wanted.

Q. What is Mr. Tom Carr's land ^{part} per acre if you take the farm through?

A. The way land sells now I think it would be worth, I don't know, most all the land he has now is cleared land, the best part of it is, Tom has about 75 acres I reckon. I don't know something like that. I know Bradshaw offered him \$1500. for it and he would not take it. Dr. Bradshaw did. That was before he built that new house up there though.

Q. What would you say it was worth through taking the whole farm per acre?

A. I reckon it was worth about \$25.00 per acre. He sold me the worse part of it.

Q. What is the land of R. J. Cox worth per acre, you think?

A. I reckon it ~~is~~ worth about as much as Tom Carr's. It is adjoining land. The railroad cut each in two.

Q. You think it would sell for that now?

A. ~~Yes sixx~~ Now?

Q. Yes sir.

A. I don't know about that. I think it is damaged now to what it was.

in any shape and form. I bought that for myself.

Q. Would you have bought it had you not believed that the station would be put there?

A. I would not have paid that price for it not by a long jump. I would have been ^a fool. Could have bought it for \$10.00 or \$15.

Q. You feel very much disappointed then that the station was not pu there?

A. Yes sir I was disappointed. But I am a man who feels that if I make a bargain and it is a bad one I don't cry about it.

Q. You feel then that you yourself have lost sometying by reason of there not being a station at this point named?

A. Yes sir I have but I don't blame any body for it but myself. Because I bought the land. To show that I was favorable to the ~~rail~~road company they had a washout there and I stopped there that night, stopped the train and give them timber to repair it.

Q. How far do you live from J. E. T. Joyner's house?

A. A mile from here to my house right down that road.

Q. When you say to my house do you mean this new house you built on this one acre of land?

A. Yes sir. I bought more to it but did not buy more than an acre at that time.

Q. You say you bought more since then?

A. Yes sir.

Q. How much more?

A. I don't know. I bought a piece from Tom Carr, two acres. It is all woodland.

Q. What did you give him for that?

A. About 20 dollars an acre. You cannot cultivate it at all. It is right on a hill that was washed right out down side a hill.

Q. You think that Tom Car's land is worth 20 dollars per acre through take it as it comes?

extent of \$3000. did you take into consideration the damage to the fishpond?

A. Yes sir. I took into consideration all.

Q. Did you notice any water standing in Mr. Joyner's yard just now when you went out to the track?

A. Yes sir.

Q. Tell us about this water?

A. Well that was caused by cutting that railroad there.

Q. Is there a trench on either side of the railroad?

A. Yes sir.

Q. How deep is this trench in the yard?

A. Well I reckon it will measure about two feet. I have not measured it.

Q. Then from the bottom of the trench to the railroad ties is about how much?

A. About four feet or more.

Q. Mr. Fraiser, how does the fact that this railroad runs ^{through} the yard effect the use of the yard ~~for~~ keeping horses, cattle, etc., in there?

A. I suppose if you have stock turned out there and the train came through it is liable to be killed.

Q. As the road is constructed would it be safe to turn horses or stock in Mr. Joyner's yard?

A. I would not think so.

Q. CROSS-EXAMINATION
by Mr. Corbitt.

Q. You still own that acre of land do you that you bought from Mr. English?

A. Yes sir. I have built a house there and all out houses.

Q. A dwelling house?

A. Yes sir. I reckon it cost me a \$1000. or \$1200 for what I done therea.

Q. You don't feel very kindly towards the railroad company?

A. I have not a particle of animosity against the railroad

and I think he was damaged that much.

Q. About how near is the railroad to the front door of his house?

A. I never stepped ~~at~~ off. I don't know how far it is.

Q. You are now sitting in the yard of Mr. Joyner, between his house and the railroad. Will you please go to the door and estimate as nearly as you can the distance from the railroad to the house. (Witness walks from porch to railroad.)

A. Instead of estimating I have stepped it. I have stepped from the porch to the center of the railroad track and make it 107 steps.

Q. How far is it from the porch to the right-of-way?

A. It is 50 feet less.

Q. How does the railroad run through Mr. Joyner's yard?

A. It ~~splits~~ splits it in two.

Q. Does it run through on the level of the yard or set on an embankment?

A. It is on an embankment I reckon. I reckon it is 2-1/2 ft. high.

Q. Through how much of the open land does the railroad run?

A. The length of it?

~~xxxThe length of xxx~~

A. Yes.

A. Really I don't know I have not measured it or stepped it.

Q. I want an estimate?

A. I don't know the distance I would not like to say. ~~that xxxxxxx~~
Half a mile or more.

Q. Have you ever noticed the fishpond through which the railroad is constructed?

A. Yes sir.

Q. What effect has the construction of this embankment had on the fishpond?

A. Ruined it so far as I can see.

Q. When you had estimated the road had damaged the farm to the

\$5.00 and I give it to him. I said get your deed ready and I will pay you cash. He got his deed ready and I paid him.

Q. Then if I understand you you are ^{very} sure from what you had heard that the depot would be built at the point named? That you paid \$50.00 for an acre of land there?

A. Yes sir that is right.

Q. Mr. Frasier are you familiar with the value of farm land in this vicinity?

A. I think I ought to know a little something about it, been tax collector three years and been deputy sheriff. I ought to know something, not much though.

Q. What would you estimate to be the value of Mr. Joyner's farm on which he lives before the Tidewater Railway was constructed through it?

A. Well sir I suppose I reckon this farm probably was, there were three hundred and some acres of land there, I suppose this was worth \$6000.

Q. Do you mean now or before the railroad was constructed before it.

A. I don't mean now I mean before the railroad was constructed?

Q. What do you think it is worth now?

A. You mean what I think it is damaged?

Q. Yes.

A. About half now.

Q. Why do you think it is worth only one half as much as it was before the railroad was constructed through it?

A. Well sir they went right through about the middle of the field here and cut his field all to pieces and cut canals or ditches on each side of the bank

this station. That was about all that was said at that time until we went into the house. When we went in the house Mr. English sorter hesitated about signing the option. And finally he did it by Mr. What is his name telling him that it would enhance the value of his farm three or four times its value, present value.

Q. What was said about the depot?

A. He told Mr. English there would be a station there.

Q. What would you say was their contract from your recollection of what you heard them say?

A. He was to give English nothing, the dollar I suppose to seal the bargain. Mr. English give it to me and I cashed the 1 dollar check.

Q. You do not understand me. Why did English give him the right-of-way across his land?

A. Because simply he give him the right-of-way with the understanding he was to have a station there.

Q. Do I understand that that was all? with the exception of the one dollar that Mr. Finley was to pay him for the right-of-way?

A. That is all I suppose. From what I understand it was?

Q. Give me as nearly as you can the language Mr. Finley used when he promised to erect the station on the road you mentioned?

A. He said that there would be a station there and it satisfied me that there would be one and a few days afterwards I saw Tom Carr, of course, that had nothing to do with it, but I will say it, I says Tom says I what will you take for an acre of land right there? He says \$100 for it. I says I will give you \$50.00. So I waited on and a couple of days after that and he come to me and says he needed some money and would take \$50.00. So he said he would take it and I had

The depositions of R. T. Frasier, Laura V. Joyner and others taken before F. W. Lloyd, a Notary Public of Hansemond County, Virginia, by consent of all parties, to be read as evidence in behalf of the defendant in the chancery cause of Virginian Railway Company vs. J. E. T. Joyner, at the residence of J. E. T. Joyner, in Isle of Wight County, Virginia, pursuant to adjournment.

PRESENT: James U. Burges, Counsel for defendants.
James H. Corbitt, " " plaintiff.

R. T. Frasier, being duly sworn, deposes and says as follows:

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

A. R. T. Frasier, 68, Isle of Wight County, Tax Collector, I know Mr. and Mrs. J. E. T. Joyner.

Q. Did you hear any negotiations between Mr. Finley, representing the Tidewater Ry. Company, and Mr. Joe. English in regard to the purchase of a strip of land for a right-of-way for said railroad and if so state what you heard said by Mr. Finley in regard to the location of a depot in this vicinity, if anything?

(Counsel for plaintiff objects to any evidence of this or any other witness in reference to any contract for the purchase of a right-of-way from other parties not parties to this suit, and Counsel for defendant ~~agrees~~ that this objection may be read as taken to all similar questions for this and all other witnesses.)

A. Well Mr. Finley come up there, Mr. English with Mr. Joyner, they come together.

Q. Came up where and when?

A. I think it was the 16th day of May they came up there, Mr. Joe English. And Mr. Finley says to me what road is that out there. I said the Smithfield and Franklin road, the only name I have ever heard for it. He says I told Mr. Carr that I would have a station at this road here and Mr. Carr agreed to give me a piece of land for

(3)

Virginia By Col.
St. J. depositions
J. C. J. J. J.

JAMES U. BURGESS
ATTORNEY AT LAW
SUFFOLK, VA.

STATE OF VIRGINIA,
To-wit:
County of Hansemond.

I, F. W. Lloyd, a Notary Public for the County of Hansemond, in the State of Virginia, do certify that the foregoing depositions were duly taken before me at the place and time therein mentioned in accordance with agreement of Counsel, and that the signatures of witnesses were waived by consent of Counsel.

IN WITNESS WHEREOF I have hereto set my hand at Suffolk, in Hansemond County, Virginia, this 21st day of February, 1908.



Notary Public:

It is agreed that Counsel for Defendant may make such exceptions to any questions herein contained at the hearing as if the same were made at the taking of this testimony.

think it will be up in eighteen ~~rx~~ or twenty months.

Q. It is not as high now as it was then?

A. No.

Q. ~~XXXXXXXXXX~~ Were you going to get the farm for farming purposes?

A. I just thought that land was going higher and it would be a good investment for the money?

Q. You were speculating?

A. Yes sir. I had bought land before and made a profit out of it and I thought it was as good an opening here ^{at} and there was there.

Q. You got tired of keeping that \$7000. at home?

A. No sir I aint got a dollar home.

Q. What was your plan with reference to this farm?

A. I know I was going to sell it to some body else?

Q. Did you have a man already to buy it?

A. Yes I had two or three men I thought would buy it. They wanted a little time on it.

Q. You were going to sell it right away?

A. Of course, I would not sell it if they would not give me my price for it. I calculated I could get say \$10,000. on it. I had bought land and sold it before that day.

Q. How much were you going to get out of the timber?

A. But I just told you I thought I would get \$10,000. out of it land and timber. Don't you remember how land was going along every day. There was land sold around me there for \$40.00 or \$50.00 per acre that I could have bought for \$3.00 or \$4.00.

Q. Land was higher then and it had been for a good long time?

A. Yes I think it will go back within eighteen months.

And further this deponent saith not.

has changed the looks and condition of the farm so that you would not care to buy it now?

A. No I would not care to but it now. I would not live here if I could get any where else to live. It use to be a very nice place here.

Q. At the time you offered to buy it did you know anything about the Tidewater Railway coming through here?

A. No if I had I would not have been wanting to buy it.

Cross-examination

by Mr. Corbitt.

Q. How far do you live from the railroad Mr. Duck?

A. About mile and a half straight road.

Q. You would not like to live any nearer than that?

A. It is nearer than I want to be. I wish I lived two miles and a half.

Q. So Mr. Joyner's house is a little too near the railroad for you now?

A. I could not love there now I don't want to live near a railroad. I don't live very near the railroad now but I have some trouble with the stock though.

Q. You don't like railroads?

A. I like railroads but I don't like to ~~be~~ be too near them. If I was another mile from them I would like it that much better. You can't keep stock near a railroad if you let them go in the woods.

Q. You said there was some timber on the farm the reason you wanted to buy it?

A. Well that was the reason and it was a good farm too. I could see very plain then that the land and timber was going up every day. I thought there would be a profit.

Q. Land is pretty low now is it not?

A. No sir not so low. Of course land is going down but I

Examined by Mr. Burges/

J. H. Duck, being duly sworn, deposes and says as follows:

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

A. J. H. Duck, 85, Isle of Wight, farmer and I know Mr. and Mrs. Joyner.

Q. Mr. Duck did you ever offer to buy Mt. Joyner's farm on which he now lives?

A. Yes sir.

Q. When was it that you offered to buy this farm?

A. (Addressing Mr. Joyner) Jim was it in 1903 or 1904.
(Mr. Joyner replied 1904).

Q. Do you mean 1903 and 1904?

A? I mean 1904.

Q. What did you offer him for the farm Mr. Duck?

A. I offered him ~~4400000~~ \$7,000.00

Q. For what purpose did you wish to buy it?

A. I thought I could get a good farm. It was said to be as good a farm as around the country. There was some timber on it too and I thought I could make a little profit on my money. I did not want to live here. I wanted to buy it on speculation. Land was good and high.

Q. Did Mr. Joyner decline or accept your offer?

A. Mr. Joyner said he could not take less than \$8000. I says Jim I can't give \$8000. but I will give \$7000. and pay you the money anytime next week. You can have the deed fixed up.

Q. What would you give him for the farm now Mr. Duck?

A. I don't know. I am not seeking the place since the railroad come through it. If I had not ~~known~~ known the place so well I would not know where I was. I would not want to buy it.

Q. I understand you to say that the construction of the road

Q. Can you give an estimate of how much?

A. I would not like to say because I did not notice that much.
As I did the land he was cultivating.
And further this deponent saith not.

Q. He pulled the fodder in August?

A. He pulled it because he thought he had to get it off?

Q. ~~Was~~ ^{Is} not ^{all} ~~the~~ fodder pulled in August?

A. Sometimes it is and sometimes later.

Q. When do you pull fodder in September?

A. Well it depends on your crop. If your corn is late you pull it late if it is ~~early~~ you pull it early.

Q. Was this early corn?

A. Well he had to get his fodder off a little earlier than he would because he thought the railroad was coming, but did not cut his corn away until they got right on him.

Q. What time in August did he pull the fodder.

A. I don't remember the day.

Q. You have no idea then what time in August he pulled the fodder?

A. Sometime about the middle or latter part of August.

Q. He cut the corn then and took it off?

A. Yes sir he took it off the place and chopped it up in piles .

Q. You think there were between three and four acres in all?

A. Yes sir. I did not calculate it at all but I think there was between three and four acres, about four I should judge.

Q. Is that four acres all the cultivated land that the railroad took in its roadway?

A. Well the corn and peanuts is all he had in cultivation then. He had lands further on in cultivation then.

Q. How much of the other land did the railroad take that was not in cultivation?

A. Well I don't know that exactly sir.

Q. I mean the open land?

A. I understand what you mean. I say I don't know exactly how much as I said about the other.

Examined by Mr. Burges.

C. D. Harrell, being duly sworn deposes, answers and says as follows:

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

A. C. D. Harrell, 44, Isle of Wight, farmer and I know Mr. and Mrs. Joyner.

Q. Were you at work on the farm of Mr. Joyner in 1905 when the crops were removed to build the Tidewater Ry.

A. I was not at work on the farm I was at work on the railroad with Mr. J. R. Cox.

Q. What were the value of the crops destroyed in order to build the railroad?

A. Well sir I was raised on a farm and I believe I have some idea of what a crop is. Mr. Joyner had a fine crop. I would have been willing to have paid \$75.00 for it and would not have thought I was stuck.

Cross-examination

by Mr. Corbitt.

Q. How do you figure it out?

A. I would judge there was ~~xxxxxx~~ ^{between} three and four acres of land in all. I hope to fill the bed and fishpond. I did not measure it at all except I could see a little and have some idea. He had a fine crop. I figured it at \$75.00 that he had two acres in corn. I would judge him to have about 8 barrels to the acre. You could not buy corn at that time for less than 80 cents ~~xxxxxx~~ a bushel. Well the fodder is worth something/ He had to get his fodder away soon. I don't know when he pulled it but he had to get it away and cut his corn down and drag it out in piles.

Q. He pulled his fodder and got it off?

A. Yes sir.

Q. How many in peanuts?

A. Two.

Q. How much do you allow an acre for the corn?

A. I suppose the corn where they went through would make about 8 barrels to an acre. It was fine corn.

Q. How about peanuts?

A. I suppose they would have made 60 bushels to an acre.

Q. Did he save any at all.

A. No sir none at all. Not matured. Nothing but the vines.

Q. He dug them in September?

A. Yes sir about the 1st day of September.

Q. So your estimate of the acreage is purely a guess?

A. No sir.

And further this deponent saith not.

Examined by Mr. Burges.

J. R. Cox, being duly sworn, deposes and says as follows:

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

A. J. R. Cox, 24, Isle of Wight County, sawmill man and farmer, and I know Mr. and Mrs. Joyner.

Q. Mr. Cox were you employed by the contractors in 1905, when the road-way was opened through Mr. J. E. T. Joyner's farm?

A. Yes sir.

Q. Were you there when crops were removed?

A. Yes sir.

Q. What was the value?

A. The value through here was \$75.00 for the crop.

Q. How do you get at that value?

A. Well when we started to grading we started in the pea-patch in the first of September 1905, and he had to dig them. They were useless. When they got in his corn they had pulled his fodder and they destroyed his corn.

Q. About how many ^{/acres} in all of corn and peanuts were there taken?

A. I think about four.

Q. Were the crops in good condition when they were destroyed?

A. Yes sir.

Q. Would you have given \$75.00 for the crops as they stood?

A. Yes sir.

Cross-examination

By Mr. Corbitt.

Q. How do you know there were four acres?

A. I just judged there were four acres from the size of the piece of the ground where the railroad went through his crop.

Q. How many acres of corn?

A. I suppose two.

land?

A. Yes sir.

Q. I understand you say that Mr. Finley stated that there would be a depot but it was not put in the paper?

A. No sir.

Q. She simply relied upon what he said about the depot.

A. Yes sir.

Q: Where do you live now Mr. Pierce?

A. I live in this County about three or four miles away from this farm.

Q. Does the railroad go through your property?

A. No sir.

Q. You are a farmer are you?

A. Yes sir.

And further this deponent saith not.

Examined by Mr. Burges.

S. J. Pierce, being duly sworn, deposes and says as follows:

Q. Please state your name, age, residence and occupation and do you know Mr. and Mrs. Joyner?

A. S. J. Pierce, 35, Isle of Wight, farmer and I know Mr. and Mrs. Joyner.

Q. Mr. Pierce did you ever hear Mr. A. J. Finley agent for Tidewater Ry. Co. say anything to the effect that he had acquired rights-of-way in this vicinity in consideration of placing a depot on Mr. Tom Carr's land?

A. Yes sir. On May 17th, 1905. Mr. Finley came to my house to see my wife's mother in regard to a right-of-way across a little farm down the road here just a little bit and in talking with her he asked her for the privilege of a right-of-way, not as to her giving it, she being a widow woman he was disposed to give her something, and said he was going through and others out there had given him the right-of-way with the understanding that he was to give a depot out here on Mr. Tom Carr's farm and she told him she could not exactly give him the right-of-way but that she would be favorable to the neighborhood and neighbors as to a depot and she would not charge an unreasonable sum. She gave him the privilege of a right-of-way for \$25.00 for crossing her place with the understanding that he would place the depot of the company near Mr. Tom Carr's place or on Mr. Tom Carr's place. I think that might be something of the substance I heard him say.

Q. Did he give the names of the parties who had given rights-of-way for the depot?

A. Yes sir. J. H. English, L. H. Carr, Tom Carr and others. I think he mentioned these three names and others.

Q. Were you there at the house when the papers were signed with reference to the right-of-way through your mother in law

was there not Mr. Turner?

A. No sir I had not heard any talk of it. It was supposed to come in Isle of Wight but I did not know where.

Q. Did they know at that time that that railroad was going down by Blackwater Church?

A. They could go by Blackwater Church without striking this farm.

Q. Would it not be natural to strike this farm if it come down by Blackwater Church.

A. The surveyors came from this way. (Indicating East).

Q. You knew that they were coming out from Kilby did you not?

A. No sir.

Q. You knew they were coming out from Suffolk.

A. Yes sir they were supposed to strike Suffolk but did not know.

Q. Was there not talk at that time of the probability of this railroad coming through this neighborhood?

A. There was some talk of it but they were not certain of it.

Q. How many farms have you known Mr. Duck to buy recently?

A. I don't know how many he has bought. I don't know whether he has bought any or not.

Q. How old a man is Mr. Duck?

A. I think about 82, or 83 years, probably 84.

Q. How has his mind been for the last two or three years very clear?

A. Yes sir for a man of his age.

Q. Clear enough to know when he was making a good contract?

A. Yes sir.

And further this deponent saith not.

Examined by Mr. Burges.

R. E. Turner, being duly sworn, deposes and says as follows:

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

A. R. E. Turner, 59, Isle of Wight County, sawmill and I know Mr. and Mrs. Joyner.

Q. Mr. Turner did you ever hear any one offer to purchase Mr. Joyner's farm?

A. Yes sir I can recall the time. It was about three years just the year the Tidewater railway was surveyed through here.

Q. What did you hear?

A. I heard Mr. Joe Duck offer Mr. Joyner \$7000.00 for his farm. Took a \$20.00 in his fingers offered it to him and told him to give a receipt to bind the bargain and he would pay him the remainder the next week. I told Mr. Joyner at the time he would have to crawl-fish out or you are out of a home. That was all that was said. What was passed afterwards I never heard.

Q. You did not hear Mr. Joyner say whether or not he would accept the offer?

A. He said that if he would give one more thousand it would bind the bargain. Mr. Duck refused to do that.

Cross-examination

By Mr. Corbitt.

Q. You say that was sometime before the Tidewater Railway was built?

A. Just before it was surveyed.

Q. You knew that there was a railroad coming through.

A. Some talk of it but it was not even surveyed then.

Q. There was some idea about where the railroad was coming

Q. That is from the location of this land and the way the railroad runs you think it materially damages the farm?

A. Yes sir. I should think that if it was mine.

And further this deponent saith not.

Examined by Mr. Burges.

J. W. Babb, being duly sworn deposes and says as follows:

Q. Please state your name, age, residence and occupation and do you know the parties to this suit.

A. J. W. Babb, 51, Isle of Wight, farmer and I know ~~Mr~~ and Mrs. Joyner.

Q. Mr. Babb are you familiar with Mr. Joyner's farm?

A. No sir just in passing through. I am not familiar with the farm. I have had occasion to go through the farm in the last four or five years being overseer of the poor but have seen it occasionally but have never been through it. I have seen mighty good crops on here. I have looked upon it as being a mighty good farm but I do not know much about it.

Q. What effect to your mind has the ~~location~~ location of the railroad within 107 steps of his door have upon the property as a residence or home for Mr. Joyner and his ~~family~~ family,

A. I take it just as I take it to myself as the railroad crosses my field. When they surveyed it I went to the house and told my wife this place ^{was} for sale if the road comes through. I went live as near the railroad as that. They went back and viewed a route before the mill, which the road is now on.

My objection would be that the farm in the condition it runs through its farm and the distance it runs from his house if I was living there like Mr. Joyner it would be for sale if it was my farm. I look at it this way. That railroad is fenced and all farmers know that you have to row your land off so that you can tend it. If you go out there and view this piece of land you will find that the railroad runs bias through that cut of corn. It looks to me like it does make a difference a big difference.

Q. That I understand is your judgment as a practical farmer.

A. Yes sir.

A. No sir not all of it.

Q. Can you guess the number of acres of open land taken.

A. No sir I don't know never heard anybody say.

Q. You are not willing then to make an estimate of the damages?

A. No sir I don't know.

Q. But you are willing to make an estimate as to the damage?

A. Well I can see the damage better than I can see the number or acres.

Q. Does not the Tidewater Railway go through your property?

A. No sir.

Q. Does it not go through the property that is known as the Rhodes' heirs?

A. Yes sir. John Rhodes' farm his heirs.

Q. Do you think Mr. Joyner's farm is damaged more than ^{that} farm?

A. I think it was to some extent. Yes right much more.

Q. Is more open land taken on Mr. Joyner's farm than on that farm.

A. I don't know about the open land taken but it don't go through in the same direction on that farm as this and is not so near the house.

Q. On which farm is more open land taken.

A. I don't know that sir.

Re-direct examination
by Mr. Burges.

Q. Mr. Rhodes you are now on Mr. Joyner's farm are you not and can see the railroad?

A. Yes sir.

And further this deponent saith not.

Re-direct examination
By Mr. Burges.

Q. As I understand you Mr. Rhodes there are other matters that you would have to take into consideration, such as the securing of another home before you would be in a position to name a price for your farm?

A. Yes sir.

Q. Is it not a fact that the valuation which you would place on your farm would be based to a great extent upon the fact that this has been your home and the possibility of your getting another home that would suit you as well.

A. Yes sir it is not for sale any how.

Q. I don't know whether I understand you correctly or not but I think I heard you say in answer to a question by Mr.

Corbitt that it was general talk around the neighborhood as to ~~zzzzz~~ the damage ^{that} had been done to Mr. Joyner's farm by the Tide-water Railway?

A. Yes sir it was spoken of several times about the damage?

Q. Do you mean by that that this is looked upon as one of the worse cases.

A. I think so.

Re-cross examination
by Mr. Corbitt.

Q. How many acres of land were taken from Mr. Joyner Mr. Rhodes?

A. I don't know sir.

Q. How many would you say?

A. I could not say I don't know. I have never been clean through his whole farm. I have never heard anybody say how many acres there were.

Q. Have you been along the railroad through all his open land?

PER ACRES

Q. What do you consider your land worth now per acre?

A. I don't know sir. I have some worth right smart and some not worth anything.

Q. What would it average per acre you think?

A. I could not tell you that.

Q. How many acres on your farm woodland and all?

A. I think I have got a rise of about 400 acres.

Q. What would you take for that farm?

A. I don't know sir. I have never thought anything about selling it and don't know what I would take.

Q. What do you think would be a fair price for it?

A. I could not tell you really. I would consider a little before I would price it.

Q. Did you consider Mr. Joyner's land very much before you priced his?

A. Yes sir. I had given it some little consideration.

Q. How long did it take you to reach a conclusion?

A. Not very long.

Q. How long would you say?

A. Well I have been talking about it ever since the railroad pass^{ed} through here how much the farm was worth and how much the railroad had damaged it. He was considered to have a very nice farm before the railroad come through here.

Q. Do you think it would take you very long right now to consider how much your farm would be worth and state it.

A. No sir not a great while if I was in the notion of selling it.

Q. You are willing then to put a ~~xxxxxx~~ price on some one else land but not on your own?

A. Well sir I could if some one wanted to buy it. I really could not put a price on it now.

is located as it is with reference to the land and the house that you would ^{not} give ~~over~~ half as much for it as you would before the road was constructed.

A. No sir I don't think I would.

Cross-examination

by Mr. Corbitt.

Q. I understand you to say that you are not so very familiar with the farm?

A. No sir I have seen it occasionally for the last 25 years. Not so very familiar after all.

Q. You have not been over it lately?

A. Well sir I was here sometime last year and we did walk up the railroad and look around some but not very much.

Q. Your estimate then that you value the farm is just a guess as to what you think it would be worth to you?

A. Well I took it from a general view. It would be to me if I wanted to buy it, knowing it as it was before the railroad went through and as I do now. I don't think I would pay more than half what I would then.

Q. How far is your farm from here Mr. Rhodes?

A. About four miles I reckon.

Q. What do you consider land in this vicinity just off from the railroad worth per acre on an average?

A. Well sir it varies in price. Been selling all the way from \$15.00 to \$100.00 per acre.

Q. What land was it sold for \$100.00 per acre?

A. I don't know of any. Some little farm here sold for mighty near \$100.00. That is not the regular price. I mean some certain acres.

Q. What would you say the farming land is worth in this section of the country taking it through and through the regular price on an average?

A. I should think it was worth any where from \$15.00 to \$25.00

Examined by Mr. Burges.

Jethro P. Rhodes, being duly sworn, deposes and says as follows:

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

A. Jethro P. Rhodes, about 68, Isle of Wight, farmer, and I know Mr. and Mrs. Joyner.

Q. Mr. Rhodes you are a farmer in this vicinity and familiar with farm lands are you not?

A. Yes sir some what.

Q. Were you familiar with Mr. Joyner's farm, the one we are now on, before the railroad was built through it?

A. I have seen it occasionally but not very familiar with it.

Q. What do you think is the difference in the value of the farm before the railroad was constructed and now? I mean by that how much has the railroad damaged it?

A. It was damaged fully half from my knowledge of it.

Q. How much would you say it was worth before the railroad was built?

A. I think it was worth about \$6000. or \$7000.

Q. And you think it is now worth a little over \$3000.

A. I think was damaged fully half.

Q. Tell us why you think the railway has damaged the farm so much.

A. Ruining the field and cutting his field up and then going so near the house here is it dangerous, turning stock out, dangerous to children. They would be the biggest and cultivating it would be a big disadvantage. The railroad would be here all the time. And it will be dangerous to them. And I would consider that a big objection and big damage.

Q. Would you care to live in a house with the railroad so near the door?

A. No sir I would not.

Q. As I understand you by reason of the fact that this railroad

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POST OFFICE BUILDING,
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of the Deepwater Ry. Co. and of the Tidewater Ry. Co., both of which companies were afterwards merged in the Virginian Ry. Co. My connection with the several companies extends since 1903.

Q. I believe you stated that the Tidewater Ry. Co. and the Virginian Ry. Co. are one and the same.

A. The two companies are one and the same, the name of the Tidewater Rt. Co. was changed to that of the Virginian Ry. Co.

Q. Were you with this company then known as the Tidewater Ry. Co. when it was securing rights of way for its line of railroad, and if so what did you have to do with the securing of the rights of way?

A. I was with the company, and had charge of the right of way department.

Q. It was your duty, as I understand it, to have contracts made for rights of way, and to take up deeds, in other words to do everything necessary to secure the company good title to the right of way.

A. It was, while all of the work was not done by me personally, I directed the men who performed the work.

Q. I now show you the contract known as Plaintiff's exhibit No. 2, signed by J. E. T. Joyner, covering right of way through the property herein described. Please state whether or not the . Please state whether or not the company's tracks have been constructed over this property?

A. Yes, sir. The tracks have been constructed over this property.

AQ. It is a fact then that the defendant, J. E. T. Joyner, allowed the company to take possession of the right of way and to construct ^{its} ~~this~~ railroad tracks, and other improvements thereon?

A. Yes sir. I advised the engineering department, as I did in other cases of like kind to take possession, and so

A. No, sir. He said he did not think that it would damage the case, that if they were railroad men they would come back and that it would give him a little more work, but what I had done was not sufficient. Sure enough the next morning there they were, the same two men come and hollered to me like they was the two nicest men that ever lived, and they were the two infernalesst rascels as ever lived. I told them there had been so mony rascals at my house trying to catch me up that I was afraid of them.

By Mr. Burges.

Mr. Corbitt, at your request I had Mr. Cocke brought here, he is now ready to be cross examined upon any matter, and I also wish to inform you that he has been a victim to the railroad company in securing option, and will be pleased to tell you his experience with them.

Counsel for complainant replies that this witness, R. J. Cocke was brought here to-day in order to give the complainant an opporunity to further cross-examine in accordance with agreement heretofore made between counsel ~~for~~ ~~complainant~~ in this, and counsel for complainant does not wish to examine this witness further, and that the statement of Counsel for defendant about the enmity of the railroad is not supported by any evidence in this case as to this witness.

Mr. John Kee, being first duly sworn, deposes and says as follows:

Q. States your name, age, residence, and present occupation.

A. John Kee, age 34, residence Norfolk, Va., occupation Assistant Attorney of the Virginian Ry.

Q. How long have you been Assistant Attorney of the Virginian Ry.

A. I have been assistant Attorney for the Railway Company since its organization. I was first Assistant Attorney

Q. Does he hold any official position?

A. He is Constable up there.

Q. And you say then that you did not tell Mr. Demas Butler Monday morning before you saw Mr. Burges that you did not know whether you had done right or not, as you did not know whether Mr. Jones represented the railroad people or not.

A. No, sir, I did not tell him so. I had Mr. L. H. Carr in the buggy with me, and I can prove by Mr. Carr that I did not.

Q. Do you remember seeing Mr. Demas Butler that morning at all?

A. No sir. I saw him that evening at the Court House.

Q. Do you remember seeing him before that evening at the Court House?

A. No, sir. I do not think he passed me on the road on the way to the Court House. I do not remember anything about it.

Re-examination by Mr. Burges.

Q. When you came to me and told me about this man who wanted to buy your farm, did you not tell me that he lived in Newport News?

A. He said he lived in Hampton.

Q. Did not he have a man by the name of Pinner with him?

A. Yes, sir.

Q. Did I, or did I not say I saw him in Mr. Corbitt's office some days before, and felt sure you were dealing with Railroad people?

A. Yes, sir.

Q. Do you remember what I told you to do if you found they were railroad people.

A. You told me to take a shot gun and shoot them down.

B^y Mr. Corbitt.

Q. Did not Mr. Burgess tell you that day at Isle of Wight Court words to the effect that you had probably made a great mistake, and that you had probably ruined your case?

be the railroad company. He says that if they was railroad man they would be back there and see me again in a few days.

Q. Did he approve of your having signed that paper?

A. He said he did not think I had done myself any injury.

Q. Is it not a fact that your suspicions were aroused before Mr. Jones come to your house the second time?

A. Mr. Burges told me that if they was railroad men they would be back, of course, I went home satisfied. The next morning they drove up, the same two men, I knew them ~~km~~ as soon as I laid my eyes on them.

Q. Was not your suspicions aroused before you went to Isle of Wight Court?

A. No sir, it was not/ Mr. Burges told me that if they were railroad men they would be back, and the moment they come then my suspicions were aroused.

Q. Was not the ~~fact~~ fact that you suspicioned that they were railroad men the cause of your telling Mr. Burges at Isle of Wight County Court what you had done?

A. No, sir. I thought that they were men who would help me to get rid of my farm. I had no idea of their being railroad men. I told them all about it, and they said they didn't reckon the man in Michigan would care anything about it.

Q. Did not you suspect that they were Railroad men when you were at Isle of Wight County Court and before you told Mr. Burges about your having given this option?

A. No, I did not. ~~fact~~ I did not suspect their being railroad men at all. If I had had any idea of their being railroad men I would not have had any contract with them at all I took them to be friends.

Q. I am not talking about what you thought the day you gave the option, I am talking about Isle of Wight County Circuit Court day. Was not the fact that you suspicioned that they

A. No, sir. I do not.

Q. Do you know any other business except farming?

A. No, sir. I have got no education, cannot do anything else.

Cross examination by Mr. Corbitt:

Q. Mr. Joyner, you stated that your suspicion as to Mr. Jones object, as you believed it to have been, was first aroused upon Mr. Jones second visit.

A. Yes, sir.

Q. It was when he came to your house the second time that you suspected that he represented the railroad company?

A. Yes, sir. By the way he wanted me to sign the papers and things, I thought he was a railroad man.

Q. His wanting you to sign the papers and things made you think he was a railroad man?

A. Yes, sir.

Q. And this was the first time that your suspicion was aroused.

A. Yes, sir.

Q. Is it not a fact that a day or two after Mr. Joyner took this option you went to Isle of Wight Circuit Court, on Monday?

A. Yes, sir. I was there on Monday.

Q. The first day of June, was it not, this year?

A. It was Court day in June, I reckon it was the first day of June.

Q. Is it not a fact that you saw Mr. Burges, your counsel, at Isle of Wight Court on that day, and told him of your suspicion of Mr. Jones.

A. I told Mr. Burges what I had done about selling my place, giving an option on there for \$8,000.00.

Q. Did Mr. Burges approve of your action?

A. He asked me what I had done, and I told him, and he said I had better be particular how I signed papers that it might

who would assist you in disposing of your farm?

A. No, sir. I did not.

Q. Were you not actuated by the desire to get as much as possible and thereby lessen your damage.

(Counsel for plaintiff excepts to question on account of its being leading.)

Question withdrawn notwithstanding the fact that counsel claims that he has the right to examine this witness upon entire testimony brought out by complainant.

Q. What was your purpose in signing this ~~papers~~?

A. My purpose was that I would get rid of the farm, and get rid of this suit and be done with it. I told the man that there was a suit, and if they would give me \$8,000 they could take it all.

Q. Who first suggested the hard times in this conversation?

A. Mr. Jones and Mr. Pincer.

Q. How long were these people in your vicinity - in your neighborhood?

A. They got to my house about five minutes before the bell ~~xx~~ rung for 12, said they had come from Mr. Cox, that they taken option on six farms in this neighborhood.

Q. What did they represent to you that they proposed to do with these farms?

A. Sell them to a man in Michigan.

Q. Mr. Joyner, if you had to dispose of your farm to-day, do you know where you could get another farm?

men, and when I stop work you stay near, and they done exactly like I told them. He offered to pay me to go with him to Mr. Holland's.

Q. Did I understand you to say that he denied that he had any connection with the Railroad?

A. He said so, and Mr. Pinner said so too. They said, "We don't care if you get \$10,000 out of the railroad company, all we want is the farm."

Q. Who was present when the first conversation took place?

A. About the option? Mr. Jones and Mr. Pinner drove up to my well, my wife was there at the piazza, it is about 10 feet from the piazza.

Q. I only want you to give names of those who heard the conversation.

A. Ernest Stephens and Otie Joyner, my son.

Q. Did they hear everything that took place between you and Mr. Jones and Mr. Pinner?

A. They heard everything.

Q. What sort of a written paper was this that they tried to get you to sign?

A. It was a letter to Mr. Jones as though I wrote to him to Michigan stating what my farm was, it was good to make brick on, it was good for trucking.

(Counsel for defendant here calls upon counsel for plaintiff, as well as the officers of the Virginian Railway Company to produce this paper.)

[Counsel for plaintiff replies that he has never seen any such paper.]

(Counsel for defendant would like to ask counsel for plaintiff how the option which he produced in evidence came in his ~~hand~~ possession, stating that he need not answer unless he so desires)

(Counsel for plaintiff makes no reply.)

Q. When you were first dealing with these gentlemen, did you have any idea that they were anything more than real-estate agents

Mr. Jones told me he had an office in Suffolk and one in Norfolk, and I believe I have a paper in my pocket where he gave me his address if I wanted to find out anything about him.

Q. Who was present the last time you talked with him?

A. It was my son, a young man that works for me, Ernest Stephens, three negroes, one name Jim Harris, one name David Harris, and one name Moody, Miss. Janie Williams a young lady about 15 or 16 years old and Bill Williams.

Q. How near were they to you when these people were there?

A. About three feet.

(Counsel for plaintiff enters objection to any testimony with reference to what was said on done between Mr. Jones referred to, and Mr. Joyner on the occasion of the second visit, the option given Mr. Jones by Mr. Joyner having been given on the first visit.)

(By Mr. Burges. Counsel for defendant replies that all of this testimony in regard to papers presented by representative of the Tidewater Railway Company is the testimony of complainants witness, as he must necessarily make the witness his own by reason of the fact that the transaction took place after counsel for defendant had taken his testimony and completed his leading examination, that therefore counsel for defendant has a right to cross-examine the witness and to ask any question bearing upon the transaction or any other transaction with representative of the Tidewater Railway Company.)

(Counsel for complainant wishes to object further on the ground that it has not been shown that this Mr. Jones was a representative of the Tidewater Railway Company.)

(Counsel for defendant here proposes to put the officers and attorneys of the Virginian Railway Company on the stand with the hope that they will disclaim having anything to do with this transaction.)

Q. Could they hear anything that took place between you and Mr. Jones?

A. They could.

Q. Were they, or were they not requested to pay close attention to any conversation that might take place?

A. I requested them to do it myself. He said that he was going down to get an option on Mr. Holland's farm. I said Hands when them men come back again, I think they are railroad

Q. You never at any time or at any place prior to the day that Mr. Hill came to your house told anybody that you were not going to sign that deed for the money that they had promised to give you?

A. No, sir. I did not.

(By Mr. Burges. Counsel for defendant here notifies counsel for plaintiff that if he knows of any person to whom Mr. Joyner made such statement, it is incumbent upon him to give name of person, when statement was made and under what circumstances before testimony will be admissible to contradict statement of this witness.)

Re-examination by Mr. Burges.

Q. Mr. Joyner when did you first learn that this Mr. Jones, or whoever he was, who was sent to your place was sent by the Virginian Railway Company?

A. Nobody hasn't told me that he was really the man sent by them, but I suspicioned when he come the second time. He said that he was a real-estate man and that he come there because he wanted to take options on property in that neighborhood.

Q. Is it not a fact that he tried to get you to sign other paper?

A. Yes/ sir. I did not trust them. The paper was about as long as my arm, I did not try to read it. My son was there and I told him that I was not going to sign any other paper, that I believed he was a man sent there as a spy for the railroad. He then tried to get me to go with him to Mr. Holland's a near neighbor of mine, he thought that I would have more influence over Mr. Holland than he would. said that he would pay me

Q. Who was with Mr. Jones?

A. A fellow by the name of Pinner, said that he bought peanuts for

Q. Did you say you had seen Mr. Jones around Suffolk?

A. Somebody told me

(By Mr. Carritt. Do not tell what someone told you tell what you know.)

Note pages missed

thought it was?

A. Mr. Hill come there for me to give him a deed for the property, and I went out in the porch and told Mr. Hill to read it to me before I signed it. Mr. Hill commenced to read and by and by he struck where it was nothing like what I had understood and I told him I would not sign that to save his life because it was not like the contract. He said he was going to prove it to me, and he got contract and read to me and it was different and I told him I just was not going to sign it. Mr. Hill went away, and I went to see Mr. W. S. Holland and asked his advice about it.

Q. And the deed that Mr. Hill had for you to sign was not like the contract you signed?

A. Was not like the contract that Mr. Findley read to me. It was not.

Q. Is a fact, Mr. Joyner, that prior to the time Mr. Hill came to your house and take this deed, that you had stated to ~~xxxx~~ other parties, or to one other party anyway, that you would not sign the deed for the money you had agreed to accept for the right of way through your property.

A. No, sir.

(Counsel for defendant here calls upon counsel for plaintiff to state when and to whom and under what circumstances this statement was made, if made at all)

Q. You never then stated to anybody that you would not sign that deed for the property?

A. I stated to Mr. Hill when he came and read the deed that he wanted me to sign.

Q. You never told anybody so before that day?

A. No, sir. I do not remember telling nobody so.

Q. You never told anybody so?

A. I do not remember telling anybody so. Who was the man I told so?

A. Mr. Windley told me so himself. There gets the man himself, he picked up the paper and showed me, as I told you before it reminded me of a long stem pipe.

Q. You expected a railroad then to go through your property like a county road?

A. He told me it would go level, and that there would not have to be a thing in my ~~xxxxx~~ yard except the ties and irons to lay flat on the ground.

Q. And it made no difference how uneven your farm was, whether in little hills or holes, it was your understanding that the railroad was to go through there so as to conform to the shape of your land?

A. It is the way he made me understand that the railroad would go through, on a level and that there would be no cuts or fills. That's just what he told me.

Q. When was it Mr. Joyner that you first learned about this paper ~~xxxxxx~~ signed by you not being as you thought it was?

A. It was some time in September, 1905, I don't remember exactly what day it was Mr. Corbitt.

Q. Is it not a fact that you became dissatisfied because you heard from somebody else that another party was damaged about as you were damaged and got more money?

A. No, sir. That did not have a thing in the world to do with it.

Q. Was this farm given to you?

A. No, sir. Not a dollar of it was ever given to me.

Q. You got this by your own work, and had nothing to start with?

A. Nothing in the world to start with. Grub and dug just as any other poor man did to get money to help me to pay.

Q. How was it you found ^{out} about this contract not being as you

around as my leg.

Q. And your farm then was located just on part of that roll?

A. Yes, sir. A part of that roll.

Q. If he wanted to get to the man's farm next to you he just unroaláda little further?

A. I don't know about that, he just showed me mine.

Q. You are sure that that paper showed on it your farm?

A. That is what he told me, I have to say what he said I do not know a thing ab out this surveying business, only what he told me.

Q. You saw the paper, did you not?

~~xxxxxxx~~

A. Yes, sir. I sawthe paper.

Q. It looked to you like that was the way it came?

A. Just on the level - just a little dip.

Q. What was that dip?

A. He said that was the fish pond.

Q. In other words he showed you paper representing rail-
road through your farm just as you could go down through
it, up and down, it that right?

A. He showed paper just as level as that table through
my farm, neither cut down or fill up, it was just a straight
mark , that is on the paper he showed me.

Q. How could there be a railroad built ^{through} ~~xxxxxxx~~ your pro-
perty, across your fish pond, and not have some fill at
some place, and cut at some other place?

Q. I do not know, but it is what the man was showing me
when he was trying to get my place.

Q. And you thought a railroad could be built through
your farm that would not have a cut anywhere, and would
not have a fill anywhere?

part of the evidence, marked plaintiff's exhibit No. 2.)

A. Yes, sir. That is the original agreement.

Q. You stated heretofore that Mr. Findley showed you something that looked like a long stem pipe. What was that?

A. He said that it was the grade that went through my farm - plat of where the land was surveyed through my farm.

As I said before, I told you the nearest thing I could compare it to, it looked like a long stem pipe. That little point he said was the fish pond. And where it com through my farm it look it was as level as that table, to my eye.

Q. You said Mr. Findley said this was a map showing how it would go through your land, whether on fill or on cut.

A. He was arguing and trying to bargain with me there would not be any of the land cut out. He took this paper out to try and prove, and he showed cut to prove to me by the paper that the land had been serveyed.

Q. In other words he showed you the paper showing how near the railroad was building through there, and where it would stand relative to your land.

A. There would no cuts or fills. There was a little mark, I don't know anything about this survey mark, but when it went along it looked that the mark was formed by a pipe.

Q. Do you recognize this as the plat to which you have reference.

(Paper is herewith shown witness filed, and marked plaintiff's exhibit No. 3)

A/ That was on a piece of what paper two yards long.

Q. It was not that?

A. No, sir. That was not the paper

Q. It was a larger paper?

A. It was a larger paper, and rolled up it was as large

for loading and unloading freight. I understood that.

Q. What were you to receive?

A. By putting that there, they were to give me \$475.00 with the understanding that these things were all to be there as I told you.

Q. Was anything said about damage to your crop?

A. Yes, sir. They should, if any damage was done to my crops they would pay me for it.

Q. Was the company to pay you for damage to the crops in addition to this payment of \$475.00?

A. Yes, sir. If they damaged any of my crops they were to pay for that extra.

Q. This payment of \$475.00 did not cover then the damage to crops?

A. If they damaged any of my crop on the land that they were to take they would pay me the damages.

Q. Have you stated everything in your agreement as you understood it?

A. They were ^{only} to have a strip of 100 feet wide, or 50 feet from the center, which was called the center line.

Q. Anything else in there?

A. If they were to decide to shift the track either way, or to change it 50 feet either way if they interfered with my buildings of any kind they were to pay that. They were to have a right to change the track so as it did not go over 50 feet either way from the center line.

Q. But if they damaged your building they had to pay for that.

A. Yes, sir.

Q. Was anything said about moving the buildings?

A. No, sir. Nothing was said about moving the buildings.

Q/ Is this the original agreement with the Tidewater Railway Co. signed by you.

Q. Mr. Joyner, how far did you say it is from your residence to the nearest Tidewater depot.

A. By public way to go there?

Q. By the way you do go there.

A. It is about a mile and a quarter coming down the railroad, there is a private path I can get there in about two miles, by private path opening and shutting 7 gates.

Q. Do you use this path?

A. Yes, sir / I do sometimes.

Q. Do you use that for driving purposes?

A. Sometimes I go over there.

Q. Now Mr. Joyner you have testified heretofore about the agreement between you and the Tidewater Railway Co., what was in your agreement?

A. What was in that agreement?

A. Yes, sir.

xx (By Mr. Burges. Counsel for defendant has no objection to the cross examination of this witness to show manifest efforts to contradict on the part of the Tidewater Railway Co., and he hopes that these efforts were made by the management and not by the counsel for the railway, but he does object to continued and repeated cross examination on the same subject.)

A. I thought I told you what was in there one time, Mr. Corbitt.

(By Mr. Burges. Go ahead and tell him again.)

I would like for him to read a part of it and tell me what you want to know.

Q. Tell me again what you understood the ~~xxxxxxx~~ agreement to be?

A. I understood the agreement to be that where the railroad crosses my property it crossed level with the land that was in the field, and where it crossed the fish pond that there would be a trestle or bridge, and said there would be no land taken away from me for cuts, fills, borrow pits, ,
-11- and in an other place I know I understood it that there was to be a depot by the Smithfield and Franklin County Roads

six more.

Q. What was in that option?

A. Well it was just in the option that he took an option for thirty days, and if he brought the money in thirty days I was to give him a deed for the farm.

Q. Was anything said about whether the farm was worth more than \$8000.00 or not?

A. No, sir. He told me just as soon as I said I would take \$8000.00 that he would take an option on it.

Q. And nothing was said in the option or otherwise about the farm really being worth more than that?

A. Mr. Jones said, if it were not for these hard times your farm would be worth more than it not? I said, yes, sir,, I reckon it would. I was talking just like you and I are sitting talking.

Q. Mr. Jones then said, that if was not for these hardtimes it would be worth more?

A. I told him probably it would.

Q. But you never said anything like that yourself?

A. No, sir.

Q. Never put anything like that into the option?

A. No, sir.

Q. Is that the option you signed? plaintiff's
(The defendant is herewith shown paper marked ~~25-~~
~~XXXXXX~~ exhibit No. 1)

A. Yes.

Q. That paper then is correct, is it?

A. Yes, sir:

Q. And you signed the paper in both those places where your name is shown thereon?

A. Yes, sir.

Counsel for defendant requests that the paper be filled, marked as plaintiff's exhibit No. 1, which is accordingly done.

A. Yes, sir. I wanted to sell it to get clear of the railroad.

Q. You never told them that hard times had anything to do with it?

A. No I did not tell them that. I wanted to get clear of the railroad, that is all I ~~wanted~~ wanted.

Q. Was the only reason that you gave for selling for \$8000.00 so that you could get away from the railroad?

A. Yes, sir.

Q. How many parties have wanted to buy this farm since the railroad has been there.

A. There was one - there was two come, but one wanted to take an option. I don't know but I suppose you sent him there, that is Mr. Jones, around here somewhere.

Q. Did you tell him what was the fair market value of the farm?

A. Yes, sir. He said he wanted to take an option on my farm. I asked him what he would give me and he said \$7500.00. I told him I would take \$8000.00, and he could take the railroad, afrm and all, so he took an option on for thirty days for \$8000.00.

Q. You signed an option then for thirty days. How long was it you signed this ago?

A. The 29th day of June - he came back and wanted me to lengthen the option thirty days. I told him I would not do it. I saw him here to-day and he was one of the sheepishest looking men I ever seen, he would not look at me in my face and hung his head like an owl. I have seen the man here three or four times. He swore that day that he knew nothing about the railroad, had nothing in the world to do with it, and was sent there by a man in Michigan, said he had taken option on six farms around the neighborhood, and that he wanted

value of this farm was not more than \$4000.00 ?

A. Have I always said that that it was not worth more than \$4000.00? I don't know as I have ever said before to-day nothing about what it was worth. I have been asked several times by several men, and I told them before any railroad was there what I would take for it. Since the railroad has been there they do not seem to want it.

Q. Since the railroad has been there ~~they do not seem to want it~~ you have not been asked by anybody what you would take for it?

A. Yes, I have been asked by some peopple what I would take for it.

Q. What did you t ell them?

A. I told them I would take \$8000.00, and they could take the railroad and all. If they got \$10000.00 out of the suit they are welcome to it.

Q. In other words you/would sell the railroad along in the bargain?

A. Yes, sir. All the right Inhave to it, there is 332 acres more or less on the farm and they c an take the whole business.

Q. Why were you willing to s eell it for that?

A. Because I wanted to get clear of it.

Q. You wanted to selleit because you wanted to get away from the railroad?

A. Yes, sir.

Q. Hard times had nothing to do with it.

A. No, sit. Just because I wanted to get away/ffrom that railroad. I would not take a cent less for my farm than I would before the hard times come if it was not for the railroad there.

Q. So you told the party that the only reason you were

-8- selling was because the railroad was there?

a cent or not.

Q. That was not my question. My question was what would you take for the balance of the farm outside of that taken by the railroad company?

(By Mr. Burges. Mr. Corbitt I think the witness would understand you better if you would incorporate in your question the fact that he could get another home which would be suited to his likes, and that he would be able to buy this home and pay for it so that he would not be left without a home if he made a sale.)

A. If I had a home that was satisfactory, one that I could go to I would take \$5000.00 for it.

Q. Without regard to what you would take, what do you think the balance of your farm, exclusive of that occupied by the railroad company, is worth at a fair market ~~value~~ price?

A. I would not think it worth over \$4000.00 if I had to buy with things like they stand.

Q. What do you understand to be meant by a fair market value of a piece of property?

A. Well I understand if a man wants to buy it what he pays for it would be a fair market value of it. I reckon that it about what I understand about it. You can take an old farm that is not worth much and you can hold to it.

Q. Farming lands are not as high to-day as they were some-time ago, are they?

A. No, they are not as high as they were here a year or two ago. They are not in quite such a boom, but I do not think they have declined much, you cannot find the buyers.

Q. Times have been a little hard?

A. Yes, sir. Been pretty tough for the last twelve months.

Q. Have you always said that, and thought that the market

Q. If all questions between you and the railroad were settled with reference to this right of way, what would you take for the balance of this land?

A. I am not prepared to say to-day, sir, what I would take.

Q. If every question between you and the railroad company were settled with reference to this right of way, what do you think would be a fair market value for the balance of your farm to-day with the railroad through it?

A. I don't know what it would be, because I do not know what the railroad is going to pay me. They may pay me \$5.00, they may pay me \$100.00, and they may not pay me a cent. It is just a question I can't answer.

Q. What has what the railroad may pay for the right of way given and occupied by them got to do with the fair market value of the balance of your farm?

A. How do I know what they are going to pay me?

Q. It makes no difference what the company pays you, whether it pays you \$1.00 or \$10,000.00. How can that effect the fair market value of the balance of your farm?

A. I just told you while ago I would not give \$4000.00 for it, and I would not if I had \$10000.00 cash in my pocket, I would not do it. Some other man may like to live on the railroad.

Q: Under these circumstance and conditions I have just recited, what do you think would be the fair market value of the farm?

A. I just told you I would not give \$4000.00 for it. I would not buy it, I do not want it.

Q. Would you be willing to take \$4000.00 for it to-day?

A. If I take \$4000.00 I got nowhere to go. The railroad may not pay me 25 cents. I do not know whether they will pay

today?

A. Well I just don't know. I have got nowhere to go to, and I can get no money ~~xxxxx~~ out of it, I have just got to stay there until I can do better. If a mans got a poor home of his own, it is better than somebody's good one.

Q. Do you think you could buy a farm from somebody else somewhere?

A. If I had the money I could buy it, I reckon.

Q/ If you were to sell this farm you would have this money, would you not?

A. If I could sell the farm, and get the money for it I would have it.

Q. What I want to know is what you would take for the farm if somebody had the money ready to pay you, and let the railroad stay there as it is?

A. If a man will give me \$8000.00, they can take the railroad, land and all. I don't want the railroad, nor the land either.

Q. I am not talking about the purchaser taking railroad and all, we will suppose that t he railroad company has got the railroad, and supposing that it has got the railroad what will you take for the balance of the farm cash to date?

(By Mr. Burges. Question objected to on the grounds that it is immaterially improper. If the witness were to sell and dispose of the farm he would thereby lose any claim that he may have against the company for damages, and to ask him what price he would take for his farm without considering his claim for damages places him ina position as answering as to what value he puts upon only a portion of his property.)

A. I just don't know what I would take. The railroad company hasn't paid me nothing. When the railroad company pays for my property I will sell the balance mighty quick if a man will take it.

A. Yes, sir. Mr . Dennis sold the timber to be Bradshaws.

Q. That is the only timber contract that you have signed?

A. Yes, sir.

Q. You were saying before in your examination that~~xxxxx~~ you did not want the farm now at all.

A. Did not want it at all?

Q. Not if you could sell it?

A. Well if I could sell it, of course, if I could sell it and get away from there would do it.

Q. What would you be willing to take for it?

A. Well I offered to t ake \$8000.00. That is what I offered to take for it before the railway ever came through, and I would take it now if a man wanted it.

Q. What do you really think it is worth.

A. If a man will give me \$8000.00 he can take the land railroad and all. I have been paying taxes on the railroad. If a man wants the railroad and the land he can get the whole business.

Q. Leaving out the railroad, what do you think the farm worth now?

A. You mean let the railroad stay there just in the condition it is?

Q. Yes, sir.

A. Well I do not know what it would be worth to somebody else, but I would not like to buy it and give a man \$4000.00 for it if it was anybody else's, but it is mine, and I have got to stay there until I can get clear of it. It is nothing in the world but an aggravation from one days end to the other.

Q. Let the railroad stay where it is , and what would you be willing to sell it for?

A. And give me no damage for the railroad?

Q. Without regard to what you would get from the railroad company, what would you be willing to sell the property for

A. I suppose it is just about the same distance. I don't suppose there is a 100 yards difference in the distance either way.

Q. Have you ever had plat made of your farm?

A. No sir.

Q. Have you ever seen one of it?

A. Yes sir.

Q. How many acres is said to be in this farm?

A. I pay taxes on 332 now, more or less.

A. Now about this fish pond that you said something about in your testimony, do you use that pond at all?

A. No sir. Nothing there to use.

Q. You don't get any fish out of it at all?

A. No, sir. Have not had a fish out of there this year.

Q. Is there much timber on this farm?

A: Well there has been right smart timber on it, but the timber has been sold and cut a long time now.

Q. To whom did you sell it?

A. Mr. Wash Dennis, and he has cut about half of it.

Q. I believe it has been testified to heretofore that this timber was sold to Mr. Dennis after Mr. Duck offered to buy your farm.

A. No, sir. The timber was sold when Mr. Duck offered to buy the farm.

Q. Refresh your memory a little, and are you not mistaken about that. Was not that timber sold to Mr. Dennis after Mr. Duck ~~offered~~ made the offer?

A. It was not. The deed will prove it to be the 17th day of this month six years ago, I sold the timber and fixed up the contract.

Q. How much did you get for it?

A. I got \$1,000.00.

Q. And that contract is now on record at Isle of Wight

A. It lacks 150 yards of being a mile from the yard gate to the county road - somewhere in the neighborhood of being about 200 yards shorter distance from the road gate to the county road.

Q. After you go out of your main farm gate you drive through a woods path some distance before you reach the county road.

A. You might call it a woods path - it is a lane cut from the county road to my house.

Q. About how far is it from your dwelling house down this path to the point where your line crosses the path?

A. It is about 1600 yards, about that. My line runs within 150 yards of the main county road.

Q. How far is your line from the house in the other direction - North?

A. It is about 300 yards from the house.

Q. Is it not over that?

A. No sir, it is not over 300 yards. I have never measured it, but by guess work I do not think it is over 300 yards back of the house.

Q. How does Currywalk Swamp run, rather in an angle to the road does it not?

A. Currywalk Swamp runs down, or runs in the shape of a horse shoe with the point towards my house.

Q. How far is the railroad where it leaves your property going west from your main line?

A. Where it leaves my property going west? Well I have never measured it, I suppose it is about somewhere from a half a mile to three quarters, I don't think it is a mile.

Q. How far is the railroad where it crosses your line going east from Currywalk Swamp?

Pursuant to agreement of counsel heretofore noted at the conclusion of the evidence heretofore given by J.E. T. Joyner, the said J. E. T. Joyner, being heretofore duly sworn, is recalled for further cross examination as follows:

By Mr. Corbitt.

Q. In testifying heretofore, Mr. Joyner, you said that the railroad track goes through your property on a fill, is that not true?

A. Goes through on a fill - part on a fill and part on level.

Q. How much fill is it where it crosses your drive-way to your house?

A. I suppose about 2 feet and a half with the dirt and ties - anywhere from 2 1/2 feet to 3 feet.

Q. Does that fill obstruct the view from your house down your lane?

A. It does, after it comes through my gate and goes up on a hill.

Q. Which gate do you mean, the road gate?

A. Yes sir. The gate out towards the road.

Q. How far is this road gate from your dwelling house?

A. I suppose it is about - I have never measured it, I reckon it is about 200 yards somewhere about.

Q. As I understand you then, as you go from the road through your road gate you go down a depression and then come up again on the track and go up to your house, in other words there is a low place between your road gate and the track.

A. Just a little lower where I made a bank across the ravine to keep from having such a high hill.

Q. How far is your road gate from the main county road?

5

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(Mr. Corbitt objects to question on the ground that the witness has never stated that he took dinner at Mr. Joyner's house).

A.

A. I do not recollect how long we sat on the porch, but am under the impression that it was some half or [✓]three _^quarters of an hour, possibly as much as an hour, but such a matter as time made little impression upon my mind, when I was engaged in ^a~~a~~ business transaction of this kind or in argument with a person.

Q. Now ^{aa}~~aa~~ your memory has been refreshed by the suggestion of dinner, and with the further suggestion that if you ate dinner, you went through the house into another small house in the rear of the house, can you not say positively that you did eat dinner with Mr. Joyner?

(Mr. Corbitt objects to question for the reason that it has never been shown that this witness went into another house in the rear of the main house.)

A. We might have done so and I have a hazy, indistinct recollection of being in another room or house back of the main house, and it may have been to take dinner, but I do not recollect distinctly whether this was so or not. I remember getting a drink of water at the well on one occasion, but whether that was this same visit or not I do not remember.

Q. When you are out in the country taking deeds, you quite frequently took dinner, did you not, with the various parties with whom you did business?

A. I generally ate or lodged wherever I happened to be when meal time came, or night overtook me, if the citizen living there would accommodate me, which they generally did, and I almost invariably paid for my meals, lodging and horse feed.

(And further this deponent saith not.)

almost as soon as we began to discuss business. He had evidently been brooding over his fish pond or that was the conclusion I reached at that time.

Q. Was not his first statement, words to the effect that he would not sign the deed. That he never would sign it, or something like that, while you were reading it?

A. He made such statements several times, but whether it was before I read the deed or while I was reading it, I am unable to say. I think that after I partially read the deed, he objected to some of its terms, or possibly after I had produced the contract and showed him where the deed was drawn in conformity with the contract.

Q. Then, if I understand you, he did emphatically declare several times that he would not sign the deed, and this was in the presence of Mr. Johnson and Mrs. Joyner?

A. I don't know ^{Mr. Johnson was} whether or not, but I think Mrs. Joyner was.

Q. Do you remember whether or not Mrs. Joyner took any part or not in the conversation?

A. I do not recollect, but if she did, it was a small portion, as Mr. Joyner and I did most of the talking.

Q. How many times did I understand you to say that you afterwards spoke to Mr. Joyner about signing the deed?

A. I think it was three times all together, but it may have been only twice. I am quite certain, however, that I say them three times, once, was in regard to both the deed about the right of way across Mr. Joyner's land and for a deed across another piece of land in which Mrs. Joyner was interested, and Mr. Joyner and Mrs. Joyner readily consented to sign the deed for the right of way across the land in which Mrs. Joyner was interested, although, they refused to sign the deed for the right of way for the land owned by Mr. Joyner.

Q. How long do you think you remained on the porch talking to Mr. and Mrs. Joyner?

Joyner in the road, when he was going to Carreville.

Q. If Mr. Johnson says that he heard all the conversation which took place between you and Mr. Joyner, both at his house and in the road, would you say that he was mistaken, or that it was incorrect?

A. I would say that he might possibly be mistaken, but that he was conscientious in making this statement, for the same reason that I have intended to qualify my statement to the best of my recollection during this examination, even though as to some points, I have been quite positive, but owing to the lapse of time and the great number of visits I have paid to total strangers I might possibly be mistaken as to some surrounding circumstances, or as to some conversation which made no particular impression upon me, and for this reason I have testified to the best of my recollection, and I think Mr. Johnson would do the same were he to testify, but he might be mistaken.

A. I know, Mr. Will, that has been a long time, and that you had a number of these cases for which deeds were taken, and for this reason, I am endeavoring to refresh your memory as to some of the circumstances. After the conversation about the fish pond, did not Mr. Joyner say, that he would never have signed the contract unless he felt sure that it would get him a depot this side of the river?

A. I don't recollect such a statement. Mr. Joyner showed some excitement during our conversation, and appeared to regret that he had signed the contract, but I don't recollect his making such a statement in regard to the depot.

Q. Did Mr. Joyner appear to be mad at dinner, or did he show any excitement at dinner time?

A. No, Mr. Joyner treated us courteously and hospitably but became excited after we commenced to discuss business, in fact,

Q. Is it not a fact that while reading the deed, Mr. Joyner made some objection and said he would not sign it, to which you replied, "I think we can force you to sign it, I have the contract in my pocket." And did you not then produce the contract and read it?

A. I think not, exactly in those words, for the reason that I never carried the contract in my pocket, but in a small hand satchel, and if such conversation took place and I produced the contract as I think I did, it must have been from my satchel instead of from my pocket.

Q. You are right, Mr. Hill, it was from a satchel, so I am informed that you did produce this contract and did read it in the presence of Mr. Johnson and Mr. and Mrs. Joyner. How long do you suppose it was after you had this conversation before you ~~forgot~~ ~~forgot~~ it, and you began to refresh your memory so as to prepare to testify ~~is~~?

A. I think about twelve months. at least, it was about 12 months afterwards when I made affidavit to the return upon the notice of acceptance of the contract. If I am not mistaken, before I left Mr. Joyner, I offered to strike out any provision in the deed in regard to an additional right of way that might be thereafter desired by the company, so that the deed would exactly conform to the terms of the contract, and asked him to execute a deed in accordance with the terms of the contract. That might have been upon this visit or another conversation during another visit, I am not positive as to this point.

Q. Are you positive that when this offer was made Mr. Johnson was or was not present?

A. I am not positive because, as I stated before, my recollection was ^{he was} with his horse in front of the gate, while I was carrying on this conversation on the porch, and he was in his buggy holding his horse, when I had the conversation with Mr.

to feel quite strongly in regard to his fish pond.

Q. Will you give me as nearly as you can the words you used when he said he would not sign the deed you had prepared for him?

A. I do not recollect his exact words. He refused to sign the deed, and my recollection is that he asked me to read the contract in the course of this conversation, which I did, and we discussed different parts of the contract?

Q. Is it not a fact, Mr. Hill, that Mr. Joyner claimed to you in the presence of Mr. Johnson, Mrs. Joyner and one other person, that the deed differed from the contract, and did you not say to him, "Why, Mr. Joyner, this deed is better than the contract you signed."

A. I do not recollect using those words but I might have done so from an argumentative standpoint, endeavoring to secure promptly without loss of time and expense, a compliance with his contract by Mr. Joyner. Since you speak of this it seems to me that there was some provision in regard to payment for any additional land that might be thereafter required for slopes or cuts and fills, drainage or borrow pits, at a certain price per acre, whereas the contract provided that he should convey the strip of right of way together with so much additional land contiguous thereto as might be necessary for slopes or cuts, drainage and borrow pits, for the consideration named in the contract, which I think was \$475.00, and as I say I might have made such a remark as a matter of argument with Joyner, but have no recollection of using such word.

Q. Which did you read first, the deed or the contract?

A. I don't recollect, but I think that I read the deed first or partly read the deed or until some objection was made, and I produced the contract as my authority for the terms of the deed

the porch, and that dinner being suggested, you said let's eat dinner first and talk ^{business} dinner-afterwards, and that following this suggestion you all went into the dining room and ate dinner and then returned to the front porch, would you claim that he was mistaken?

A. No, Sir, I would not. If Mr. Johnson's recollection was positive upon that point, because as I stated, my recollection as to the eating at Mr. ~~Johnson's~~ ^{Joyner's} house, and as to the surrounding circumstances, are very indistinct.

Q. If Mr. Johnson were to say that after dinner that you, Mr. Joyner, Mrs. Joyner and another person went out on the porch and discussed the deed, would you say that he was mistaken?

A. My recollection is that we did discuss the deed on the front porch.

Q. Did you not begin the discussion by taking out the deed which you had for them to sign and reading it to them?

A. I think I read this deed, but I think Mr. Joyner asked some question in regard to the fish pond, before I did so, or as I was beginning to read the deed.

Q. That question was more of a statement, was it not, of the method of construction being adopted by the construction corps. In other words did not Mr. Joyner begin to talk about the way they were putting dirt on each side of his fish pond?

A. He certainly objected to the dirt being dumped into each side of the fish pond, and desired that a bridge or trestle be built by the railway instead of making a fill across the fish pond, with pipes underneath the fill to permit the passage of water and fish?

Q. Would you, as nearly as you can, give the words used by Mr. Joyner when he made this statement?

A. I have given them as nearly as I can. I am unable to give the exact words as they made little impression upon me, but I have given the substance of his objection, and he seemed

Q. You have referred to a conversation which took place between you and Mr. Joyner at Mr. Joyner's residence in regard to the fish pond, depot and other matters. Did Mr. J. A. Johnson hear this conversation?

A/ I do not know.

Q. Will you relate as nearly as you can what transpired when you first arrived at Mr. Joyner's house?

A/ I think I took a seat upon the front porch after being introduced to Mr. and Mrs. Joyner, and after commencing the conversation with them, I think Mr. Johnson's horse became uneasy, and he came out to the front gate to see about it, but I am not positive as to this point as considerable time has elapsed, and there was nothing at that time to make any impression upon my mind other than similar transactions, as I paid many visits to various land owners each day all of whom were total strangers to me.

Q. Was Mrs. Joyner present during the first of the conversation?

A. I am uncertain whether she was or not. I do not recollect as to this point.

Q. Do you remember any one else who was present?

A. I do not, although some one might have been present without my recollecting it.

Q. I wish to refresh your memory Mr. Hill. Did not you as the matter of fact, go first to the dining room with Mr. Johnson and Mr. Joyner's family and eat dinner before any conversation after that as to the deed took place?

A. I do not recollect ever taking a meal at Mr. Joyner's, although I may have done so. I kept an expense account book at that time which will show where I dined or lodged, but unfortunately lost this book during a trip to Southampton Co.

Q. If Mr. Johnson were to say that when you first arrived on

A. Mr. Johnson was with me on Sept. 22nd, 1905, when I demanded the deed and served the notice on Mr. J. E. T. Joyner.

Q. Did he hear all the conversation that took place between you and Mr. Joyner?

A. I do not know whether he did or not. When we met Mr. Joyner in the road and I served the notice, Mr. Johnson remained in the buggy and held the horse. On the occasion when I demanded the deed at Mr. Joyner's residence I think Mr. Johnson was with the horse at the front gate, but I am not positive about this point. My mind was upon my business and I paid little attention to the surroundings, at that time having no idea that litigation would ensue.

upon
that is agreed between the parties.

(By Mr. Burges. This question, as all similar ones which seek to set up general rules adopted by Mr. Findley, is excepted upon the grounds that the evidence is immaterial, irrelevant and incompetent')

A. Mr. Findley's rules and instructions to his men were absolutely to incorporate into the written contract every agreement, condition or stipulation promised or agreed upon.

(By Mr. Burges. So much of the answer of the witness as refers to Mr. Findley's rules and instructions to his agents is excepted to for the reasons heretofore given.)

Question by Mr. Hill. I would like to know if there has been any attack on Mr. Findley's character or integrity.

By Mr. Burges. Mr. Hill, while I feel that the record is being encumbered with a mass of immaterial evidence, I have no objection to your making any further statement that you desire, but hope that you will confine yourself to the issue involved in this case.

By Mr. Hill. I simply asked as between friends as a matter of information, and had no idea that Mr. Burges would insist that it go into the record. Having been acquainted with the counsel for both plaintiff and defendant for several years and fearing that the question might slip my mind if I postponed asking it until another time.

Cross examination by Mr. Burges.

Q. Mr. Hill, I direct your attention to that part of your evidence which refers to the time that you went to Mr. Joyner's house to secure a deed, and he declined to give it to you. Who went with you that day?

A. Mt. Jos. A. Johnson, Justice of the Peace of Isle of Wight County, was with me twice and possibly three times, I think.

Q. Now Mr. Hill I am asking you only in regard to the day that you demanded the deed and the deed was refused. Will you please confine your answers to that one occasion, as it materially shortens the testimony. Was Mr. Johnson with you on that day?

tract anything about conveying land sufficient for cuts, fills, borrow pits, etc?

A. He made no claim of fraud in this respect that I recollect.

Q. To whom did you report in your right of way work in Isle of Wight County other than to Mr. John Kee?

A. I reported to Mr. Findley who was then making headquarters at the Mansmond Hotel at Suffolk. I had no instructions from the company to report to other than Mr. John Kee until a month or so after the occurrences above mentioned, but because of the fact that Mr. Findley was older in the service of the company than any other employee in our department at Suffolk all of the employees voluntarily reported to Mr. Findley for convenience, and also because the work required the supervision of an experienced man to enable each of the men to work more advantageously.

Q. You then during this period did report to Mr. Findley, and later on were instructed to report to Mr. Findley?

A. Yes, I reported to Mr. Findley, and about the first of December I received instructions to report to him at Lynchburg exclusively.

Q. What familiarity in reporting to Mr. Findley did you gain as to his rules?

(By Mr. Burges. Question excepted to for the reason that Mr. Findley's rule is not material evidence in this case.)

A. I became thoroughly familiar with Mr. Findley's systematic ^{his} manner of conducting work, and regard him as more accurate in detail than any other man I have ever been associated with in such work.

(By Mr. Burges. So much of the answer of the witness as states his regard to Mr. Findley is immaterial, incompetent and irrelevant.)

10- Q. Please state what were Mr. Findley's rules as were made known to you with reference to embodying in contracts all

had perpetrated any fraud upon him in not putting this into the contract, or did he simply say that he thought that was the way it was going to be done?

(By Mr. Burges. Question excepted to as leading.)

Question withdrawn by Mr. Corbitt.

Q. Please state, Mr. Hill, what, if any, fraud was claimed by Mr. Joyner to have been perpetrated upon him by Mr. Findley with reference to the crossing of his fish pond.

A. He made no claim that Mr. Findley had read as a part of the contract any matter not contained in the contract, but stated that Mr. Findley had told him that the construction of the railroad would not disturb his fish pond, but that the company would be compelled to provide a sufficient passage for the water, or something to that effect.

I do not think he stated that Mr. Findley promised that the company would put in a trestle or bridge, but I understood from his conversation that he inferred that such would be the method of building the railway across his fish pond, as he said that he did not know pipes large enough to carry off the volume of water upon the upper side of the track could be used.

Q. State what fraud, if any, he claimed was perpetrated upon him by Mr. Findley with reference to the railway ~~xxxx~~ ~~xxxx~~ going through his land on a level with the land.

A. I do not recollect of any such claim of fraud being made by Mr. Joyner, and he made no complaint to me in regard to the grade, but complained of his peanuts and corn, I think, being dug up or cut down before maturity. I think he said he had to cut his corn himself to save it, but do not remember whether he dug up the peanuts or the construction force. He made complaint in regard to the destruction of his crops, however.

9. Q. What, if any, fraud did Mr. Joyner claim to have been perpetrated upon him by Mr. Findley in inserting in the con-

A. He said that he had been absolutely ruined by the construction of the railroad, by which I understood him to mean that his farm had been ruined, that he had not been given nearly enough money for the right of way, that his fish pond would be disturbed, that notwithstanding the fact that the water would fish might pass ~~through~~ back and forth from one side of ~~the~~ right of way to the other through pipes to be paid across the fill then being made by the workmen, that he could not pass through with his boat, and that would not be satisfactory to him, that the fish pond was a matter of pride with him, that he had long wished for ~~his~~ a fish pond and now had the pond full and well stocked with fish and it was a source of considerable pleasure to me. He also complained that he would not be more convenient to a depot if the depot were located on the opposite side of the river, and that if a depot were located within a mile or two of his place it would be a great convenience to him, and his place would not be damaged nearly so much. I think he also made complaint in regard to the railroad being built before his crops matured, stating that he had to get some corn that would be injured or lost, something to that effect.

Q. Did he say anything about Mr. Findley having promised to put into the contract that he should have a depot?

A. No sir. He made no claim to me that he had been promised a depot, but this conversation with me about the depot was in regard to the advantage or disadvantage to his place that would ensue from the location of a depot upon the east or west side of the Blackwater River.

Q. I understood you to say that Mr. Joyner seemed to be under the impression that a bridge or trestle would be used in crossing his fish pond. Did he complain that Mr. Findley

were a part of the contract, until their memories are refreshed, or the whole conversation gone over with them when they often recall that no promise was made in regard to the subject of the conversation, and very frequently that the conversation took place after the contract had been agreed upon, prepared and signed.

(By Mr. Burges. This answer is ²⁴accepted to for the following reasons: 1st. That any evidence in this case which tends to affirm or deny that Mr. Findley received any reward for any alleged fraud is immaterial and irrelevant. 2. Any evidence as to the opinion of the witness as to what the officials of the company would have done in the event they had discovered fraud, is incompetent and irrelevant, the witness not having shown how ~~much~~ he knew that the officials of the company would have done under such circumstances, and at the most it is merely an opinion of the witness as to what he would have done in such circumstances, while his testimony shows that he was in no way in charge of Mr. Findley's actions. 3. So much of this answer as refers to what Mr. Joyner said is excepted to as not responsive to the question. 4. So much of this answer as refers to the experience of the witness with Mr. Findley is objected to on the grounds that it is irrelevant and incompetent, and only tends to show the personal opinion of the witness of Mr. Findley, and for that reason is not competent evidence in this case. 5. So much of the answer as refers to rule 8 and principles which the witness believes controlled Mr. Findley in his action is excepted to on the grounds that the same is incompetent and irrelevant in this case. 6. So much of the testimony of this witness as refers to the customs of land owners is also excepted ~~from~~ to on the grounds that it is immaterial and improper, and merely tends to argue the case in behalf of the complainant, but is incompetent as evidence.

In general Counsel for defendant moves to strike out the entire answer of this witness with the suggestion to counsel ~~for~~ for complainant that the same be incorporated in his brief.)

Q. When you saw Mr. Joyner did he say anything to lead you to believe that any ~~affair~~ fraud had been perpetrated upon him by Mr. Findley?

A. No. Not that I recollect.

Q. Please state what he did say as near as you can.

by Mr. Joyner to have been perpetrated upon him?

(By Mr. Burges. Question excepted to on the grounds that it calls for an answer which is manifestly immaterial and irrelevant.)

A. Absolutely none, and furthermore any right of way agent guilty of perpetrating a fraud of any kind upon a land owner would have been discharged as soon as his guilt were ascertained by the Company, which guilt would almost certainly have been discovered by the Company when the same or any other right of way agent attempted to secure a deed for said land under said contract. Furthermore in this particular instance Mr. Joyner and his wife, to the best of my recollection, made no claim to me that Mr. Findley had read as if a part of the contract any matter not contained in the contract, but stated that Mr. Findley in conversation had said that the railroad company would not disturb his fish pond, or words to that effect, and Mr. Joyner understood that the Company would put in a bridge or trestle, as he explained to me, that he did not know that pipes of that kind could be used in place of bridges by culverts; and furthermore he made no claim whatever in regard to a depot having been promised at any particular place, but said to me that if he were given a depot anywhere within a mile or two of his place it would be a great convenience, and would not damage his land nearly so much as at that time. In all my experience with Mr. Findley I have never known him to promise anything to a land owner without writing such promise into the contract, and I know that it is one of his rules or principles in right of way work to write into the contract every promise or stipulation made. I know from experience that many land owners discuss outside matters sometimes before, sometimes after a contract is prepared, and are often under the impression that such matters discussed in casual conversation

and placed this copy with my papers. My recollection is that he executed and acknowledged at that time a deed which conveyed his interest in another tract of land in which his wife was interested, and told me to tell his wife that he was satisfied with the deed to the land in which she was interested, but that he would not sign the deed for the right of way across his farm, and after leaving him I went on to his home and, after reading the deed carefully to his wife and asking her if she understood the same, she executed and acknowledged the deed to this other tract of land in which she held an interest and I left.

I think I made ^a ~~the~~ third trip to see them, happening to be in the neighborhood, and again endeavored to secure the execution and acknowledgment of Mr. Joyner and his wife of the deed for the right of way across their farm.

Q. Mr. Hill, I understood you to say that you and Mr. A. J. Findley were engaged in the same kind of work.

Mr. J. E. T. Joyner claims that Mr. Findley perpetrated a fraud upon him in procuring the signature of his wife and himself to the agreement to convey right of way to the Tidewater Railway Co. The fraud consisting of Mr. Findleys not reading to them as being in the deed anything about sufficient land for slopes of bank, cuts and fills, borrow pits, etc., and read to them as being in the agreement, although it was not there, words to the effect that the company should build a trestle where the track crosses the fish pond, that a depot should be located on Tom Carrs land where the Smithfield and Franklin County Road crosses the railroad right of way, and that the railroad track should go over Mr. Joyner's land on a level with the land.

What benefit, if any, could have accrued to Mr. Findley, to you or to any other right of way man engaged in the same work from perpetrating any such fraud as the one claimed

said he was being ruined, but I understood him to mean his farm, and also that his fish pond would be in a shape very unsatisfactory to him if the work then in progress were continued; that he had been informed by the workmen that they intended placing a large pipe through the fill, and that while it would permit the water and fish to pass through still it was not satisfactory to him, and he could not get his boat through the pipe. He seemed to have assumed, or understood that a bridge or trestle would be built across his pond, and he much desired such bridge or trestle instead of the culvert.

Q. Did he say that it was simply an assumption on his part that it would be a bridge, or did he claim it was part of the contract?

A. My recollection is that he stated he understood that the company would build a bridge or trestle. He made no claim that such was a part of the contract that I remember.

Q. I show you now a paper to be filed as exhibit in this case, known as exhibit No. , please state what that paper proposes to be?

A. This paper I prepared and served on Mr. J. H. T. Joyner on the 22nd day of September, 1905, on the public road near his home, as I was going to his home to see him, and he was going to Carrsville in a one horse farm cart loading with peanuts, I had already demanded the execution and acknowledgment of the deed and offered to pay the consideration called for when I called at his house a day or two prior to this meeting and was again on my way to see him to again request him to comply with his contract and to execute, and acknowledge and deliver a proper deed for the right of way in accordance with the terms of his contract, when I met him, and after a brief conversation saw that he was obstinate and further efforts would be futile, I filled out the printed blank, of which this is a copy, delivered him the original

I was sent to West Virginia sometime in July, or about the first of August, 1906, I do not remember the exact date.

Sometimes I would be with Mr. Findley almost daily for weeks ^{even} and months, and then again we would be separated for as much as a week or two at a time, but these separations were infrequent and my association with him was almost without interruption.

Q. Do you know Mr. J. E. T. Joyner, of Isle of Wight County, the defendant in this suit?

A. I met him when I went to see him and his wife in September, 1905, for the purpose of securing from them a deed for the right of way across their farm in that County. I have seen him possibly three or four times, and am acquainted with him purely in a business way, resulting from these several interviews.

Q. I understood you to say that you went to get from Mr. J. E. T. Joyner a deed for the ~~property~~ right of way through his property, please state whether or not you were successful in getting this, and if not, why not?

A. My recollection is that about the 20th or 21st of September, 1905, I went to see Mr. Joyner and told him that I had come to take a deed for the right of way needed by the Tidewater Railway Co. across his farm, and to pay him consideration therefor. My recollection is that before proceeding further Mr. Joyner called my attention to the fact that a construction force was making a fill by dumping dirt into his fish pond near the house on each side of said pond, and wanted to see what provision was made on the deed in regard to the preservation of his fish pond.

Q. Did I understand you to say that he refused to give the ~~me~~ deed?

A. He refused to give the deed, claiming that he did not get enough money for his right of way, that his farm was being ruined by the construction of the railway, I think he

for its right of way and other railway purposes, making an agreement with the land owners for such land as would be needed, and after the agreement had been reduced to writing, executed and acknowledged by the land owners they were forwarded by me to Mr. John Kee, the Chief of that Department, whose official title was Assistant Attorney, or else these contracts were turned over to other employees to whom I was temporarily directed to report at various times, according to the accessibility of the Company's head office and general convenience in handling such matters.

Q. Were you engaged in making right of way contracts through Isle of Wight County?

A. No, I was engaged in taking deeds for land in Isle of Wight County, the contracts for which had been made by others. When I first entered the employ of the Company I was sent to Sussex County to take contracts for rights of way, and remained there about one month at this work, after which I was ordered by Mr. Kee to come to Suffolk, and for a few weeks I was engaged in abstracting titles in the Clerk's Office of Nansemond County, after which I went to Southampton County and procured the execution and acknowledgement of parties for the right of way needed, paid the consideration called for by the respective contracts, and after several days, or possibly a week or so, I was sent to Isle of Wight County to take up deeds, that is to receive from the land owners the properly executed and acknowledged deed for the land needed for right of way purposes, and pay to the respective land owners the consideration therefor when the deed was so executed and acknowledged.

Q. Were you associated with Mr. A. J. Findley in this work?

A. I was associated with Mr. Findley from the time I first came to Suffolk about the first week in June, 1905, until

Office of James H. Corbitt, Suffolk, Virginia.

Met pursuant to adjournment at the office of James H. Corbitt on the 14th day of July, 1908, at 4 o'clock P. M.

Present:

James H. Corbitt, Counsel for plaintiff.

James U. Burges, Counsel for defendant.

Wm. H. Hill, being first duly sworn, deposes as follows:

Examined by Mr. Corbitt.

Q. State your name, age, residence and occupation.

A. Wm. H. Hill, age 32, residence is now Lawrenceville, Virginia, and by occupation I am a lawyer.

Q. Are you practicing law alone at Lawrenceville?

A. In partnership with Mr. E. P. Buford and Mr. E. C. Palmer, the latter of whom resides at Emporia and has charge of branch office we have at that place. The firm being Buford, Palmer & Hill, Lawrenceville, Va.

Q. Are you in any way connected with the Tidewater Railway Co., or the Virginian Railway Co. at this time?

A. I am not. And have not been since the first of September, 1906.

Q. You say you have not been since the first of September, 1906, please state what your connection with the Tidewater Railway Co. was prior to that time.

A. In the early part of May, 1905, I entered the services of the Tidewater Railway Co. in the position of a right of way agent, and at various times also performed the duties of an abstractor, claim agent and general field agent.

Q. Please state some of the duties to be performed by you as right of way agent.

A. Calling upon farmers and other property owners across whose land the then proposed railway was surveyed, estimating the value of the land needed by the railway company

I had paid for a right of way in this section of the country.

(Mr. Burges here objects to so much of this answer, as it refers to the value of other lands of the prices paid therefor on the ground that it is immaterial and irrelevant.)

And further this deponent saith not.

(Re-direct examination by Mr. Corbitt)

Q. Mr. Finley, Mr. Burges has asked you a good many questions about how you arrived at a fair compensation to be paid land owners for rights of way through their property. Please explain some of the things that influenced you in arriving at this measure of fair compensation the property through this immediate vicinity in which J. S. T. Joyner's farm lies?

A. The land owners of the particular community value the ir land to you at any where from \$8 to \$12 per acre. Just across Mr. Joyner's property, on the Southampton Co. I first went through the county and took agreements from most of the land owners paying a consideration therefor. Of course they were anxious that the railroad should go through that community, but they at that time had not decided to make any special inducements to get the company to adopt the route through their community, and I was acquiring a right of way by agreeing to pay them a consideration for the same.; They valued their land, taken by the company, at anywhere from \$8 to \$12 per acre. This was their own estimate as to the value of their land. As best I could learn when I went into Isle of Wight Co. the land had about the same value as in Southampton Co., excepting it was some little nearer Suffolk than Norfolk, and had a little better railroad facilities, but it was my information from all the circumstances that I knew that Mr. Joyner's land had a value of from 8 to \$15 per acre, taking the entire quantity that was included in the right of way, the most of which was woodland. But owing to the right of way going approximately close to his house and taking a part of the lot in front of his house, and in order to reach a settlement with Mr. Joyner without any litigation, I agreed to pay him the price that I did. Although, at that time that was by a considerable the largest price that

Q. I believe you said that you did have some kind of a map which you showed to Mr. Joyner, but that it was not what is commonly called a profile map.

A. Yes, I think I had two ^{maps} different with me, but I had no profile.

Q. When you read the paper to Mr. Joyner do you remember whether or not you said, "Here is the paper, I will read it to you. I think I can read it better than you can?"

A. I may have said that I ^{would} ~~was~~ read the paper, but I don't think that I could hardly have said that I could read it better than Mr. Joyner could.

Q. It was your own hand writing was it not?

A. Yes sir, it was my own and writing.

Q. I believe you said that you also took into consideration damage to crops. Was this incorporated in the agreement?

A. Yes sir, it was. As I remember it, the agreement will speak for itself.

Q. Did you discuss with any of these people who have testified the relative distance of their places to Carraville and Windsor?

A. I expect I did. Yes sir. I discussed in speaking of the line of railway for one thing that the line of railway would be coming through a country where there was no other within a distance of 7 or 8 miles and I would often say that they would have depots closer on our line than on other roads. I often said that to land owners, but that was a matter of belief not knowledge.

Q. That was only a matter of conversation?

A. Yes, that I believed they would have depots nearer than on other lines. As I remember it, Mr. Joyner's place is 7 or 8 miles from the depots and on the other roads.

one to ask.

Q. But, if I understand you, you do not recall that Mr. Joyner asked you anything about cuts and fills, and that you do not recall anything that was said about the pond, is this correct?

A. I did not recall any conversation that Mr. Joyner and I may have had with reference to cuts and fills. He may have asked questions about them, or he may not have asked them, I don't way as to that.

Q. Then if the depot was something that in no way effected your reaching agreement, when you talked about the depot this could hardly be construed to be a casual conversation, could it?

A. The way in which we talked about a depot would be called a casual conversation, because in no instance would I or did I promise the location of a depot to anyone to induce the securing of a contract, and anything said with reference to depot being located at any particular point was spoken by myself entirely separate and apart from any negotiations and would have been given as an opinion the same as if the land owner had spoken of it.

Q. Then if I understand you, when the land owner would offer to negotiate in regard to depots etc., that on this and similar instances what you would say you only meant to be considered a casual conversation. Am I correct in this?

A. When the land owner would offer to negotiate to give his right of way for the depot I would turn down his proposition because we would make no promise of any kind with reference to the location of depots.

Q. But you would then take occasion to speak of depots in a casual conversation, would you not?

A. We would speak of depots in conversation, yes sir, we would talk about their probable location, it was quite a common occurrence.

Q. Did not the farmers quite frequently ask you so to whether there would be cuts and fills in crossing their farms?

A. Yes, sir.

Q. Did not a large percentage of them ask you this question?

A. Yes, sir. I expect so, I presume so.

Q. If there was a pond or stream, would they not ask how the railroad would cross the pond or stream, whether by culvert, or trestle?

A. Yes, sir. That is a most natural question for any-

am not sure which. I am of the opinion that I never discussed with him Mr. Joyner's matter, or right of way with the knowledge that he was counsel for Mr. Joyner/ I remember statement made to Mr. Holkand with reference to what the interest of some land owners sh ould be for their right of way.

Q. If it has anything to do with this transaction, or as to this witness I think it is pertinent and I should like to have it.

A. I told him that if any land owners in that section made a statement to him that I promised or used any inducements in any way that the company would give depot for the right of way, that they said that which was absolutely false, and I told him that he could tell them so for me.

Q. What caused you to make this statement?

A. I think it was said in the course of a casual conversation, I do not remember anything definite that should caused me to make it with the exception of what he should have said to me.

Q. Mr. Findley, will you explain to me the difference, according to your construction, between communicating for sale and "casual conversation."

A. In communicating for sale we would and the land owner would agree upon certain terms or certain things that they would give certain piece of land for right of way and we would in turn pay certain ~~xxxxxx~~ ^{specified} sum of money, or they would allow right of way to be shifted 50 or 100 feet or that the consideration would cover damage to crops or things of that character depending upon the circumstances governing each agreement. What I mean by things that might come ^{up} in a casual conversation, would be things that we might talk about that would have in no way any reference to the things that we would agree to in ~~xxx~~ reaching agreement.

something to me about Mr. Holland being his lawyer. Just what I do not recall, but I told him that Mr. Holland could not execute the deed for him.

Q. Did you ever go to see Mr. Wm. S. Holland?

A. Yes, sir. I saw Mr. Wm. S. Holland at different times.

(By Mr. Corbitt. I object to question and answer on the grounds that it has not been shown that it is relevant, or has any bearing upon the execution by Mr. Joyner of the deed.)

By Mr. Findley - Let me correct my statement as to seeing Mr. Holland, I am not sure that I ever talked to Mr. Holland with reference to Mr. Joyner's matter, but I saw him with refernce to some rights of way in that community, ^{which} ~~one~~ from Mr. Avis, ~~but~~ ^{on} as to Mr. Joyner I am not sure.

Q. Is it customary with the officers and attorneys of the Tidewater Ry. Co. to continue to deal with individuals when they are informed that they are represented by counsel?

(Counsel for complainant objects to this witness being called upon to testify as to what is the custom of attorneys and agents of the Tidewater Ry. Co. as his competency has not been shown.)

By Mr. Burges. You may answer the question, Mr. Findley, if you so desire, but I do not insist upon it.

A. It is the custom of the attorneys of the Tidewater Ry. Co. when they know that attorney has been employed, but for little things as to matters of right of way through their property it is their custom to go to the farmers.

Q. Do you not recall in this instance ^{positively} whether you went to see Mr. Holland or not.

A. I am sure that I did not go to see Mr. Holland with reference to Mr. Joyner's matter, I went to see him with reference to his giving some release deeds, etc. ^{whether} and to talk with him about some matters of rights of way, ~~but~~ ~~XXXXX~~ ^{rather} they were matters pertaining to Mr. Joyner's land or Mr. Avis' I

and we only had as many as nine or ten condemnation cases, that is including the counties of Manselond, Isle of Wight and Southampton, and further west including 600 tracts that came under my supervision we only condemned because being unable to agree about 25 or 30 different tracts, there were several condemnation proceedings on account of infants having interest, etc.

Q. I believe you said that when you went to Mr. Joyner to demand a deed that he acted like a maniac. Is this true?

A. When I went back through his house back to where I found him after he left me he was in the door of the kitchen. I told him that I was there to get a deed from him for the right of way in accordance with the agreement, he flew into a rage and acted very much like a maniac. Yes, sir.

Q. Mr. Findley, could not that whole question have been answered with the word "yes".

A. No, sir. It could not for the reason that the answer "yes" would have applied to the time of my first seeing him when I came to get deed. I first saw him in the doorway of his house, at which place I asked to get dinner.

Q. Then I understand you to say that he did not act like a maniac until you demanded deed. Is this correct?

A. Until I went back to the kitchen. I had told him before that I had come to get deed from him, but it was when I went back to where he was in the kitchen and told him that I had come to get deed that he flew into a rage.

Q. Mr. Hill had already demanded deed of him prior to that time, had he not?

A. Yes, sir.

Q. What did Mr. Joyner say to you about Mr. Wm. S. Hilland, attorney, on the day that you spoke to him?

A. I think Mr. Joyner informed ~~xxxxxxx~~ me that or said

as they thought fit.

Q. Mr. Findley, You stated that you tried to give farmers the actual value of their land. Whose judgment did you use in ascertaining the actual value?

A. If I said actual value, I should have said fair compensation of the land, but the judgment that I used was usually obtained after I would go into the country, from what people would accept through the community and after going over the right of way and after getting acquainted with the details of the property that was taken by the railroad company, of course I used a great many methods in getting fair value. My effort was to always reach a fair compensation for the property that we would get from the land-owners.

Q. Then if I understand you it was rarely a question of more than a few moments before you agreed with the land owner when you took this option for the land?

A. It was a question of more than a few moments? No, sir. It was often a question of several days before we came to an agreement, sometimes a question of a few hours. In that section of the country Mr. Joyner was the most difficult man I had to deal with up to that time. My experience with this section of the country, usually we were a few hours but often it required that it might be weeks before we were able to to perfect agreement for the right of way through one's property.

Q. Why all this trouble and delay if you take the farmer's valuation?

A. I have not said that I took the farmer's valuation. I sometimes used the judgment of the farmer in assisting me to determine its value, and often I gave what was more than I thought was fair value in order to avoid litigation and future trouble.

Q. You quite often condemned land did you not, Mr. Findley?

A. No, sir. Not often, I do not think? In this particular territory the railroad passed through 190 ~~XXXXX~~ tracts of land

A. No, sir. I do not recall any conversation.

Q. How long were you talking with Mr. Joyner in making this contract?

A. Well, I suppose, we went over the right of way ab out 8 or 9 or 10 o'clock, and then we came back and I gave him some idea of what I was giving for rights of way, but we did not come to any conclusion. He and I went East in the afternoon, and I secured right of way through some other land near through which out line passed. We returned, I think, about 4 or 5 o'clock, and after we returned it was not very long before we came together and closed up the agreement.

Q. Did you talk to Mrs. Joyner at any time ab out the right of way prior to the reading of the ~~agreement~~ option.

A. I may have done so, I am not prepared to say that I did not. I feel sure in saying that I did not make any proposition to her, that she had no part in our reaching the agreement. Mr. Joyner and I reached agreement out apart from the house, and came to the house and prepared the agreement what was necessary to be written up. Some of it was printed.

Q. Did Mr. joyner tell you that he could not read very well?

A. I do not remember that he told me that he could not read very well.

Q. Do you remember that he did not tell you anything about reading?

A. I do not remember that he said anything with reference to it one way or the other.

Q. You quite frequently put paragraphs in your contracts about depots do you not?

A. In the instances that I have heretofore explained that land owners would be solicitous about getting a depot and would say, usually when we were writing up the agreement if depot were put on their property they would give land for it, and we embodied that in the agreement, saying after it so that the company would have option of locating the depot or not, as

tract, or Mr. Joyner read it.

Q. Is it not customary with you in reading these contracts to stop and explain the meaning of the contract as you go along?

A. Well it may have occurred that we stopped and explained or talked about certain terms of the contract, there are always more or less terms of the contract, and I may have talked about some of them.

Q. Mr. Findley, you are a lawyer, and have had ~~xxxxxxxxxxxx~~ to draw contracts. Is it not true that in nearly all contracts you read you stop and explain things that you think require explaining?

A. That is true, but when I was taking rights of way I usually the plan, I ~~xxxxx~~ cannot say I made no exceptions, I would read the whole contract and then go back and take up the different phases.

Q. Did you do that in the Joyner case?

A. I do not remember.

Q. Are you prepared to say that during the time that you were reading the Joyner contract that nothing was said about the depot?

A. I am absolutely sure there was nothing said with reference to depot in the sense that we were going to put depot at a certain place, there may have been conversation about a depot.

Q. Did I understand you to say just now that you did not remember anything about the fish pond?

A. I do not remember anything about it as a fish pond. I remember something about a ravine to the southeast of the house having water in it, but as to its being a fish pond I do not remember, of course, I don't attempt to say it was not a fish pond, but I do not remember it as such.

Q. Do you recall any conversation whatever with reference to a fish pond? I mean the using of the words fish pond?

here at this place, you are going to have a depot at the county road at the corner of your land. I have been to see Mr. L. H. Carr and Mr. Joe English and they have given their rights of way for depot, would you be willing to do the same?"

A. That part of the statement that I said I had agreed to give Mr. English and Mr. Carr depot for rights of way and asked him if he would be willing to do the same is untrue. I absolutely made no inducement for him to give the right of way, and the agreement will bear me out in my statement.

Q. Mr. Findley, Mr. L. H. Carr testifies that you promised him that there would be a depot at the county road. Is this correct?

A. It is not correct that I promised him that there would be a depot at the county road.

Q. How many of those men, if you recall, did you tell ~~any~~ in express words when they were talking to you that you did not know where the depot would be located?

A. I do not know that I told any of them that, but if any of them asked me the question then I told them that, because as a matter of fact ^{time} that the company had not decided upon its northern or southern route. That fact was explained by me when I went to Mr. English for his right of way, and the two Mr. Carrs to get the rights of way through their premises.

Q. Now if I recall your testimony, you say that it is customary with you in filling out an agreement to read it over to the parties, and then offer it to them to read. Is that correct?

A. Yes, sir.

Q. Do you recall in this instance whether you read the contract or Mr. Joynes r?

A. I do not recall in this instance whether I read the con-

correct?

A. I made no such promise, the agreement shows the nature of our agreement with reference to the depot.

Q. Mr. J. H. English testified that he gave you a right of way because you promised to put a station in his neighborhood. Is that statement correct?

A. So far as the statement goes that he gave the right of way, that is correct, but in so far as he says I promised to give depot in the neighborhood, it is untrue. The agreement speaks for itself.

Q. Mr. Findley, what do you mean by the often repeated statement that the agreement speaks for itself?

A. The agreement shows the terms which were entered into and agreed for the right of way. If I promised anybody to do anything why that promise was put in the agreement. I do not now recall a single instance in all my transactions with the company where I promised a single thing that was not embodied in the agreement, that is in reference to taking rights of way through the various properties. I speak positively on that matter for the reason that I had a policy of my own that I adhered to in order to avoid future intanglements, and in order to be fair with the people, that in no instance would I make a promise to anybody that would not be embodied in the agreement.

Q. Mr. Findley, Mr. R. J. Cox says that you told him "I am going to have a depot right near your land" and that he could make money by selling off lots. Is this correct?

A. It is untrue that I said I am going to have a depot near his land. I may have said to him as perhaps I said to others, there may be a depot near your land, and if so you can sell off lots.

Q. Mr. Findley, Mr. S. T. Carr testifies that you came to his house and said "Good morning. You are blessed to live

that I should have told them that Mr. Carr had agreed to give land for depot in the event that the depot was located there.

Q. Mr. Findley, Mr. R. T. Frazier testified in this that on the 16th day of May, 1905, that you and that you and Mr. Joyner came to Mr. Joe English, and that you asked what that road was, and being told that it was the Smithfield and Franklin road you said "I told Mr. Carr that I would have a station at this road here, and Mr. Carr agreed to give me a piece of land for this station," and again Mr. Frazier states that in answer to a question that you told Mr. English there would be a station at this place. Is this correct?

A. I learned from somebody there, I remember of asking someone as to the name of that road, I do not know as to whether it was Mr. Frazier or someone else, but as to my stating or agreeing or promising that there would be a depot there as a consideration for any right of way, I made no promise that there would be a depot, I made no agreement that there would be a depot there in consideration for any right of way, so far as he says that his statement is incorrect.

Q. Did you tell Mr. Frazier or Mr. English that you did not know where the depot would be located?

A. I do not know, but if they had asked me where the depot would ~~xxxxxxx~~ be my answer would have been that I do not know, and could not know.

Q. At this time can you recall the language that was used between you and these parties.

A. No, sir. I could not recall the exact language used between me and those parties, but I am absolutely positive that I in no wise promised or suggested that a depot would be located there as an inducement for the right of way. Of that I am positive.

Q. Mr. Ballard testifies that you promised him that the station would be within a mile or two of his house. Is that

A/, If I talked to them about it at all, I absolutely told them that I did not know where they would be located, because I did not know.

Q. Then, if I understand you, if you talked to any of the witnesses who have testified in this case about the location of a depot you are sure that you told them that you did not know where the depot would be located?

A. Yes, sir. This is absolutely correct. In way of explanation I might go on and say that I may have given it as a matter of opinion along with their own opinion that their road was a ^{public} ~~private~~ road and might have advantage over some other road in getting the depot, but whatever I have or would have said would have been a casual opinion, as I had no knowledge as to the location of the depot.

Q. Mr. Findley, MR. S. J. Pierce testifies that on May 17, 1905, you came to see his wife and him in regard to a right of way and said "that the others out there had given him the rights of way with the understanding that he was to give a depot out here on Mr. Tom Carr's farm." Is that statement correct?

A. That statement is not correct. Now what they said may have been suggested to them, or their imperfectly understanding me may have caused them to say that, what I may have told them was that Mr. Carr had agreed to give land for depot in the event the depot was located there.

Q. Then, if I understand you, you think it is probable that there was a ~~mistake~~ ~~misunderstanding~~ you and these parties.

A. I do not think that it was probable that there was any mistake whatever.

Q. Then I understand you to say that they could not have misunderstood what you said?

A. You may understand me to say that they could not have misunderstood that I agreed to give them a depot for any right of way, they could not have misunderstood that. What I said as to the basis of their testimony may have been the fact

ticular section was valued to me at \$8.00 and \$10.00, and some few lands at \$12.00 per acre, that was their own value upon their land, and was their own value upon the right of way with few exceptions that had been given to me up to the time that I had been dealing with these people. As we came east the right of way became more valuable.

(By Mr. Burges. So much of the witness' answer as refers to what somebody else said about their land, and how much other people valued their land is excepted to on the grounds that it is irrelevant~~xxxx~~, incompetent and immaterial.)

Cross examination by Mr. Burges.

Q. Mr. Findley, since you have been here you have read over the testimony of the different witnesses have you not, and have familiarized yourself with their testimony?

A. I have read over part of it, but I have not read over all of it.

Q. If I understand you clearly you stated that you did not know, and did not know, at the time you purchased these rights of way, where the depots would be located. Is this correct?

A. Yes, sir.

Q. Did I also understand you to say that as ^a general rule that all farmers~~xxxx~~ were exceedingly anxious that a depot should be near their farms?

A. I do not know that I said that all farmers were exceedingly anxious. As a rule all farmers would ask as to depots, and I would say that they would likely have a depot near their farm.

Q. Mr. Findley. Is it not a fact that a large percentage of them asked you about the depots when you spoke about running the railroad through their farm?

A. Yes, a large percentage.

Q. Did you ever tell any of the witnesses who testified in this case that you did not know where the depot would be located?

agree that in the event said party of the second part locates a depot at any point along said railway on their said premises they will give, grant and convey sufficient land for depot purposes, it being understood the location of said depot is optional with said party of the second part." The reason for this clause in our agreement was that it often happened when we were securing right of way that the landowner was anxious to get depot on his property, and he would say or propose that if a depot should be located on the right of way through his premises that in that event he would give the land for that purpose, and that often occurred, and inasmuch as we never knew where the depot would be located we would insert this proposition and write it down in the agreement, always with the proviso that the company would have the option of locating it on the premises, or elsewhere, as they thought best.

By agreement the original of this contract between Mr. S. T. Carr and the Tidewater Railway Co., or certified copy thereof shall be filed with the evidence in this case, marked exhibit 5.

Q. Now Mr. Findley, I believe Mr. J. H. English was another one who said he gave the right of way through his property to the company. What are the circumstances under which this was done as recalled by you?

A. Mr. English agreed to give his right of way to the company, and the reason for his doing so I have told you in my depositions heretofore, and was because there were two routes in view by the company, and he was anxious that the northern route be adopted, and all along the line the people of Southampton County and the two Mr. Carrs did it as an inducement to get the company to adopt the northern route. The right of way taken from Mr. English, while it was several acres, was through a tract of land that was no value, as was the character of the right of way through all that section of the country, and the land at that time in that par-

Ballard specifically says "That in the event t the said party of the second part (meaning the company) located a depot along said road on the premises of the said parties of the first part, that the said parties of the first part agree to give, grant and convey to said party of the second part the said strip of land as herein s et forth, and in the event the consideration will have been paid to them they, the said parties of the first part will agree to refund to the said party of the second part the consideration received of them for said right of way. It being understood, however, that the location of said depot on said premises is optional wity said party of the second part." This agreement speaks for itself all terms arranged between the company and Mr. Ballard for the right of way through his premises, and distinctly proves that what Mr. Ballard said with reference to my promise is incorrect.

(By Mr. Burges. I request ^{either} ~~that~~ the original ^{and} certified copy of this agreement be filed in this cause.)

(By Mr. Corbitt. I agree that ^{either} ~~from~~ the original ^{or} ~~copy~~ certified copy of the agreement with Mr. Jno. M. Ballard shall be filed with the papers in this case, and marked exhibit 4.)

Q. Mr. S. T. Carr in his testimony stated that you agreed with him that the company would give him a depot upon his premises if he would give right of way. State what you have to say with reference to the truthfulness of this agreement?

A. I made no such statement to Mr. Carr, and the agreement speaks for itself all that was said and agreed upon with reference to the depot being put upon his premises, or given as consideration for the right of way. The agreement between the company and Mr. Carr, which I obtained from Mr. Carr specifically states "The parties of the first part further

anybody along the line from West Virginia to Norfolk promised or tried in any way to influence a party to give right of way, or sell right of way, nor specified that he would get depot within certain limits, except in one instance in Southampton County where it specially stated in the agreement of several parties that in the event that depot would be located within certain stated limits they agreed to give the right of way.

Q. Mr. English, Mr. L. H. Carr and Mr. S. T. Carr testified that they gave their rights of way. Have you any explanation to make as to why they gave their rights of way?

A. Yes, sir. The reason for their giving their right of way has been heretofore explained by me wherein I spoke of the people of Southampton County giving right of way through their premises and some few of the ^{farmers} ~~premises~~ of Isle of Wight County giving right of way through their premises. At the time that I saw Mr. English and the two Mr. Carrs with reference to their rights of way the company had two routes in view to run the railroad, one through the property of the two Mr. Carrs and Mr. English, in the northern part of Southampton County, and the other right of way by Emporia and Franklin, going south of Isle of Wight County. The people along the two routes got up somewhat of a contest to get the company to adopt their route, and that was the reason that ~~it~~ Mr. English and the two Mr. Carrs had for giving their right of way.

Q. Mr. Findley, Mr. Jno. W. Ballard has testified ~~that~~ to the effect that you promised him a depot within a mile of his place, or on his place and that was a part of the consideration for the sale of the right of way. What have you to say with reference to the truthfulness of this statement?

A. I made no such promise. What I said to Mr. Ballard with reference to the right of way is embodied in the agreement with him. The agreement which I had with Mr. John M.

testified that I promised them a depot in consideration for their right of way, I do not attribute what they say wholly to Mr. Joyner's trying to get them to testify a certain ~~way~~ kind of testimony, but rather believe it was due to their bad memory. I have found it my experience quite often in dealing for the right of way along the line that the land owner would mistake what may have been said between us in a casual conversation for the terms of the agreement. I am sure it is true that I talked with some of these people about where the depot would be located, but in each instance what I would say would be in the course of casual conversation, and what I said was said in no way as an inducement to get them to enter into an agreement with the company.

Q. What statements did you make to them indicating that you knew or could know where the depot could be located?

A. I made no statement to them indicating that I knew or could know where the depots would be located, because I did not know where the depots would be located. I do remember, however, that in our casual conversation with the people of that community they figured upon the distance from a certain public road in Southampton County crosses the Franklin road, but if I said anything about the depot being located there it was only done in a casual conversation, and in no way as a part consideration for the right of way.

Q. Why was it that you ever talked about depots at all?

A. Every land owner through whose premises we passed, I suppose, would ask as to the location of depots, and owing to these questions would be the reason that we would ever talk about depots.

Q. And I understand you to say then that you simply talked in the most general way with these people about the possible location of depots?

A. Yes, sir. Whenever I talked with them it was in a most general way. I absolutely and positively in no instance with

news had reached me that Mr. Joyner was not going to execute the deed for the reason that he was ^{dissatisfied} ~~satisfied~~ with the consideration paid him for the right of way through his property, and dissatisfaction was brought about for the reason that the company had paid, as he believed, better prices to other parties.

(Mr. Burges. So much of the statement of the witness as refers to what somebody else told him that Mr. Joyner said is excepted to on the grounds that it is immaterial and improper.)

The witness is prepared to state that Mr. Joyner gave him this information.

Q. Mr. Findley, I now hand you the paper heretofore introduced in the evidence of Mr. J. E. T. Joyner known as exhibit No. 1. Please state what this paper is?

A. This is a written demand for a deed, which I partly read and gave to Mr. Joyner on the 8th day of November, 1905, which asked for a deed in compliance with agreement made with Mr. Joyner on the 16th day of May, 1905.

(By Mr. Corbitt- Counsel for complainant, waiving all exceptions that may or have been probably taken by the complainant to the testimony of R. J. Cox, J. H. Carr, S. J. Carr, J. H. English, proceeds to examine the witness as follows:

Q. There has been an attempt, Mr. Findley, to interduce evidence to the effect that you promised them that a depot should be located where the Franklin and Smithfield road crosses the railroad company's right of way, and secured agreements from by reason of this promise, although said witnesses generally testify that they did not require this to be embodied in the agreement executed by them. Please state whether this is true or not.

A. The best evidence of our agreement with the different parties is embodied in the respective agreements with them. As to my having promised to give any of them a depot, I made no such promise, or as for my agreeing with them and making it one of the considerations for their granting the right of way, there was no such agreement. The agreement will speak for itself. While these gentlemen have in a way

this right of way in accordance with the terms of agreement I had taken with him, but Mr. Hill returned without having obtained from Mr. Joyner and wife a deed in accordance with the agreement, but informed me that he had made a written acceptance of the agreement as provided for in the terms of the agreement. Subsequent to the time Mr. Hill returned from seeing Mr. Joyner I went to see Mr. Joyner myself, in hopes that I could persuade him, or get him to execute the deed in accordance with said agreement. I went to his place, and got there at noon time, and asked permission of him to get dinner at his place. He informed me that he could not give me dinner, and I at once explained to him my business in coming to see him, and sat down on his front porch and got out some papers and the deed I wanted him to execute. He left me and went back through his house and back to the kitchen in the rear of his house. After I had taken the paper from my grip I followed him to the kitchen where I found him standing in the doorway. I told him that I had there a deed that I had prepared in accordance with the agreement had with him and asked him to execute it, and told him that I was there ready to pay him for the right of way. No sooner had I told him that than he flew into a ^{great} rage, acting very much like a maniac, and demanded that I leave his premises and other things.

There was a chair at my right, and for self defense I grabbed it, but before leaving his premises I took a written demand which I had in my hands for the deed and read a part of same to him, showing him that we were willing to comply with the agreement, and asking that he give us a deed, or execute a deed in accordance with the agreement. After reading what I wanted to to him I did not venture to hand him the written demand, but pitched it at him and left his premises.

Mr. Joyner refused to execute a deed to me. Before coming to Mr. Joyner's place I had prepared all my papers in order that they might be executed or delivered upon short notice

also who gave the right of way to the railroad company. Their reason for doing it was to induce the company to adopt the northern route of the two routes then in view by it for its road. The people at Franklin and Emporia at that time were making a most desperate effort to get the company to adopt the southern route surveyed by it for its road, and the people at Southampton County had meetings at different places along the road, and agreed to make this, in order to offset the inducements offered by the people along the southern route, to give the right of way or so much of it as possible along the northern route, and all the right of way that was given to the company in Isle of Wight and Southampton county was an inducement to get the company to adopt the northern route.

(By Mr. Burges. The answer just above given is objected to on the grounds that it is incompetent and totally irrelevant to the issue involved in this case, and immaterial as it appears upon its face.)

Q. State who, if you know, made the demand of Mr. Joyner for a deed, in accordance with the terms of the agreement you have in your hands?

A. I made demand for the deed, both oral and written demand.

Q. Please state the circumstances?

A. About the time the agreement taken from Mr. Joyner was to come due I had my head quarters in Suffolk, Virginia, and has as a part of my work the seeing after the getting all of the deeds to the right of way along the line in accordance with agreements prior to that time taken. Prior to the date of the expiration of the agreement I sent Mr. Hill to deliver a written acceptance as provided for in the agreement, showing that the company would accept the agreement that I had made with Mr. Joyner for the right of way through his property. Mr. Hill returned without getting a deed. I mean to correct myself- in place of sending Mr. Hill to deliver written acceptance, I sent Mr. Hill to get deed for

as I remember it, but a straight line drawn across it, with the farm lands shown upon it, and if there was anything else I do not now recall it. Then I had another map which showed the two routes which the company had at that time in view, one coming by the way of Mr. Joyner's premises and the other going by the way of Franklin, but this map was simply a map showing the two different routes through the counties of Nansemond and Isle of Wight, Southampton and Sussex, and perhaps a part of Greenville and was a small map, and perhaps was the one that looked to him like the pipe stem that he mentioned.

Q. How were you employed by the railroad company?

A: How was I employed? I was employed upon a salary.

Q. What benefit could possibly have accrued to you for perpetrating a fraud upon Mr. Joyner, as claimed by him.?

A. Absolutely none in the world. There is no reason of any kind why I should have even have wanted to have gotten the right of way from Mr. Joyner for less than its value, and in fact I do not in any of my dealings for the company with anybody make any effort to get the right of way from them for less than the actual value of the property taken.

All the time I was working for the company I had the idea that if anybody should be favored, either the company or the farmer, and any advantage should be given to either as to the party who should be made whole, it should be the farmer. Furthermore we were under absolute instructions from head quarters to give a fair and proper compensation for the right of way taken by the company.

Q. What would you say about cases where parties gave rights of way to the company.?

A. Through Southampton County most of the land-owners through which the road passed gave the right of way to the railroad company, and there were two or three in Isle of Wight County

(By Mr. Burges. So much of ~~the~~ answer as attempts to give of his own knowledge the reasons why Mr. and Mrs. Joyner refused to sign the deed is excepted to on the grounds that it is manifestly improper.)

Q. Mr. Finley, that contract which you have in your hands states the consideration to be \$475.00. Do you recall how that consideration was arrived at?

A. The right of way through Mr. Joyner's premises takes, as I remember it, about 9.02 or 9.04 acres, I am not sure which and this information I had at the time, and we practically agreed upon a basis of \$50.00 per acre for the right of way through his premises, or \$450.00 for the right of way through his premises, but in fixing up the papers, it was unknown to us then when the company would begin construction through his property if they began construction, if it began construction before his crops were taken off his crops would be damaged, and if they began later subsequent to the time his crops would be moved, there would be no damage to the crop, so we then agreed to the \$25.00 additional to the sum of \$450.00, making total of \$475.00 for the right of way through his premises and, as I remember it in the agreement, the agreement provides that the consideration to be paid him includes damage to any crops taken in the right of way.

Q. Mr. Joyner has stated that you showed to him some kind of a map or plat when you stated to him that the railroad would go through his property on a level, I believe you stated that you had no paper showing that, and you made no such statement. Please state what paper you did have and probably showed it.

A. I had two maps with me, one of which he referred to, I suppose, was a map showing that center line of the right ~~of way~~ road as it touched the different farms. I had that map in order to enable us to ascertain the distance of the right of way through the different premises, or tract of land the road would touch, and that map did not contain anything,

That in so far as my making a representation as to agreeing for the company to build a depot on Mr. Tom Carr's land, at that time I had no knowledge of where Mr. Tom Carr's land was, nor any definite knowledge of the distance to Mr. Tom Carr's , and absolutely said or did nothing before Mr. or Mrs Joyner to in anyway influence them or induce them to agree to convey the right of way , or in believing that a depot would be given them at Mr. Tom Carr's place or any other place, and if anything was said with reference to any depot, it was in the way of a casual conversation. All along the line of the road when people would ask me in my opinion where the depot would be put, and if there was anything said with reference to depots being put at Carr's ~~place~~ crossing, it was said in the way of casual conversation, just as if two people who were not in the employ of the company were talking and discussed as to the probable location of a depot.

As to making agreement with reference to the fish pond, I have now no recollection of there being any fish pond on Mr. Joyner's land. I do, however, remember something of a little ravine just southeast of his house, which had a little pond of water, as I remember it now, in it, but as to its being a fish pond I have no remembrance of it, and as to my agreeing to give him a trestle or bridge would even have been too absurd for a sane man to have suggested. I absolutely said or did nothing in the way of promising a trestle or bridge to induce or influence Mr. Joyner to enter into this agreement. As to my agreeing to place the railroad through the premises of Mr. Joyner on a level with the surface of his land is equally as absurd for any sane man to suggest.

I had no plats or data with me showing cuts or fills through Mr. Joyner's premises, and as to my agreeing with him that the road should pass through his property on a level with the surface of his land is equally as impossible as what he says with reference to the depot and trestle.

A. Yes, sir.

Q. Did you also give Mrs. mJoyner the opportunity to read it?

A. I did.

QL Mr. Joyner has testified that the signature of himself and his wife to this paper was gotten by fraud on your part in that you misread the paper. Mr. Joyner stating that you failed to read to him anything in the paper about slopes, cuts, fills, drainage or borrow pits, and that you read to him as if there was in that paper an agreement on the part of the railroad company that where the railroad crosses the fish pond of Mr. Joyner that a trestle or bridge would be built, which would rest on piling so as not to interfere with the water in the pond, and so that Mr. Joyner might pass under the railroad in his boat; that where the railroad crosses the county (the ~~Sandyford~~ and Franklin Road) a depot would be built, for loading and unloading freight on the land of Tom Carr, and that the railroad would be built through his land on a level with the land. Please state whether or not you perpetrated any fraud on Mr. Joyner or Mrs. Joyner, and whether or not you failed to read to him anything that was in the paper, and whether or not you read to him as if there were written in the paper these various things I have heretofore enumerated?

A. All that Mr. and Mrs. Joyner say that I failed to read in the paper, which was in the agreement, and all of which they say I did read in the agreement which was not in the agreement is an absolute falsehood, and is a make-shift scheme of theirs to get out of executing the deed in accordance with the agreement, and there is not one iota of truth in what they say with reference to this. I absolutely read everything in the agreement that was in the agreement, and read nothing in the agreement which was not in the agreement.

A. Yes, sir. It embodies in full the agreement had with Mr. Joyner as to all the terms for the right of way through his property.

Q. And Mr. Joyner fully understood all the terms of that paper before signing?

A. Yes, sir. We did. In the morning of May 16th, I went with Mr. Joyner over the right of way through his property. We viewed it from one end of his place to the other, and I do not know what time we got through going over the right of way, but we were unable to reach an agreement before noon, and in the afternoon we both went east of his premises, and I took an agreement with two or three parties who lived near his premises, Mr. Fowler, I believe, and Mr. English. After getting agreements from them, along about 4 or 5 o'clock, we returned to his premises, after we returned we came to an agreement for the right of way through his property, the terms of which agreement are embodied in ~~writing~~ the written agreement here in your possession, which has been filed in the papers in this case.

Q. Why are you satisfied that Mr. Joyner fully understood all the terms of that paper before signing?

A. For the reason that we went over the right of way and we discussed the terms of the agreement, and after preparing I read it to him, but it is usually my custom in preparing agreements that most of it is printed, some of which is written with pen, I usually do the writing with the pen and after writing it, it was always my custom to read the agreement, and pass it over to the parties ~~if they could read it~~ for them to read, or to modify if it becomes necessary. I either read it to Mr. Joyner, or he read it himself. I feel positive of the fact that I read it, and it is my impression that he read it himself, although I would not say positive as to that.

Q. I understood you to say positively, however, that you gave him the opportunity to read it?

2 parts, and I was what was known to my Chief as Division Right of Way Agent. Some of my work consisted of being in the office, and some of going into the field and acquiring rights of way.

Q. You stated that you went to see Mr. Joyner with reference to securing from him for the railroad company right of way through his property. Please state whether or not you were successful in securing this optional contract for right of way?

A. Yes, sir. I secured from him agreement for the right of way through his property.

Q. What became of that contract?

A. I sent the contract in to head-quarters, and afterwards the contract was returned to me to see that a deed was secured in accordance with the contract, and then afterwards, after I had failed to get deed in accordance with the contract, I returned the contract to Mr. Kee at Norfolk, who is in charge of the right of way department.

Q. Mr. Bidley, I now show you a paper which has been introduced heretofore in the evidence as exhibit No. 3. Please state whether or not you have ever seen that paper, and what that paper is?

A. Yes, sir. I have seen that paper, it is the agreement that I had with Mr. Joyner, in which he agreed to convey to the Tidewater Ry. Co. the right of way through his farm.

Q. You say that paper contains the agreement with Mr. Joyner. Does that contain the entire agreement?

A. This paper contains absolutely the entire agreement had with Mr. Joyner and his wife for the right of way through their property.

Q. Is there enclosed in that paper more than they agreed upon?

A. More than what they agreed upon. No, sir.

Q. In other words, I understand you to say that that paper embodies in full the agreement made by Mr. Joyner with the railway company, and contains nothing else than the agreement?

Mr. A. J. Findley, being first duly sworn, answers and says as follows:

Examined by Mr. Corbitt.

Q. Please give your name, age, residence and occupation?

A. A. J. Findley, age 35 years, my residence is Clarksburg, West Virginia, my occupation that of a lawyer.

Q. Are you in any way at the present time connected with the Virginian Ry. Co., formerly known as the Tidewater Ry. Co.?

A. I am not.

Q. How long has it been since you severed your connection with the said company?

A. The fall of 1906.

Q. Do you know Mr. J. E. T. Joyner?

A. I do.

Q. When, where and under what circumstances did you first meet him?

A. On the 15th day of May, 1904, I believe, I went to the home of Mr. Joyner in the afternoon to secure from him the right of way through his premises for the Tidewater Ry. Co. The engineers were boarding at his place, and I spent some time, I think, and he was not at home. I went beyond his place and arranged for the right of way with some other parties, and came back to his place late that afternoon, and owing to the fact that the engineers were boarding at his place I wanted to see them, and I got permission to stay all night at his place, which permission he gave me.

Q. You said you went to his house to get a right of way for the Tidewater Ry. Co.

A. Yes, sir.

Q. Were you employed at that time by the railway company?

A. I was employed at that time by the railway company.

Q. Please state in what capacity?

A. I was employed at that time by the company in the capacity of a right of way agent. The territory was divided in

this instance is 20 feet to the inch, or one inch equals 20 feet.

Q. Mr. Dalton, Please state distance from the point marked L. to the point marked W. on this profile?

A. 2300 feet.

Q. What is in that distance the deepest cut, and the highest fill?

A/ The deepest cut Between L and W is approximately 4 feet on the center line, and there is only one fill of about 1 foot in depth, and ten feet long on the center line.

And further this deponent saith not.

balance of his farm as indicated by this plat, with practically no cuts or fills.

(Excepted to by Mr. Corbitt on the grounds that this witness should not be called upon to decide as an expert as to what some ordinary man, who is not an expert, might believe.)

(By Mr. Burges. In this opinion Counsel for defendant ~~agrees~~ agrees, and moves to strike out the testimony given by the witness in answering all similar questions on leading examination.)

Re-direct examination by Mr. Corbitt.

Q. Mr. Dalton, say whether or not the cuts and fills from the point L/ to the point W are light or heavy?

A. They are extremely light.

Q. As an engineer and person familiar with work of this kind is it often the case that you would find a distance of that kind that you would have fewer cuts or fills?

A. I do not often find such light grading.

~~XXXXXXXXXX~~

Cross examination by Mr. Burges.

Q. Mr. Dalton, there is quite a fill through the fish pond, is there not, and if you know how deep it is will you please give its depth?

A. There is a fill of approximately 15 feet at the point marked X.

Q. Re direct examination by Mr. Corbitt.

Q. Mr. Dalton, please explain what is the parallel scale on this map.

A. The parallel is the scale that runs with the line across the property from left to right.

Q. What is the scale used in making this profile?

A. 400 feet to the inch, or one inch equals 400 feet.

Q. That the vertical scale used in making this profile, by which you determine the cuts and fills?

A. The vertical scale is the scale to determine heights and depths of the fills and cuts. The horizontal scale in

Q. You heard Mr. Joyner's testimony, did you not?

A. Of to-day.

Q. If so, did you not hear him say that he understood that there was to be a tressie across the fish pond?

A. I heard him say so.

Q. Mr. Dalton, assuming that that is the fish pond, will you draw a line with a pencil at the point about where Mr. Joyner's yard or lane crosses this line?

(Mr. Corbitt objects to the question as the map is not introduced to show and does not show Mr. Joyner's lane.)

A/ I cannot do so from memory.

Q. Anout how far is Mr. Joyner's lane from the fish pond?

A. I do not know.

Q. About where is the Eastern boundary of Mr. Joyner's farm on this palt?

A. Witness here markes "E".

Q. Will you now please mark the Western boundary with the leter "W".

A. Witnes here markes "W".

Q. Now Mr. Dalton, ~~unfamiliar with grades~~ Is it not probable that one unfamiliar with grades would not believe, if told, that a trestle was to be putover the fish pond, and that there would be put little cuts and fills o ver the land to the Western boundary of the farm

(Counsel for complainant objects for it has not been proven that anyone was told that there would be a trestle over this fish pond.)

A. I do not understand exactly, I would say from this point which I mark "I." to point "W" that an unexperienced man might think there would be very little cutting and filling.

Q. Then, if we assume that it is true (I do not ask you to say that it is true) that Mr. Findley told Mr. Joyner that he would construct a trestle over the fish pond, that Mr. Joyner, assuming that he is unexperienced in grades, might believe that a railroad track could be constructed across the

Q. Does that profile show cuts and fills?

A. It does.

Q. Please state what the yellow line is intended to represent?

A. The yellow line is a shading of the original ground line before construction began.

Q. What does the line intersection that marked 2 represent?

A. That is the sub-grade line.

Q. Mr. Joyner has stated that Mr. A. J. Findley has told him that the railroad would go through his property on a level, and that there would be no cuts and no fills. If the original ground is as indicated on this plat, could it, in your judgment, have been possible for anyone thinking that a railroad could be built across it without cuts and fills.

(By Mr. Burgess. Question objected to as incompetent, relevant and immaterial, and for the further reason that it calls for the opinion of a witness who is an expert as to the judgment of a man who has no peculiar knowledge of the methods of constructing railroads, and requesting a witness, who is an expert, to express his opinion of a conclusion reached by one who has no such knowledge.)

Question is withdrawn.

Q. Please state, Mr. Dalton, about what are the deepest cuts and deepest fills as shown on that profile.

A. The deepest cut is 4 feet, and the deepest fill is about 15 feet.

Cross-examination by Mr. Burges.

Q. Mr. Dalton, what is this point here which is marked X, it being near line No. 2460?

A. I would like to consult the map with reference to the profile if it is at hand.

Q. Do I understand you to say you do not know what this is without further maps?

A. I simply asked for the map to check myself on that, but I believe that point is what is termed on the map as Fish pond.

perty in the performance of its public duties is a matter in which the public is deeply and seriously interested?

A. Yes, sir.

(By Mr. Burges Question and answer objected to on the grounds that it asks and receives the opinion of a witness.)

Q. From testimony, on the part of J. E. T. Joyner, the defendant, to the effect that, in order to admit of any view, through the farm claimed to be owned by him, the right of way would have to be shifted in a southerly direction of approximately one mile, and in a northerly direction approximately three quarters of a mile - state whether or not it would be practicable or possible to change this location?

A. By shifting the line North or South the distance stated would necessitate the changing of line several miles either side of this property, and would interfere seriously with the maximum grade through this place, which is a very low grade at present.

Q. I understand you to say then that you already have through this place your maximum grade, and that it would ^{be} practically impossible to shift this line so as not to interfere with this maximum grade?

A. Yes, sir.

Q. I understood you to say, Mr. Dalton, that the laying of the track through this property was completed ⁱⁿ sometime ~~in~~ May, 1906?

A. May 23, 1906.

Q. About what time did the company go upon the property and ~~begin~~ the work for the purpose of laying their track?

A. The work was begun in August, 1905.

Q. Mr. Dalton, I now show you the exhibit heretofore introduced, known ~~as complainant's exhibit No. 3~~ ^{as complainant's exhibit No. 3.} Please explain what that exhibit is.

A. The exhibit I have in hand is a profile of the J. E. T. Joyner property, showing the grade as now constructed.

Q. Can you, by reason of your official capacity, say whether or not the railroad is now being operated through this property?

A. I can.

Q. Can you say, Mr. Dalton, about ~~how long~~ what time the company finished the laying of tracks through this property of Mr. J. E. T. Joyner?

A. The track was completed over this property May 23, 1906.

Q. When was it that the railroad company began operating ~~in~~ trains carrying passengers and freight?

A. It was open for the transportation of passengers July 2nd, 1906, or that was the time that the first schedule was issued, previous to that time, possibly a month previous, they carried passengers over this property.

Q. Can you state about what time this company began carrying express?

A. August 16th, 1907.

Q. Is this railroad still in operation, carrying express, passengers and freight, and has it been in operation since the dates you named?

A. It has.

Q. This railroad company has since the dates you have given been acknowledged as a public carrier, carrying freight, passengers and express over its right of way through this property of Mr. Joyner's?

A. Yes.

Q. Does it also carry United States mail?

A. It does.

Q. Please state how, ever since this railroad has been in operation, essential it has been for the company for the complete performance of the company's duties required of it mentioned by to have possession of the right of way in question?

A. It has been absolutely necessary.

Q. I judge then that the right to operate through this pro-

Q. And if the optional agreement was void for any reason that ^{you} had ~~no~~ right to go upon the said land?

A. We considered the optional agreement a binding and absolute contract, because it has been accepted by us and deed demanded as provided by the terms of the contract, and the contract further and in specific terms gave us the right to go upon the lands at any time in completing the construction of our road.

Q. You have not answered my question. I asked if the agreement was void for any reason would you have any right to go upon the land.

A. We possessed that right until the agreement was completed.

Q. Do you mean to say that if the contract was absolutely void that it was a binding contract?

(By Mr. Corbitt. This question objected to on the ~~that~~ grounds that it has not been shown by any evidence that this contract was absolutely void.)

A. I do.

Q. Mr. Kee, you also knew that Mr. Joyner protested against the use of this land by the company, did you not?

A. I did not know that Mr. Joyner entered any protest against the use of the land.

Q. But you did know that he declined to give a deed?

A: Yes, sir.

Mr. James A. Dalton, being first duly sworn, deposes and saith as follows:

Examined by Mr. Corbitt.

Q. State your name, age, residence and occupation?

A. James A. Dalton, age 33 years, residence Norfolk, Va., occupation Assistant Engineer Tidewater Railway Co.

Q. As Assistant Engineer of this company are you familiar with the right of way through the property of Mr. J. E.

T. Joyner?

A. Yes, sir.

A. Mr. Findley entered the employ of the Tidewater Ry. Co. in about 1904, in the capacity of right of way agent, and remained in our employ in my department until about the fall of 1906.

Q. How did you regard him as a right of way man?

(By Mr. Burges. Question objected to on the grounds that it calls for personal views of the witness.)

A. I regarded Mr. Findley as one of the best men I had on my force, which at times was quite large. I gave him charge of a part of the agents, whose work he supervised, he being one of two Division Right of Way Agents.

Q. Was Mr. Findley paid a salary?

A. He was.

Q. It has been charged by the defendant in this suit that Mr. A. J. Findley perpetrated a fraud upon him in securing the signing of this contract that was just shown you, known as complainants exhibit No. 2. Please state what reason, if any, you know Mr. Findley could have had for perpetrating any such fraud upon defendant.

(By Mr. Burges. Question objected to for the reason shown)

A. Mr. Findley could have had no reason, because there could have been no personal gain to him, and he would have been, I consider, violating instructions received from our department to have perpetrated fraud in securing right of way contracts.

Q. I understand then that Mr. Findley was employed by the company through you upon a salary, and he could in no wise benefited by perpetrating fraud upon defendant as claimed by the defendant, he could neither have benefited himself nor the railroad company in so doing.

Cross examination by Mr. Burges.

Q. When the company took possession of this land you knew that you had no deed, did you not?

A. Yes, sir.

~~Q. And that the objection is based on the reason that you~~

in due course by the people whom you employ, that Mr. Joyner has refused to give the deed, in accordance with the contract, and accept the money?

(By Mr. Burges. Question objected to for the reason that it manifestly calls for hearsay testimony.)

A. Yes sir. In the course of my duties I gave such directions to my men, and had reports from them that my directions had been carried out. In the matter of Mr. Joyner refusal is a matter of record in my office.

Q. How, Mr. Kee, are you able to say that Mr. Joyner ~~has~~ has refused to give the deed in accordance with the contract, and refused to accept the money?

A. In answering that question it would be necessary to get an idea of our system. Our optional contracts were taken up on certain stated periods, and record of these options are kept in my office, and before the expiration of the options descriptions of the land required for rights of way in each particular case are sent to my men in the field, with instructions to the men to demand a receipt and receive deeds for the land required, and in the event the deed was refused to make a written demand and serve written notice of our acceptance of the terms of each contract. That this was done in the case of Mr. Joyner is shown by written notice returned to my office by right of way man, and by his report to me.

(By Mr. Burges. Answer objected to for the same reason.)

Q. Does your record also show the refusal on the part of Mr. Joyner?

A. The carbon on file in my office is a part of the record.

Q. Do you know Mr. A. J. Findley?

A. I do.

Q. When did you know him, and how long have you known him?

A. I think I met Mr. Findley first in 1902, or 1903.

Q. What connection, if any, did he have with the Tidewater Railway Co. at any time since it has been in existence?

far as I am advised, they had no trouble in taking possession, and did so.

(By Mr. Burgess. Answer objected to, inasmuch as witness cannot say except from his own information.)

Q. I understand you to say then that possession was taken by the company in pursuance of the agreement which you have just seen, marked exhibit No. 2.

A. Yes, sir.

Q. And solely by that agreement?

A. Yes, sir.

Q. Have you, as representative of the company, been always ready and willing, and are you now ready and willing to comply with the terms of that agreement and pay ~~the~~ Mr. J. E. T. Joyner the amount stipulated therein, upon his complying with the terms stated, and giving deed for the right of way?

A. I have always been ready and willing, and am now ready and willing to pay Mr. Joyner the amount, and ~~accepting~~ from him deed.

Q. Why has not this payment been made?

(Question objected to by Mr. Burges, as the records in this case is the best evidence.)

A. Under my direction demand has been made of Mr. Joyner for a deed, under the terms of the contract. Mr. Joyner ~~refuses~~ to make deed, and refuses to accept the money.

(By Mr. Burges. So much of the answer of the witness as has been acquired by hear say testimony is objected to)

Q. It is your duty, is it not Mr. Kee, to know about these matters, and to have reports duly made to you?

A. It was and is my duty to know, and my men report to me fully such matters.

(Same objection.)

Q. In the course of the carrying out of your duties you have directed that this deed be demanded, in accordance with the contract, and the money paid, and it has been reported to you

A. Yes sir.

Q. When?

A. To-day.

Q. Had you ever seen it before to-day?

A. No sir.

And further this deponent saith not.

either at Isle of Wight Court House or Carrsville that at the time you took the acknowledgment you told Mr. and Mrs Joyner that they better know what they were signing that they would get only what the contract called for?

A. I don't think so. I think I told James E. Avis on one occasion that they need not expect more than was in the contract. He had some dispute about his right-of-way.

Q. Do you recall saying at either one place or the other that if you did not tell Mr. Joyner it was contrary to your custom as you generally told people that they could only get what the contract called for.

A. No I don't recall that conversation. I ~~have~~ ^{said in taking} I think/~~taken~~ contract acknowledgments when I thought that they were people who did not know what they were signing. ~~That~~ when there were two contracts a written one and a verbal one that the written one would stand while the verbal one would fall.

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A. I remember very well that we had a conversation at Isle of Wight Court House in regard to this paper and I think I remember what I said.

Q. But the point that I am trying to direct your attention to is this don't you remember any conversation we had either in Carrsville or Isle of Wight when I asked you about signing this contract?

A. I don't think I asked them that for when I asked them if they knew what they were signing they said Mr. Finley read it to them.

Q. Have you ever seen the testimony of Mr. Wm. H. Hill in this case?

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Q. Did you say anything else to them?

A. I don't remember saying anything else about the paper.

Q. Did you tell them anything about the effect of the contract?

A. No sir. No more than that it was for a right-of-way across their land.

Q. Did you tell them that they better know what it was because they would only get what it called for and nothing else.

A. No sir.

Q. Mr. Johnson, to refresh your memory, did you not tell Mr. and Mrs. Joyner something like this: that they had better know what they were signing because they would only get what the paper called for and nothing else?

A. I don't think I told them that.

Q. Is it not customary with you in getting people to make acknowledgments when you have not seen the paper drawn to say anything of that kind?

A. No sir not usually. My idea is this that they know that they have signed. I have taken a great many acknowledgments to deeds and contracts and never asked them if they knew what was in the contract, simply asking them if they acknowledged that to be their signatures.

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Cross-examined by Mr. Corbitt.

Q. Mr. Johnson why do you remember all these details so well?

A. I remember them because I was there and heard them.

Q. How long ago has that been?

A. In 1905, I think.

Q. Nothing specially caused you ~~you~~ to remember this.

A. No sir.

Q. You refer here to a contract that Mr. Joyner said he signed and that the deed was not in accordance with it. What contract was it?

A. An option contract for a right-of-way across the land of Mr. Joyner for the Railway company.

Q. Do you know anything about that contract?

A. I took Mr. and Mrs. Joyner's acknowledgment to that contract.

Q. Did you read it to them?

A. No sir.

Q. What did you tell them if anything about it?

A. When I went up there I told Mr. Joyner "I had come there to get them to sign an option contract". I asked them if they knew what it was. I said "it is an option contract for a right-of-way across your land". Mr. Joyner said "all right". I said "it was sent to me by some one, I don't

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Q. Did Mr. Joyner say that that was in the option?

A. He said Mr. Finley read it to him that way. Mr. Hill said "why Mr. Joyner I reckon you must be mistaken. I don't see why Mr. Finley should have read it that way when it was not in the contract." Mr. Joyner said "I did not read it myself he told me it was in there. He said 'I reckon I can read it better than you can' and he read it to me, but not the way that you now read it. I refuse to sign that deed!" We sat there and Mr. Joyner and Mr. Hill discussed the matter for sometime. Mr. Hill tried to prevail on Mr. Joyner to sign the deed saying that it would be better for him. Mr. Joyner told him that whenever the deed was prepared in accordance with the way it was read to him he would

sign the deed. Will you as well as you can tell everything that took place on that occasion and what conversation or conversations took place between Mr. Hill and Mr. and Mrs. Joyner?

(Counsel for plaintiffs objects to the testimony of this witness if it is introduced for the purpose of impeaching Mr. Wm. H. Hill as sufficient notice of such impeachment was not given the witness, Mr. Hill, and it is understood that this objection is entered to all similar questions and answers having this effect.)

A. Mr. Hill and I drove up to Mr. Joyner's house about twelve o'clock in a buggy. Mr. Joyner came out and I gave him an introduction to Mr. Hill. Either Mr. Hill or myself said, "I just don't recall which one, we come here to get the deed from you to the Tidewater Railway Company fixed up." Mr. Joyner said, "It is about dinner time get down and let me feed you". We got out of the buggy and unhitched the horse. Mr. Joyner sent the horse to be put up by a boy. Mr. Hill and myself went with Mr. Joyner in the house and went out to the dining room, which is off from the dwelling house. We ate dinner, came back through the dwelling out to the front porch.

Q. Was anything said about the deed while at dinner?

A. No sir. After we came out on the front porch we took a seat. Mr. Joyner and I sat on a bench and Mr. Hill on a chair close to us. Mrs. Joyner came and took a chair and put it near the door way and sat down. We sat there and talked a while. Mr. Hill then remarked to Mr. Joyner

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J. A. Johnson, being duly sworn, deposes and says as follows:

Examined by Mr. Burges.

Q. Please state your name, age, residence and occupation?

A. J. A. Johnson, Isle of Wight, forty-two, Justice of the Peace and farmer.

Q. As such Justice of the Peace did you take any acknowledgments for the Tidewater Railway Company?

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Q. Did you go to the house of Mr. J. E. T. Joyner with one Mr. Wm. H. Hill; an attorney representing the Tidewater Railway Company, to take acknowledgments to a deed to be executed by Mr. and Mrs. Joyner, conveying a right-of-way to the Railway Company?

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Argentine Railway Co.
B. De Witt
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Q. Mr. Hill has testified that on the day that you and he went to Mr. Joyner's house that Mr. Joyner refused to

Isle of Wight C. H., Va. Sept. 13th. 1907

Mr. J.U. Burges, Attorney,

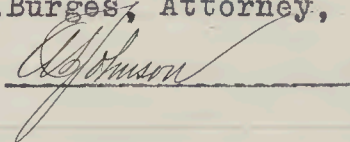
TO A. S. JOHNSON, DR.

CLERK ISLE OF WIGHT COUNTY CIRCUIT COURT.

1907.

Sept. 13th.	To writ tax in Joyner vs. Tidewater Ry Co.	1 00
-------------	--	------

Paid by J.U. Burges, Attorney,


C.C.

Isle of Wight C. H., Va.

Sept 28

1907

Mr. J. W. Burgess, Attorney

TO A. S. JOHNSON, DR.

CLERK ISLE OF WIGHT COUNTY CIRCUIT COURT.

1907

Sept 28

To Drift tax Jorney vs The Virginian
Ry Co & Tidewater Ry Co

700

See if you have ever paid this
or any part. I do not remember

Isle of Wight C. H., Va.

Sept 30th 1907

Mr J. U. Burge, Attorney

TO A. S. JOHNSON, DR.

CLERK ISLE OF WIGHT COUNTY CIRCUIT COURT.

1907

Sept	13	Do erris tax James vs Ry Co	2 00	
Paid 9/30/1907			You can pay more 50¢ when you come over	



New York, N.Y. Jan 4th 1909.

Suit of E. H. Jones v. Lidewater & Co., Es.
(Doll of Wright County Circuit Court)

To (Miss) E. H. Jordan DR.
New York, N.Y.

TERMS,

To taking and transcribing
depositions in above case
\$2 pages at 40 cents.

\$32 80

allow for shipping
the coils P.D.W.

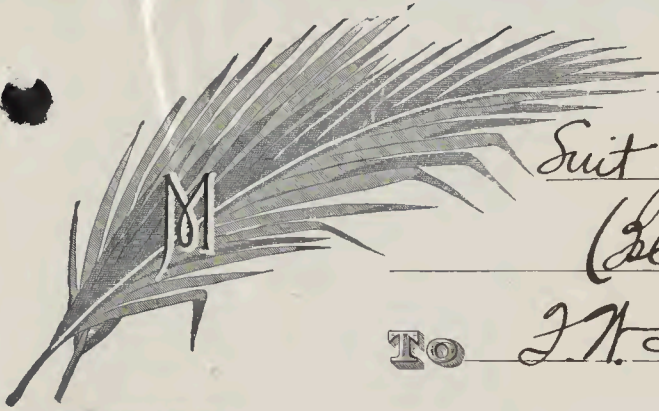
J. U. BURGESS,
ATTORNEY AT LAW,
COMMONWEALTH'S ATTORNEY FOR NANSEMOND COUNTY
SUFFOLK, VA.

January 4th, 1909.

Suit of J. H. T. Joyner vs. Tidewater Ry. Co.,
Isle of Wight Circuit Court.
To Ruth W. Marshall.

For taking and transcribing depositions in above
case, 56 pages at 40 cents per page.....\$22.40

*Allow 1/2 of fee in
the capst. of J. H. T. Joyner*



Suffolk Va Jan 4 1909

Suit of E. J. Joyner vs Tidewater Ry Co.
(City of Night County, Circuit Court)

To J. H. Lloyd DR.

Suffolk Va

TERMS

To taking and transcribing
depositions in above case
30 pages @ 40¢

\$ 12.00

Allow 1/2 for
in the case
A. J. G.

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

Virginian Railway Company, -----Complainant,
v.

J. E. T. Boyner, -----Defendant.

I, (Miss) E. W. Jordan, hereby certify as a part of the record in the above case that when the testimony of witnesses John Kee, James A. Dalton, A. J. Findley and Wm. H. Hill were taken by me at Suffolk, Virginia, they entered their attendance as witnesses in accordance with which the mileage travelled in each case is as follows:

1.8 4

John Kee, from Norfolk, Va., to Suffolk, Va., and return 46 miles,

1.8 2

James A. Dalton, from Norfolk, Va., to Suffolk, Va., and return 46 miles,

37.68

A. J. Findley, from Clarksburg, W. Va., to Suffolk, Va., and return 942 miles,

6.16

Wm. H. Hill, from Lawrenceville, Va., to Suffolk, Va., and return 154 miles.

E. W. Jordan

2

The Virginian Ry. Co., etc.

vs) Chancery

J. E. T. Joyner.

Secur

December 2^d 1907

To be entered

R. E. Boykin

C. O. B. No. 6. J. 524

VIRGINIA IN THE CIRCUIT OF ISLE OF WIGHT

COUNTY, ~~OCTOBER~~ ^{December} 2^d, 1907.

The Virginian Railway Company, a corporation,
formerly known as the Tidewater Railway Company---Complainant.

v.

J. E. T. Joyner-----Defendant.

On motion of the complainant an injunction is granted it in accordance with the prayers of the said bill, enjoining and restraining J. E. T. Joyner, his agents and attorneys from prosecuting the said action of ejectment recently brought in the Circuit Court of Isle of Wight County by the said J. E. T. Joyner against The Virginian Railway Company and the Tidewater Railway Company until the further order of this Court.

But before said complainant shall have the benefit of this order it or someone for it shall enter into bond before the Clerk of the Circuit Court of Isle of Wight County in the penalty of \$ 500⁰⁰, conditioned to pay all such costs as may be awarded against the complainant and all such damages as may be incurred in case the injunction may be dissolved.

Virginia Railway Company,
Incorporated, a corporation.

vs.

J. E. T. Joyner.

*The consent to the within
deed -
Virginia Railway Company
By James H. Corbett, its attorney.*

*J. E. T. Joyner by
J. H. Burgh
his attorney -*

Enter March 2 - 4, 1908.

R. E. Boykin

Entered in Chancery Order

Book No. 6, page 543.

Virginian Railway Company, Incorporated,
a corporation.....Complainant.

vs.

J. E. T. Joyner.....Defendant.

IN THE CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT.

By consent of all parties, entered of record in open court, it is ordered that this cause be submitted to the Judge of this court for such decision and decree, judgment or order, therein in vacation, as may be made in term.

To the Clerk of the Circuit
Court of Isle of Wight County.

Tidewater Railway Company, party of the second part, copy of which said contract is filed with the bill of complainant as "Exhibit A", and is of the opinion that the said contract is good, valid and binding, and the Court doth so decree. And it is further adjudged, ordered and decreed that the injunction awarded complainant in this cause on the _____ day of _____, 190 , to enjoin and restrain J. E. T. Joyner, his agents and attorneys from prosecuting the action of ejectment brought in the Circuit Court of Isle of Wight County by the said J. E. T. Joyner against The Virginian Railway Company, and the Tidewater Railway Company be made perpetual, that the cross-bill of the defendant be dismissed and that the defendant do pay to the complainant its costs by it about its suit in this behalf expended.

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

Virginian Railway Company -----complainant,

v.

J. E. T. Joyner -----defendant.

This day the answer of the defendant prayed by him to be treated as a cross-bill, and the demurrer of the complainant to the said answer treated as a cross-bill by leave of Court are duly filed; and thereupon the demurrer of said complainant being argued it is the opinion of the Court that the said demurrer is bad: Therefore it is decreed and ordered that the said demurrer be overruled and leave be granted the complainant to file its answer to said cross-bill; and thereupon the complainant by leave of Court filed exceptions to the said answer of the defendant, which said exceptions being argued, it is ~~is~~ the opinion of the Court that the said exceptions are not well taken: Therefore it is decreed and ordered that the said exceptions be overruled; and thereupon the complainant by leave of Court filed its answer to the said answer treated as a cross-bill of the defendant and its general replication to said answer of defendant, to which said answer of complainant the defendant replied generally; thereupon the cause came on to be heard upon the bill of the complainant, the answer of the defendant prayed to be treated as a cross-bill, the answer of the complainant to the said answer of the defendant prayed to be treated as a cross-bill, the replications to said answers, the exhibits and examinations of witnesses and was argued by counsel.

On consideration whereof the Court is of the opinion that there was no fraud in the procuring of the contract dated the 16th day of May, 1905, between James E. T. Joyner and Laura V. Joyner, his wife, parties of the first part and the

Virginia Railway Co.

to.

J.E. D. Joze

Freight

1909.
June 10.
Enter this.
P.D.

Joyner, which said main line of The Virginian Railway is described as follows:

Entering the said premises of the said J. E. T. Joyner where the same adjoins the lands of L. H. Carr at station 2449 + 00 of the said main line, thence on a tangent S. 85° 16' W for a distance of 4000 feet to station 2489 + 00 of the said main line, in the boundary line between the lands of J. E. T. Joyner and those of Joseph Johnson; said strip or parcel of land containing $9\frac{18}{100}$ acres more or less; and that upon the execution and delivery of said deed, the said Railway Company shall pay to the said J. E. T. Joyner the sum of \$475.00, and should the said J. E. T. Joyner and Laura V. Joyner, his wife, fail or refuse to execute and deliver the deed aforesaid within sixty days from the date of the entry hereof, then upon the tender of the said sum of \$475.00 and within the sixty days aforesaid, the Court doth appoint H. Stuart Lewis special commissioner, who shall execute and deliver to ^{The Virginian Railway Company} ~~the defendant~~, a good and sufficient deed, with covenant of special warranty, conveying the said property to ^{The Virginian Railway Company} ~~the defendant~~, and should the ~~complainants~~ ^{complainants} refuse to accept the said sum of \$475.00 then the said ~~complainant~~ ^{complainant} shall deposit the said sum to the credit of the complainants in the Bank of Suffolk, Suffolk, Virginia. *And nothing*

And the said ~~complainants~~ ^{complainants} having expressed their intention to appeal from this decree, it is ordered that the execution hereof be suspended for a period of sixty days.

And nothing further necessary to be done in this case if the same be removed from the books.

Tidewater Railway Company, party of the second part, copy of which said contract is filed with the bill of complainant as "Exhibit A", and is of the opinion that the said contract is good, valid and binding, and the Court doth so decree. And it is further adjudged, ordered and decreed that the injunction awarded complainant in this cause on the 2 day of December, 1907, to enjoin and restrain J. E. T. Joyner, his agents and attorneys, from prosecuting the action of ejectment brought in the Circuit Court of Isle of Wight County, by the said J. E. T. Joyner against The Virginian Railway Company and the Tidewater Railway Company, be made perpetual, that the cross-bill of the defendant be dismissed and that the defendant do pay to the complainant its costs by it about its suit in this behalf expended.

And the Court doth further adjudge, order and decree that the said J. E. T. Joyner and Laura V. Joyner, his wife, ~~upon the payment to them by the defendant of the sum of \$475.00,~~ do execute and deliver to The Virginian Railway Company an apt and proper deed in accordance with the contract hereinbefore mentioned for the land and other rights therein described, the land for the right of way being more fully described as follows:

A certain strip or parcel of land lying and being in Windsor Magisterial District of Isle of Wight County, Virginia, near Blackwater River, and described as follows:

A strip of land one hundred (100) feet in width, that is to say fifty (50) feet on each side of the main line of The Virginian Railway as now constructed: and being all the lands of the said J. E. T. Joyner that may lie within a strip one hundred (100) feet wide and included between two lines, one on each side of the said main line of the said Railway and parallel to and distant fifty (50) feet therefrom, said main line, parallel lines and the strip included, extending entirely through and across the lands of the said J. E. T.

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

Virginian Railway Company -----complainant,

v.

J. E. T. Joyner -----defendant.

This day the answer of the defendant prayed by him to be treated as a cross-bill, and the demurrer of the complainant to the said answer, treated as a cross-bill, by leave of Court was duly filed; and thereupon the demurrer of said complainant being argued it is ~~is~~ the opinion of the Court that the said demurrer (is bad: Therefore it is decreed and ordered that the said demurrer) be overruled, and leave be granted the complainant to file its answer to said cross-bill; and thereupon the complainant, by leave of Court, filed exceptions to the said answer of the defendant, which said exceptions being argued, it is the opinion of the Court that the said exceptions are not well taken: Therefore it is decreed and ordered that the said exceptions be overruled; and thereupon the complainant, by leave of Court, filed its answer to the said answer, treated as a cross-bill, of the defendant, and its general replication to said answer of defendant, to which said answer of complainant the defendant replied generally; thereupon the cause came on to be heard upon the bill of the complainant, the answer of the defendant prayed to be treated as a cross-bill, the answer of the complainant to the said answer of the defendant, prayed to be treated as a cross-bill, the replications to said answers, the exhibits and examinations of witnesses and was argued by counsel.

On consideration whereof the Court is of the opinion that there was no fraud in the procuring of the contract dated the 16th day of May, 1905, between James E. T. Joyner and Laura V. Joyner, his wife, parties of the first part and the

Virginian Railway Company, Incorporated,
a corporation.....Complainant.

vs.

J. M. T. Joyner.....Defendant.

IN THE CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT.

By consent of all parties, entered of record in open court, it is ordered that this cause be submitted to the Judge of this court for such decision and decree, judgment or order, therein in vacation, as may be made in term.

To the Clerk of the Circuit
Court of Isle of Wight County.

"The law does not afford relief to one who suffers by not using the ordinary means of information, whether his neglect be due to indifference or credulity."

In *Hawkins v. Hawkins*, 50 Cal. 558 the Court says:

"The ~~judgment~~ was properly sustained. It does not appear from the complaint that any relation of especial trust or confidence existed between the parties to the contract, or that the means of knowledge as to the terms and conditions of the writing were not equally open and accessible to both. The care and diligence of a prudent man in the transaction of his business would demand an examination of the instrument before signing, either by himself or by someone for him in whom he had a right to place confidence.

The fact that the plaintiff was illiterate, and could read manuscript only with difficulty, did not render the precaution less necessary."

In *Aetna Ins. Co. v. Reed* 33 Ohio St. 283, on page 281,

the Court says:

"The personal relations of the parties was not one calculated to begot confidence or reliance, but on the contrary. Rice was acting avowedly as the agent of a party whose interests were adverse to Reed, and common intelligence would have caused Reed to know he was not acting as his friend or advising his interests. Presumptively he would not be likely to stand in a relation different from other persons representing adverse interests."

Respectfully submitted,

REPRESENTATIONS. (*italica mine*) So far as the allegations of the answer are concerned, there is nothing to show that the land was not at hand when this contract was made, and that it could not, by the use of ordinary prudence, have been investigated by the purchaser; and in cases of this kind, it seems to us that parties must exercise ordinary business sense, and the ~~xxxxxxx~~ faculties ~~thatare~~ given to them for the purpose of transacting business; and that they cannot call upon the law to stand in loco parentis to them in the ordinary transactions of business, and their ordinary dealings with their fellow men. x x x If people having eyes refuse to open them and look, and have understanding refuse to exercise it, they must not complain, when they accept and act upon the representations of other people. If their venture does not prove successful. Written contracts would become too unstable if courts were to annul them on representations of this kind.' The rule above announced has been reiterated in many subsequent cases. Land Co. v. Heren, 16 Wash. 665, 48 Pac. 341; Griffith v. Strand, 19 Wash. 686, 54 Pac. 613; Walsh v. Bushell, 25 Wash. 376, 67 Pac. 216; Samson v. Beale, 27 Wash. 367, 65 Pac. 180; ~~27 Pac. 281; Samson v. Sherman v. Sweeny, 28 Wash. 321, 69 Pac. 1117, Hulst v. Achey 30 Wash. 91, 80 Pac. 1108; Lake v. Churchill, 30 Wash. 318, 81 Pac. 849; Walsh v. Meyer, 30 Wash. 321, 80 Pac. 1108; Hulst v. Achey 30 Wash. 91, 80 Pac. 1108; Lake v. Churchill, 30 Wash. 318, 81 Pac. 849; Walsh v. Meyer, 40 Wash. 650, 82 Pac. 938.~~

True, in nearly all of these cases,, the false representations related to the quality, quantity, or condition of property embraced in a contract of sale or deed; but if a party cannot rely upon the representations of others as to such matters when the means of investigation are at hand, should not the rule apply with even greater strictness where an attempt is made to avoid the effect of a written contract which a party has signed, relying solely upon the representations of another as to its contents? In McBurnack v. Wolburg, 43 Iowa, 381, the plea of fraud or mistake was even stronger than in this case. A demurrer was sustained to the plea, and, in affirming the judgment the court said: 'In Bell v. Byerson, 11 Iowa 233, 77 Am. Dec. 142, it is said if the means of knowledge of the alleged fraud were equally open to both parties the law will not interfere to protect the negligent; and in Rodgers v. Place, 29 Ind. 577, it is said if no device is used to put him off his guard, a party who, having capacity to read an instrument, signs it without reading, places himself beyond legal relief. 'If the truth or falsehood of the representation might have been tested by ordinary vigilance and attention, it is the party's own folly if he neglected to do so, and he is remediless.' 2 Parsons on Contract, 772; Kerr on Fraud and Mistake, 77. To the same effect is the late case of Nebeker v. Cutsinger, 45 Ind. 436. - - - - - Without reviewing all the cases cited, it will be found that in nearly all of them appears some fact or circumstance tending to show fraud or mistake aside from the mere reliance on the contract as to its contents, such as inability to read or understand the language of the contract, a relation of trust or confidence between the parties, or some artifice used to obtain the signature of the party or prevent him from reading the contract."

In Andrus v. St. Louis Smelting & Refining Co. (U.S.) 32 L. ed. 1056, Mr. Justice Field says:

LARGELY FROM PAYING MORE ATTENTION TO ELOQUENT PASSAGES IN SOME JUDICIAL OPINION CONDEMNING THE WRONGDOER, AND NOT TOO SEVERELY - AND CONDEMNING HIS ATTITUDE OF CONCEALING THE WRONG, (*italics mine*) so to speak, and shielding himself from the consequences, or attempting to do so, by the ignorance of his victim, ~~XXXXXXXXXXXX~~ than to the decision rendered and the real philosophy thereof, which will be found, as a general rule, to be that THE IGNORANCE WAS IN THE PARTICULAR CASE EXCUSABLE, EXISTING THE CONDUCT OF THE WRONGED PARTY BY THE DUTY OF EVERYONE TO PAY REASONABLE ATTENTION TO HIS OWN INTERESTS. ^(THESE DIFFICULTY) That difficulty is also largely attributable to the tendency of some authors to select such eloquent passages for their text instead of carefully deducing from the decision the rule of law applied in the case."

and on page 1025 he says:

"THAT UNDER SOME CIRCUMSTANCES THE LAW LEAVES A PARTY WHERE IT FINDS HIM, AND THAT ONE OF SUCH CIRCUMSTANCES IS WHERE ONE APPEALS FOR REDRESS WHO IS GUILTY OF AN INEXCUSABLE FAULT IN FALLING INTO THE DIFFICULTY COMPLAINED OF, IS WELL SETTLED." (*italics mine.*)

In *Tubenthal v. Spokane I. Ry. Co.* (Wash. 1906) 88 Pac. 958, a very similar case to the one at bar, on page 936, *Rudkin, J.* says:

"The only question arising on the first cause of action is this: Does the allegation 'that at the time said agreement for the right of way was entered into between plaintiffs and defendant corporation, the said defendant corporation proposed to plaintiffs that they would reduce the said agreement to writing and would prepare the necessary instrument for the purpose of carrying out said contract, and thereafter said defendant corporation did present to plaintiffs a certain agreement in writing, which said defendant corporation said embraced the ~~instxxxx~~ agreement so made for the said right of way, and requested plaintiffs to sign the same, and plaintiffs, believing that the said instrument so presented contained the agreements for said right of way as above alleged, thereupon executed such agreement, and the said defendant corporation took possession of the said instrument, and at all times since has retained the same. That plaintiffs have no exact knowledge as to the exact contents ~~tx~~ of said agreement so signed, but signed and executed the same on the understanding and representations that it contained the agreements of the parties as above alleged: 'entitled the appellants to equitable relief on the ground of fraud or mistake, simply because the agreement does not embody all the prior stipulations of the parties? We are of opinion that it does not. In *Washington Central Imp. Co. v. Newlands*, 11 Wash. 212, 39 Pac. 386, this court said: 'conceding that these representations were false, and conceding that the purchaser relied upon them, there is not yet enough shown, it seems to us, in this answer to give the defendant relief. THERE IS NO FIDUCIARY RELATION BETWEEN THE ~~XXXXXXXXXX~~ SELLER AND THE BUYER ALLEGED. IT IS NOT ALLEGED THAT THE BUYER WAS IN SUCH A POSITION THAT HE WAS UNABLE TO MAKE AN INVESTIGATION CONCERNING THE TRUTH OR FALSITY OF THESE ALLEGED

Joyner from either trying to read the contract before signing, or having it read for him by someone in whom he had a right to place confidence. I insist that Joyner had full opportunity to guard his own interests, that there was no circumstance reasonably calculated to deter him from improving such opportunity and that if he did not avail himself of the opportunity he must take the consequences and the demurrer to the cross-bill should be sustained.

In *Standard Mfg. Co. v. Plot* (Wis. 1904) 195 Wis. St. Rep. 1018, a well considered case, on page 1023 Marshall, J. says:

"The law applicable to the aspect of this case last suggested has been so recently discussed that it seems hardly necessary to go over the subject again: *Bestwick v. Mutual L. Ins. Co.*, 116 Wis. 384, 97 N. W. 830, 92 N. W. 246; *Kaiser v. Memmendor*, 120 Wis. 234, 97 N. W. 932. It is there emphatically laid down THAT A PERSON IS BOUND TO KNOW THE CONTENTS OF A PAPER WHICH HE SIGNS; NO ACT OF THE ADVERSE PARTY OR CIRCUMSTANCE FOR WHICH HE IS RESPONSIBLE OCCURRING REASONABLY (italics mine) calculated under the circumstances to divert such persons attention therefrom, and which ~~ineffectually~~ does so effectually. The fact that a false representation is made in respect to the paper is not necessarily sufficient to excuse such person for affixing his signature thereto in ignorance of its contents, unless under all the circumstances, in view of his duty to give reasonable attention to the protection of his own interests, the false representation was still reasonably calculated to and did induce him not to make the investigation which he otherwise would have made. A person cannot sign a paper in ignorance of its contents and thereafter excuse such ignorance by the mere plea that he was busy or that he is habitually neglectful in such circumstances, and throw upon the courts the burden of protecting him from the consequences of his imprudence. The policy of the law is fixed to the effect that he who will not reasonably guard his own interests when he has reasonable opportunity to do so, and there is no circumstance REASONABLY CALCULATED TO DETER HIM FROM IMPROVING SUCH OPPORTUNITY, MUST TAKE THE CONSEQUENCES. A Court do not exist for the purpose of protecting persons who fail in that regard. Where there is such inattention upon the one side and fraud upon the other, and but for the former feature the latter would not be effective, and loss occurs to the inexcusably negligent one, he is remediless; not because the wrongdoer can plead his own wrongdoing as an excuse for not making reparation, but, first, because the consequences are attributable to inexcusable attention of the injured party; and second, because the court will not protect those who, with full opportunity to do so, will not protect themselves. Much difficulty has been experienced at times in not appreciating that there may be fraud upon one side, concurring with inexcusable ignorance upon the other, resulting in an injury, when but for the latter fault it would not have occurred, and there is no judicial remedy. THAT COMES

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY,
VIRGINIA:

The Virginian Railway Company, Incorporated-----complainant ,
v.
J. E. T. Joyner-----defendant.

BRIEF OF COUNSEL FOR COMPLAINANT ON DEMURRER TO
CROSS-BILL.

On demurrer the sole question is whether the case set up in the cross-bill APPEALS TO THE CONSCIENCE OF THE COURT under the well settled rule of law "that he who will not reasonably guard his own interests when he has reasonable opportunity to do so, and there is no circumstance reasonably calculated to deter him from improving such opportunity, must take the consequences;"

From a superficial examination of the decisions of the courts of cases involving questions of fraud there appears to be conflict, but upon a ^{careful} examination it will be found that, while some well known general principles are well settled, each case rests entirely upon its own facts, and the true test is whether or not the case set up APPEALS TO THE CONSCIENCE OF THE COURT under the well settled rule of law above quoted.

Now the cross-bill shows on its face that Joyner could read; it does not show that there were any fiduciary or confidential relations existing between him and Findley, on the contrary it shows ~~they~~ they were dealing at arms length and the statement, if made by Findley as claimed in the cross-bill, that, "he would read it (the contract) to them as he doubted they could read his writing" was not sufficient to excuse

in the paper known as plaintiff's "Exhibit No. 1" that he considered his farm now worth \$10,000. He agreed to sell the right of way through his farm for \$475.00, and his statement of damages in his action of ejectment calls, his counsel contends, for \$1,500.00 additional, making total of \$1,975.00 claimed by him as sufficient compensation. I will simply say further that all the testimony introduced by Joyner as to damages is incompetent, immaterial and irrelevant, for the reason that the alleged damages caused by the alleged fraud are not separated from the damage caused by locating the railroad through the property along the identical line agreed upon by Joyner, for the reason that the proper measure of damage is in no case used and for further reasons which I deem unnecessary to now discuss in detail.

Respectfully submitted,

But so great and obvious is the danger of permitting the solemn engagements of parties, when reduced to writing, to be varied by parol evidence, that in no case will relief be granted except where there is a plain mistake, clearly made out by satisfactory and unquestionable proof. According to some of the cases, there must a certainty of the error. At all events, the party alleging the mistake, must show by evidence, which leaves no reasonable doubt upon the mind of the Court, not only exactly in what the mistake, if any, consists, but the correction that should be made. x x x A rule less rigid would be fraught with infinite mischief, since it would be destructive to the certainty and safety of written contracts;'"

That a preponderance of evidence is not sufficient, U. S. v. American Bell Telephone Co., 45 L. Ed. 144, 158;

that the quality of the evidence must be clear and conclusive, Shen. Valley R. R. Co. v. Dunlop, 86 Va. 361, Houghton v. Graybill, 82 Va. 578.

I signify that the evidence introduced to show the fraud in no particular meets the requirements.

Should, however, the Court consider the testimony of Joyner and wife as tending in any degree whatsoever to show the misreading the deed with intent to defraud, the Court must further consider that the cross-bill did not waive an answer under oath, and that the defendant to the cross bill, The Virginian Railway Company, filed an answer under oath denying the allegations and under the rules of evidence this answer itself cannot be overcome except by the testimony of two witnesses or the testimony of one and corroborating circumstances. Sufficient testimony has not been introduced to meet this rule of evidence.

D A M A G E S.

Inasmuch as the evidence fails to establish fraud, I shall not take up the time of the court in discussing at length the question of damages. The testimony does not show any damage, it shows that Joyner's farm is worth more than ever, although lands have depreciated generally in value. All his witnesses testify that before the railroad was cut through Joyner's farm his farm was worth \$6,000 or \$7,000, while Joyner states

the evidence of Mr. Findley, the only other party present, and the evidence of Mr. W. H. Hill to the effect that Mr. Joyner never claimed that the deed had been misread.

Further, it is not shown what motive Mr. Findley could have had in misreading the deed to Joyner. From Mr. Findley's own testimony and from that of Mr. Hill and from that of Mr. John Kee it clearly appears that Mr. Findley could not have derived any benefit from perpetrating the alleged fraud and this testimony is nowhere contradicted.

Counsel for The Virginian Railway Company insists that without the introduction of evidence on the part of the Railway Company and without the filing to any answer to the cross-bill the charge of fraud made in the cross-bill is not made out by the testimony introduced for that purpose, for the court must consider that the burden of proof is upon the one alleging fraud, *Engleby v. Harvey*, 93 Va. 440-445, *Houghton v. Graybill* 82 Va. 573; in *Houghton v. Graybill*, on page 540, Judge Fauntleroy says:

"The doctrine that fraud will not be presumed, but must be distinctly charged and the grounds specified, and must be clearly and conclusively proved as alleged, to justify the Court in granting relief against and setting aside a contract executed by the delivery of deeds, by and between the contracting parties, is familiar and well established by the authorities on equitable jurisprudence;"

that the presumption is always in favor of innocence, *Engleby v. Harvey*, 93 Va. 440-445;

That the presumption is that the contract in writing embodies agreement between the parties, *Donaldson v. Levine*, 93 Va. 472-475; in *Donaldson v. Levine*, on page 475, Judge Cardwell says:

"It was said by Lewis P., in *Shen. Valley R. Co. v. Dunlop and wife*, 86 Va. 361: 'The authorities all agree that equity has jurisdiction to reform written instruments in two well defined classes of cases only, viz.: (1) Where there has been an innocent omission or insertion of a material stipulation, contrary to the intention of both parties, and under a mutual mistake; and (2) where there has been a mistake of one party accompanied by fraud or other inequitable conduct of the remaining parties.'

presumed to be of good character, at the present time a practicing attorney at Clarksburg, West Virginia.

I wish also to call the attention of the Court to the evidence of Mr. William H. Hill. An effort had been made by Counsel for Mr. Joyner to contend that Mr. Hill's memory was not very clear. On the contrary his memory could not be clearer on the main point of his testimony, which is to the effect that when he went to take the deed from Mr. Joyner, Mr. Joyner did not claim that any fraud had been perpetrated upon him by Mr. Findley, or that Mr. Findley promised him a depot, or that Mr. Findley promised to put a trestle over his fish pond, but rather seemed disappointed in that things did not turn out as he had hoped. Counsel for Mr. Joyner says a good deal about Mr. Hill's not recalling whether or not he on a certain day in question took dinner at the house of Mr. Joyner. The recollection of eating a dinner would naturally not continue long, unless it had been a very good one or a very bad one. He does not pretend to say whether he ate dinner at the house of Mr. Joyner, or did not eat dinner, but seemed under the impression that he did not eat dinner there. Mr. James A. Johnson, a friend of Mr. and Mrs. Joyner, who took their acknowledgments was introduced for the purpose of contradicting Mr. Hill chiefly on the point of eating dinner. From an examination of the evidence of Mr. Joyner on page 7 of his examination in chief, and on page 16 when he was called for further cross-examination it will appear that Mr. Hill went to his house for the purpose of taking a deed for the property, saw Mr. Joyner and took the matter up with him at once. Mr. Joyner's testimony would seem to bear out Mr. Hill in his recollection that he stayed there long enough only to endeavor to close the transaction by taking a deed.

The Court will readily see that the only evidence introduced to show that the deed was misread is the evidence of Joyner and wife, while to show that it was not misread we have

tice also that Mrs. Joyner also has a legal mind, or is certainly familiar with the phraseology used in legal papers, as appears from the following question and answer on page 26 of her testimony:

Q. State as near as you can the words used by Mr. Findley as read by him in the option paper about the depot, and about the fish pond, and about the railroad coming through level?

A. Well, he read that where the railroad crosses the fish pond there would be a bridge resting on pilings, so as not to interfere with the water in the pond, and the said J. E. T. Joyner might pass and repass in his boat and that there would be a depot about a mile and a quarter at the land of Tom Carr."

This is all the testimony in the record by which an effect is made to show that Mr. Findley misread the contract in question to Mr. and Mrs. Joyner.

the Court
Now I wish to consider the evidence of Mr. A. J. Findley. I feel it unnecessary for me to discuss this evidence in detail, it is so clear and well stated by Mr. Findley that there is nothing that I can add. Mr. Findley says (his testimony page 40) that at the time he made the agreement with Mr. Joyner he could not have agreed to provide a depot on the land of Tom Carr, for at that time he did not know where Tom Carr lived. Findley in making contracts came from Southampton County and was going eastward along the proposed line of railroad. Tom Carr lives to the eastward of Mr. Joyner and it was not until the day after the contract was made with Joyner that he saw Tom Carr and made the contract with him. The contract in evidence signed by Joyner is dated May 16th, 1905, while the contract with S. T. (Tom) Carr is dated May 17th, 1905. He states that Mr. and Mrs. Joyner understood perfectly the agreement and denies their allegations of fraud in every particular. The Court will observe that Mr. Findley is a man of standing, who, unless the contrary is shown to be true, is

To support the testimony of Mr. Joyner as to the misreading of the deed, Mrs. Laura V. Joyner, his wife, was put on the stand, see her testimony on page 22. Mrs. Joyner upon having the contract read to her by Mr. Burges, her husband's attorney, claims that the only thing in the contract that was not read to her was a clause with reference to cuts, fills, barrow pits, etc. She makes no claim such a clause was afterwards set up by her husband, Mr. Joyner, that the consideration of \$475.00 did not include damage to crops, buildings, etc. You will please note also that Mrs. Joyner on page 23 of the testimony testified as follows:

"Q. Had Mr. Joyner told you before that time what would be in the contract?

A. No, sir. He only said he had bargained for a certain amount of money (*italics mine*)."

It would seem from this statement that Mr. Joyner at that time admitted to his wife that a money consideration was the sole consideration for the granting of the right of way.

Mr. Joyner said nothing whatever to her about the fish pond, or about the deed. Mrs. Joyner admits she could read and write, as shown by the following question and answer:

"Q. You can read print all right? You can read writing if it is written plain?

A. If it is written plain I can pick up any sort of writing and read it right along."

Although Mrs. Joyner could read as she says, she never even attempted to read the agreement signed by her and Mr. Joyner. Her evidence says that Mr. Findley was a perfect stranger to her, and she had no reason to place confidence in him.

She further says that about a week after she and Mr. Joyner signed the paper Mr. Jas. A. Johnson took her acknowledgment, and even then neither she nor Mr. Joyner read the paper, or requested Mr. Johnson to read it to them. The court will no-

A. Mr. Jones said, If it were not for these hard times your farm would be worth more would it not? I said, Yes, sir, I reckon it would. I was talking just like you and I am sitting talking.

Q. Mr. Jones then said, that if it was not for these hard times it would be worth more?

A. I told him that probably it would.

Q. But you never said anything like that yourself?

A. No, sir.

Q. Never put anything like that into the option?

A. No, sir.

Q. Is that the option you signed?

(The defendant is herewith shown paper marked Plaintiff's Exhibit No. 1.)

A. Yes.

Q. That paper then is correct, is it?

A. Yes, sir.

Q. And you signed the paper in both these places where your name is shown thereon?

A. Yes, sir."

By a reference to the paper referred to in this testimony filed as plaintiff's "Exhibit No. 1" it will be at once seen that Joyner stated in writing, first, that the farm was worth more than \$2000.00, that is, it was worth \$10000.00, and that were it not for the hard times he would not sell for less than \$10000.00, as he considered that the real market value.

His testimony with reference to this paper is to the effect that he never said the farm was worth more than \$2000.00, and that he never said that the hard times had anything to do with his making the sale of this property. How can the Court give credence to the testimony of any witness who contradicts himself.

Q. How many parties have wanted to buy this farm since the railroad has been there.

A. There was one - there was two more, but one wanted to take an option. I don't know but I suppose you sent him there, that is Mr. Jones, around here somewhere.

Q. Did you tell him what was the fair market value of the farm?

A. Yes, sir. He said he wanted to take an option on my farm. I asked him what he would give me and he said \$7500.00. I told him I would take \$8000.00, and he could take the railroad, farm and all, so he took an option for thirty days for \$8000.00.

Q. You signed an option then for thirty days. How long was it you signed this age?

A. The 15th of ^{day} ~~the~~ ^{may} - he came back and wanted me to lengthen the option thirty days. I told him I would not do it.

I saw him here to day, and he was one of the sheepiest looking men I ever seen, he would not look at me in my face and hang his head like an owl. I have seen the man here three or four times. He swore that day that he knew nothing about the railroad, had nothing in the world to do with it, and was not sent there by a man in Michigan, said he had taken option on six farms around the neighborhood and that he wanted six more.

Q. What was in that option?

A/ Well it was just in the option that he took, an option for thirty days, and if he brought the money in thirty days I was to give him a deed for the farm.

Q. Was anything said about whether the farm was worth more than \$8000.00 or not?

A. No, sir. He told me just as soon as I said I would take \$8000.00 that he would take an option on it.

Q. And nothing was said in the option or otherwise about the farm really being worth more than that?

some five, six or seven days after Mr. Findley left, as he states Mr. James A. Johnson, the Justice of the Peace, came to his residence and took the acknowledgments of himself and wife to the contract. Mr. Findley was not there, the contract was not in Findley's possession, Mr. James A. Johnson, the Justice of the Peace, as Mr. Joyner says was a friend of his, that they had been raised together and that he had no doubt but what Mr. Johnson would have read the paper to him had he requested it. Joyner claimed that at that time he and his wife blindly acknowledged their signatures without making any further investigation.

To show further the inaccuracy of Mr. Joyner's statement as to the contents of ~~the~~ ^{an other} written papers signed by him I wish especially to call the attention of the Court to his testimony when recalled for cross examination, beginning on page 8, as follows:

Q. You wanted to sell it because you wanted to get away from the railroad?

A. Yes, sir.

Q. Hard times had nothing to do with it.

A. No, sir. Just because I wanted to get away from that railroad. I would not take a cent less for my farm than I would be if the hard times come if it was not for the railroad there.

Q. So you told the party that the only reason you were selling was because the railroad was there?

A. Yes, sir. I wanted to sell it to get clear of the railroad.

Q. You never told them that hard times had anything to do with it?

A. No I did not tell them that. I wanted to get clear of the railroad, that is all I wanted.

Q. Was the only reason you gave for selling for \$8000.00 so that you could get away from the railroad?

A. Yes, sir/

option that I read you differs from the option that Mr. Findle read?

A. There is. The difference was in the option that Mr. Findle read to me, and the option that you read to me, the difference comes in that where the railroad crosses my fish pond that there should be a bridge or trestle built, which would rest on piling, and a depot and about the railroad running even grade level with the land."

Here again Mr. Joyner says nothing about the \$475.00 not being in full consideration for the land taken, damage to crop, buildings, etc.

The Court will readily see he flatly contradicts his ^{previous} testimony and it clearly appears, from the most charitable standpoint, that Joyner had no clear recollection of what the agreement was between him and Mr. Findle. I say from the most charitable standpoint, and yet I wish the Court to bear in mind that Mr. Joyner does not appear from the testimony given by him to have been the ignorant man he sometimes claims himself to be. In speaking on page 6 of his first testimony as to what the agreement was the words used by him show he has a legal mind. Note the following answer given by him: "Well in the first place he read that where the railroad crosses the fish pond of said J. E. T. Joyner that a trestle or bridge should be built which would rest on piling, so as not to interfere with the water in the pond and so that the said J. E. T. Joyner might pass and repass under the railroad in his boat." Another of the numerous conflicts in his testimony is that on page 14 of his examination in chief he says the fill where the railroad crosses his land is about 3 1/2 feet high, while after being recalled for further cross examination he says on page 1: "I suppose about 2 feet and a half with the dirt and ties - anywhere from 2 1/2 feet to 3 feet."

that he and his wife signed the

A. Yes, sir. They should, if any damage was done to my crops they should pay ~~to~~ me for it.

Q. Was the company to pay you for damages to the crops in addition to this payment of \$475.00?

A. Yes, sir. If they damaged any of my crops they were to pay for that extra.

Q. This payment of \$475.00 did not cover then the damage to crops?

A. If they damaged any of my crop on the land that they were to take they should pay me the damages.

Q. Have you stated everything in your statement as you understood it?

A. They were to only have a strip of 100 feet wide, of 50 feet from the center, which was called the center line.

Q. Anything else in there?

A. If they were to decide to shift the track either way, or to change it 50 feet either way if they interfered with my buildings of any kind they were to pay that. They were to have a right to change the track so as it did not go over 50 feet either way from the center line.

Q. But if they damaged your building they had to pay for that.

A. Yes, sir.

Q. Was anything said about moving the buildings?

A. No, sir. Nothing was said about moving the buildings?

Q. Is this the original agreement with the Tidewater Railway Co. signed by you.

(Witness is here shown paper which is filed as part of the evidence, marked plaintiff's exhibit No. 2.)

A. Yes, sir. That is the original agreement.

and on page 14 of examination in chief by his counsel, Mr. Burges, we find this question and answer:

"Q. Is there any doubt in your mind about the fact that the

any reasonable man should by reading the paper himself, or by having it read for him by someone in whom he had a right to place confidence. At this point in his testimony his counsel, Mr. Burges, reads the option to him, requesting him to stop him if he read anything that was not in the paper read by Windley to Mr. Joyner. Mr. Burges then reads option down to the following clause: "Together with so much additional land contiguous thereto that may be required for the slopes of cuts and fills, drainage and borrow pits," at which point Mr. Joyner said this clause was not in the option paper read to him. On page 6 Mr. Burges, his counsel, says in a question: I have now read you all of the option and you have only stopped me once I, therefore, understand that he read to you everything in the contract except at the point at which you stopped me?" to which Mr. Joyner replies, "yes, sir."

By referring to this contract read by Mr. Burges there will be found immediately following clause hereinabove quoted, claimed by Mr. Joyner not to have been read by Mr. Windley, the following clause:

"The parties of the second part shall pay to the parties of the first part the sum of Four Hundred and seventy-five Dollars (\$475.00) in full for said strip of land the damage to buildings and to any crop that is now or may be growing on said strip of land, and which said sum shall be paid on execution and delivery of an apt and proper deed as herein set forth."

Mr. Joyner at that examination admitted that Mr. Windley read this clause to him, and no objection was made by him to same. Sometime thereafter upon being recalled for further cross-examination on page 12 of this further cross-examination, Mr. Joyner testifies as follows:

Q. What were you to receive?

A. By putting that there, they were to give me \$475.00 with the understand that these things were all to be there as I told you.

Q. Was anything said about damages to your crop?

1. Did Findley misread the deed to Joyner?
2. What motive, if any, Findley could have had in so misreading the deed?

I shall first consider the testimony of Joyner, himself, which is conflicting and contradictory throughout.

"The testimony of a party who offers himself as a witness in his own behalf is to be construed most strongly against him when it is self-contradictory, vague or equivocal."

Tuten v. A. T. L. R. R. Co. (Ga) 61 S. E. file 11.

Joyner says, on page 3 of his testimony, that the first time he ever saw Mr. Findley was on the 15th day of May, 1908, near light down, that next morning about 8 o'clock Mr. Findley mentioned to him that he wanted to buy a right of way and that after talking all day since that morning about 5 o'clock in the afternoon of the 16th day of May, after asking Mr. Joyner if he was going to be the hardest man he had struck that day, they reached an agreement. Mr. Joyner says that he told Mr. Findley that if he would agree not to interfere with his fish pond, and agree to give him a depot at the road down there ~~xxx~~ where the railroad crosses the county road at Tom Carr's place, he would agree to take what Findley offered. It is to be noted here that Joyner did not stipulate that the railroad should cross his land at a level, and that crossing his land at a level was no part of his agreement between them from his own statement. On page 5 of Mr. Joyner's testimony he testifies that Mr. Findley said the following:

"Here is an option paper I wrote a few minutes ago. I want you to sign it. I will read it to you. I think I can read it better than you can."

Embedded in this ~~instrument~~ claimed to have been read by Findley is the only reason Joyner has ever advanced for the failure on his part to read the option himself, or to have it read for him by someone in whom he had a right to place confidence. I submit that this in itself, under the authorities, in no wise prevented Joyner from protecting ~~himself~~ his own interests as

Joyner claims the fraud consisted in misreading the contract with the intent to deceive, and not in promises not performed about the location of a depot, and there has been introduced not a particle of testimony to show that Findley ever misread the contract. Counsel for Joyner admits this. On page 19 of his brief he says:

"Now it is true that none of these witnesses required the location of the depot at the designated point to be incorporated in their options and consequently there was no necessity for misreading the paper."

It follows that evidence of promises to other parties about the location of a depot does not come within the rule of law, and is incompetent, irrelevant and immaterial for any purpose in this case. Judge Staples in *Trodgen v. Com.* 31 Gratt. 862 on Page 371, says:

"Thus upon an indictment for maliciously shooting at the prosecutor, it has been held proper to show that the accused had twice shot at the prosecutor the same day for the purpose of rebutting the idea of accident, and of establishing the wilful intent. *Reg. v. Voke*, Russ & Ry. 531. And so, upon a prosecution for administering sulphuric acid to horses, with intent to kill them, evidence is admissible that the prisoner had frequently mixed sulphuric acid with horses' corn. *Reg. v. Wegg*, 4 Car. & Payne, 394. Upon an indictment for a libel, the publication of other libels not laid in the indictment may ~~XXX~~ be given in evidence to show the quo animo the defendant made the publication in question."

It is to be noted always that the evidence must be of other transactions of like character. The case of *Trodgen v. Com.* is very clear upon the question, and it is earnestly hoped it will be carefully considered by the Court.

In *Piedmont Bank v. Hatcher* 94 Va. 229 on page 231 Judge Buchanan says:

"Where fraud in the sale or purchase of property is in issue, evidence of other frauds of like character, committed by the same parties, at or near the same time, is admissible. Its admissibility is placed upon the ground that, where transactions of similar character are executed by the same parties, and closely connected in point of time, the inference is reasonable that they proceed from the same motive."

See also *Wilson v. Carpenter* 91 Va. 163 page 169.

Now that I have shown that the testimony introduced of statements made by Findley in other transactions to and in the presence of other parties pertaining to the location of a depot is clearly inadmissible for any purpose, I shall now discuss the evidence bearing upon the following questions:

evidence of "other transactions of a like (italics mine) character, - - - - provided they are not too far removed" and then only for the purpose of showing intent or motive or guilty knowledge on the part of the party charged with fraud in doing the act charged. Trogdon v. Com. 31 Grat. 862, 870-879.

Now the act charged by Joyner is that Findley ~~MISREAD THE CONTRACT.~~

Joyner must prove that Findley did misread the contract and he must prove this without evidence, even if he had it, to show that Findley misread other contracts to other parties, for ~~example~~, as it has been very properly said, testimony that a man misread one contract to one party is not evidence that he misread another contract to another party, but it may be evidence under all the circumstances of Findley's intent of

motive in misreading the contract to Joyner. In Wilson v. Carpenter, 91 Va. 183 on page 189, Judge Harrison says:

"Representations in letters are not evidence of the statements made by White to Carpenter at the time of the sale of the lot to him, but they are very persuasive in showing the bent of Mr. White's mind on the subject of this English money."

There must be proven, not only the act charged, that is misreading the contract, but also the intent to defraud.

For as is well said by Judge Staples in Trogdon v. Com. 31 Grat 862, on page 872,

"It is not sufficient that the accused, knowing ^{by}, states what is false, it must be shown his intent was to defraud. Such intent is not a presumption of law, but a matter of fact for the jury. ^{Being} a secret operation of the mind it can only be ascertained by the acts and representations of the party. A single act or representation in many cases would not be decisive, especially where the accused has sustained a previous good character. But when it is shown that he has made similar representations about the same time to other persons and by means of such representations obtained goods, all of which were false, the presumption is clearly strengthened that he intended to defraud."

The rule of law ~~requires~~ requires further that the testimony to be competent to show the intent or motive must be testimony of ^{other} ~~similar~~ transactions of like character.

Statements alleged to have been made by Pindley that a depot would be located at a certain point were not misrepresentations.

A misrepresentation by reason of which a contract will be rescinded must be by an existing fact the falsity of which representation is, at the time it is made, determinable.

If Pindley in procuring contracts made the statements as alleged that a depot would be located at a certain point it was "but the expression at most of an existing purpose and not a representation of an existing fact" Orr & Litton v. Goodlee, 93 Va. 263, 268. Representations respecting future events or things to be done at a future time cannot be true or false when made. In the case of Knowlton v. Kennan (Mass.) 4 Amer. Ct. Rep. 262, the distinction is clearly drawn on page 264 Stevens, Judge, says:

to

"The principle that written contracts are not to be enlarged, added to, or controlled by previous or contemporaneous oral agreements is too well settled to require a citation of authorities. Proof of such a representation as that offered by the defendants was proof only of an oral contract to be thereafter executed. ~~It is not a representation of an existing fact.~~

~~It is not a representation of an existing fact.~~
~~It is not a representation of an existing fact.~~
Nor even if the plaintiffs made the oral contract fraudulently, knew they could not perform it, would that have rendered the evidence admissible. There was no fraud in the written contract itself, and such evidence could not have been received to control its operation, and virtually to annul it."

On the question of misrepresentation the defendants seem to rely mainly upon the case of Horner v. Trout, 83 Va. 397, In this case, as in all others in Virginia where a contract has been rescinded for misrepresentation, the representations are of an existing fact that turned out to be false, on page 396 we find:

"The bill avers, as grounds for such annulment, that the lessee, in order to induce plaintiffs to execute the lease, made to them certain representations which were material, and which were relied on by the plaintiffs as true but which were false, and thereby procured the lease; that the representations were that certain things existed (italics mine), the existence whereof was a matter peculiarly within the lessee's knowledge;"

Second. The Rule of law allowing the introduction to

knowing, or who should have known, that the contracts themselves did not obligate the company to locate a depot at any point, claimed that they were induced by fraud to dispense with a clause obligating the company to locate a depot at a certain point when ~~the~~ road was built and to execute the contract as drawn. In the absence of fraud, accident or mistake the Law presumes that the entire agreement is represented by the written instrument and does not allow the introduction of parol testimony to vary it and for this reason, since no fraud is shown, the parol testimony of the parties who signed the contracts knowing what they contained is not admissible.

Inasmuch as there was no fraud perpetrated upon these parties who signed contracts, knowing or who should have known what they contained, and no fraud shown to have been perpetrated upon other parties ~~upon~~^{to} whom or in the presence of whom statements were made about the location of a depot, all parol testimony of statements made with reference to the location of a depot is not evidence of other frauds, therefore it is incompetent irrelevant and immaterial, and ^{is} admissible on this grounds

The Shenandoah Valley R. R. Co. v. Dunlop, 86 Va. 346,
on Page 352 Judge Staples says:

"as to the alleged verbal agreement contemporaneous with the execution of the deed, that the terms of ^{the} preliminary contract should remain in full force, it is enough to say that nothing is better settled, either by law or in equity, than that, in the absence of fraud, accident, or mistake, the deed must be conclusively presumed to contain the whole agreement between the parties. In other words, the ~~terms~~ of the deed cannot be varied by parol evidence, of what occurred between the parties previously thereto or contemporaneously therewith."

See also Meade v. N. & W. R. R. Co., 89 Va. 296.

Furthermore it does not appear that the promises claimed to have been made by Findley with reference to the location of a depot were made by authority of The Virginian Railway Company.

Meade v. N. & W. R. R. Co., 89 Va. 296, 277.

Beckley v. Riverside Land Company (va.) 23 S.E. 778,
780.

Shenandoah Valley R. R. Co. v. Dunlop, 86 Va. 346, 351.

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY, VIRGINIA:

The Virginian Railway Company, Incorporated, -----Complainant,

v.

J. E. T. Joyner, -----Defendant.

BRIF OF COUNSEL FOR THE VIRGINIAN RAILWAY COMPANY,
INCORPORATED.

The charge of fraud claimed by defendant, J. E. T. Joyner, in his cross bill consists of misreading the contract, known as "Exhibit A" with the original bill, with intent to deceive.

The first question is, DID FINDLEY MISREAD THE CONTRACT?

To prove this no testimony of other frauds is admissible

In Wilson v. Carpenter, 91 Va. 183, on page 189, Judge Harrison says:

"The representations in these letters are not evidence of the statements made by White to Carpenter at the time of the sale of the lot to him (italics mine), but they are very persuasive as showing the bent of Mr. White's mind (italics mine) on the subject of this English money."

The second question is, DID FINDLEY MISREAD THE DEED WITH INTENT TO DEFRAUD?

To prove the intent to defraud the law allows the introduction of testimony of other frauds of a like character, provided they are not too far removed.

There is no testimony of other frauds of like character.

The testimony of statements made by Findley in other transactions to and in the presence of other parties pertaining to the location of a depot is incompetent, irrelevant and immaterial, and should be excluded for the following reasons:

First. In no case have the parties, who signed contracts,

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replied that he would take \$8000.00 they immediately accepted his proposition and under the guise of getting his signature to an option then endeavored to secure evidence to defeat his action against the railway company. Joyner says they produced one long paper, which he declined to sign, but they finally succeeded in getting his signature to a paper which is filed by the company as an exhibit with its evidence. Notwithstanding the fact that these men went to see Joyner twice, neither one of them went upon the stand to relate any of their conversations with him or to testify as to the damages. One of them was present in Suffolk the day the testimony was taken, but they seemed to prefer in the language of Finley to "let the paper speak for itself". A paper without a sponsor, manifestly intended to deceive, secured by men, who stand mute, almost disowned by the officers of the company, it is expected to "speak".

It is submitted that their embarrassment and disinclination to claim responsibility therefor is at least praiseworthy.

Respectfully submitted,

Counsel for defendants.

gate that he would not care to reside on the farm. Mr. John M. Ballard says that the farm not worth one-half as much as it was before the railway was constructed. Jethro P. Rhodes says the farm is damaged at least one-half its value. J. W. Babb says before he would live there he would sell it for the best price he could get. Mr. Turner testified that he heard Mr. Duck offer Mr. Joyner \$7000.00 cash for the farm and that Mr. Joyner declined it. Mr. Duck admits making the offer but now states that he would not care to make an offer for the place.

Such is the evidence of the damages. The officers of the railway company have introduced no witnesses to say that it is less. On the other hand they content themselves with attempting to resort to their usual tactics of securing a written paper from Joyner by fraud and misrepresentations. Sometime after Joyner had testified and told of the ~~fraud~~ ~~fraud~~ fraud practiced by Finley in securing the option and ~~after~~ they had ~~refused~~ learned that he was a man of little education and an easy victim to the shrewd and unscrupulous they make another effort to get his signature to a paper which he did not intend to sign. Sometime in the month of June, 1908, they secured the services of a man by the name of Jones, a real estate man, at that time living in Suffolk, and another man by the name of Pinner, a peanut buyer, and sent them to Joyner's place fraudulently representing that they were endeavoring to secure options for land to be sold to western settlers. They emphatically denied that they were in any way connected with the railroad company and sort to impress upon him the fact that it would be a great benefit to him to sign such papers as they might prepare. They first offered him \$7500.00 for the farm and when he

Joyner says he told them that he would not sign the deed; that he never gave them any such option and several times afterwards according to their testimony refused to negotiate further with them telling them that he had obtained Counsel and that they should see him. This they totally failed to do.

Mr. Key also testified that Finley was paid a salary and received no compensation for actual fraud. Mr. Dalton testified that trains were being operated over the land and produced a map showing the location of the tracks. He was then asked if it were possible for any one to think that a railroad could be built across the land without cuts or fills. He finally answers this question on page 34 by saying "I do not often find such light gradings".

It is upon this evidence that I ask that the option be declared void. We have the clear and unmistakable evidence of Joyner and wife supported by the testimony of such men as John M. Ballard, J. H. English, L. H. Carr, R. T. Frazier, S. J. Pierce, S. T. Carr and R. J. Cox. We have the denials of Finley, supported, if at all, by the testimony of Hill, which I have already discussed.

DAMAGES.

An examination of the record will show that the damage to this farm by the construction of the railroad amounts to about \$3000.00. The railroad track runs through Joyner's front yard rendering it totally valueless for the use of his stock and dangerous for his children. It runs across his entire farm cutting his field into two parts and so altering the drainage that water stands on the roadbed. Mr. Frazier says the farm is damaged at least \$3000.00. Irving Jenkins says that the railroad is so near the front

the paper Mr. Finley read to me. The paper he read to me said they would build a ~~trestle~~ or bridge across my fishpond so as not to interfere with my fishpond." Mr. Joyner said "now they are throwing dirt in there filling it up. They said they would cross my land on a level and also build a depot at the cross-roads on Carr's land where the railroad and the County road cross."

Q. Did Mr. Joyner say that that was in the option?

A. He said Mr. Finley read it to him that way. Mr. Hill said "why Mr. Joyner I reckon you mist be mistaken. I don't see why Mr. Finley should have read it that way when it was not in the contract?" Mr. Joyner said "I did not read it myself he told me it was in there. He said 'I reckon I can read it better than you can' and he read it to me, but not the way that you now read it. I refuse to sign that deed." We sat there and Mr. Joyner and Mr. Hill discussed the matter for sometime. Mr. Hill tried to prevail on Mr. Joyner to sign the deed saying that it would be better for him. Mr. Joyner told him that whenever the deed was prepared in accordance with the way it was read to him he would sign it. We sat there a while longer and Mr. Hill said to me "lets go I can't do anything with Mr. Joyner". I said "I am at your service whenever you say go." He put his papers in his grip, closed it, took it up, told Mrs and Mrs. Joyner good-bye and remarked to Mr. Joyner "I hope you have no hard-feelings against me". He said "all I had to go by was that paper and the contract". I think that was pretty near about what was said in regard to the railroad company".

It is submitted that with the light of Johnson's testimony we can readily understand why Hill took the option from the satchel and Joyner refused to sign the deed.

The only other witnesses introduced by the railray company were John Key and _____ Dalton. Neither of them tell anything about the transaction. Key says that the company was willing to carry out the provisions of the contract and so far as he knew Joyner made no objection to the construction of the track on his land. The answer to this is obvious. Under the option that he thought he was signing he gave the company the right to go on his premises. When he notified them that he held the option void and would not give them a deed, of which they had notice, he certainly did not intend to give them a right-of-way.

(Mr. Corbitt objects to question for the reason that it has never been shown that this witness went into another house in the rear of the main house.)

A. We might have done so and I have a hazy, indistinct recollection of being in another room or house back of the main house, and it may have been to take dinner, but I do not recollect distinctly whether this was so or not. I remember getting a drink of water at the well on one occasion, but whether that was this same visit or not I do not remember."

Now I refer especially to his eating dinner because he says Johnson was possibly looking after his horse and did not hear all of the conversation.

Johnson says:(Johnson's testimony page 2)

"A. Mr. Hill and I drove up to Mr. Joyner's house about twelve o'clock in a buggy. Mr. Joyner came out and I gave him an introduction to Mr. Hill. Either Mr. Hill or myself said, I just don't recall which one, "We came out here to get the deed from you to the Tidewater Railway Company fixed up." Mr. Joyner said, "It is about dinner time get down and let me feed you." We got out of the buggy and unhitched the horse. Mr. Joyner sent the horse to be put up by a boy. Mr. Hill and myself went with Mr. Joyner in the house and went out to the dining room, which is off from the dwelling house. We ate dinner, came back through the dwelling out to the front porch.

Q. Was anything said about the deed while at dinner?

A. No sir. After we came out on the front porch we took a seat. Mr. Joyner and I sat on a bench and Mr. Hill on a chair close to us. Mrs. Joyner came and took a chair and put it near the door way and sat down. We sat there and talked a while. Mr. Hill then remarked to Mr. Joyner "I reckon we just as well fix up this paper". Mr. Joyner said "all right". Mr. Hill got his deed out and Mr. Joyner said "I would like for you to read it before I sign it." Mr. Hill said "all right" and went to reading it. ~~Mr. Hill~~ He read along down in the deed and come to point where barrow-pits, etc. were mentioned and Mr. Joyner said "I will not sign a deed like that. That is not in accordance with the contract." Mr. Hill said "It is just like the contract. I drew it by the contract." Mr. Joyner said "well if it is drawn by the contract Mr. Finley did not read it to me like that and I refuse to sign any such deed as that." Mr. Hill said "why I reckon it is all right. I drew it exactly by the contract and I reckon I can force you to sign it." I don't remember the exact words. Mr. Joyner said "well you will have to force me to sign any such paper as that". Mr. Hill said "well let me get the contract and see if they are not alike." He went to his grip and got the contract out and read the contract. Mr. Joyner said "that is not like

trestle be built by the railway instead of making a fill across the fish-pond, with pipes underneath the fill to permit the passage of water and fish?

A. Would you, as nearly as you can, give the words used by Mr. Joyner when he made this statement?

A. I have given them as nearly as I can. I am unable to give the exact words as they made little impression upon me, but I have given the substance of his objection, and he seemed to feel quite strongly in regard to his fish-pond.

Q. Will you give me as nearly as you can the words you used when he said he would not sign the deed you had prepared for him?

A. I do not recollect his exact words. He refused to sign the deed, and my recollection is that he asked me to read the contract in the course of this conversation, which I did, and we discussed different parts of the contract?"

Q. Which did you read first, the deed or the contract?

A. I don't recollect, but I think that I read the deed first or partly read the deed or until some objection was made, and I produced the contract as my authority for the terms of the deed.

Q. Is it not a fact that while reading the deed, Mr. Joyner made some objection and said he would not sign it, to which you replied, "I think we can force you to sign it, I have the contract in my pocket." And did you not then produce the contract and read it?

A. I think not, exactly in those words, for the reason that I never carried the contract in my pocket, but in a small hand satchel, and if such conversation took place and I produced the contract as I think I did, it must have been from my satchel instead of from my pocket."

Now there is in this evidence two very significant statements. If Joyner never claim to Hill that the deed differed from the option then why did Hill find it necessary to compare the deed with the option. Unless Joyner had complained about the difference why take the option from the satchel? Now Hill says on page 18:

"I think that after I partially read the deed he objected to some of its terms or possibly after I produced the contract AND SHOWED HIM THE DEED WAS DRAWN IN CONFORMITY WITH THE CONTRACT"

At the conclusion of Mr. Hill's testimony (page 19) we find the following question and answer?

Q. Now as your memory has been refreshed by the suggestion of dinner, and with the further suggestion that if you ate dinner, you went through the house into another small house in the rear of the house, can you not say positively that you did eat dinner with Mr. Joyner?

"Q. You have referred to a conversation which took place between you and Mr. Joyner at Mr. Joyner's residence in regard to the fish-pond, depot and other matters. Did Mr. J. A. Johnson hear this conversation?

A. I do not know.

Q. Will you relate as nearly as you can what transpired when you first arrived at Mr. Joyner's house?

A. I think I took a seat upon the front porch after being introduced to Mr. and Mrs. Joyner, and after commencing the conversation with them, I think Mr. Johnson's horse became uneasy, and he came out to the front gate to see about it, but I am not positive as to this point as considerable time has elapsed, and there was nothing at that time to make any impression upon my mind other than similar transactions, as I paid many visits to various land owners each day all of whom were total strangers to me.

Q. Was Mrs. Joyner present during the first of the conversation?

A. I am ~~certain~~ uncertain whether she was or not. I do not recollect as to this point.

Q. Do you remember any one else who was present?

A. I do not, although some one might have been present without my recollecting it.

Q. I wish to refresh your memory Mr. Hill. Did not you as the matter of fact/ go first to the dining room with Mr. Johnson and Mr. Joyner's family and eat dinner before any conversation as to the deed took place?

A. I do not recollect ever taking a meal at Mr. Joyner's although I may have done so. I kept an expense account book at that time which will show where I dined or lodged, but unfortunately lost this book during a trip to Southampton County.

Q. If Mr. Johnson were to say that when you first arrived on the porch, and that dinner being suggested, you said let's eat dinner first and talk business afterwards, and that following this suggestion you all went into the dining room and ate dinner and then returned to the front porch, would you claim that he was mistaken?

A. No sir, I would not. If Mr. Johnson's recollection was positive upon that point, because as I stated, my recollection as to the eating at Mr. Joyner's house, and as to the surrounding circumstances, are very indistinct.

Q. If Mr. Johnson were to say that after dinner that you, Mr. Joyner, Mrs. Joyner and another person went out on the porch and discussed the deed, would you say that he was mistaken?

A. My recollection is that we did discuss the deed on the front porch.

Q. Did you not begin the discussion by taking out the deed ~~and then from the expense~~ which you had for them to sign and reading it to them?

A. I think I read this deed, but I think Mr. Joyner asked some question in regard to the fish-pond, before I did so, or as I was beginning to read the deed.

Q. What question was more of a statement, was it not, of the method of construction being adopted by the construction corps. In other words did not Mr. Joyner begin to talk about the way they were putting dirt on each side of the fish-pond?

A. He certainly objected to the dirt being sumped into each side of the fish-pond, and desired that a bridge or

after dinner when they went out on the front porch. Johnson, who went with Hill, to Joyner's house to take the acknowledgments states this very clearly. Joyner also claims that when the deed was read to him he protested at once that it was different from the contract. With this in view let us examine Hill's testimony. On leading examination he says "Joyner made no claim that the option contained a provision for a depot, bridge, etc." as shown by the following questions and answers: (Hill's testimony pages 8,9, and 10)

"Q. Did he say anything about Mr. Finley having promised to put into the contract that he should have a depot?
A. No sir. He made no claim to me that he had been promised a depot, but this conversation with me about the depot was in regard to the advantage or disadvantage to his place that would ensue from the location of a depot upon the east or west of the Blackwater River."

"Q. Please state Mr. Hill what, if any, fraud was claimed by Mr. Joyner to have been perpetrated upon him by Mr. Finley with reference to the crossing of his fish-pond.
A. He made no claim that Mr. Finley had read as a part of the contract any matter not contained in the contract, but stated that Mr. Finley had told him that the construction of the railroad would not disturb his fish-pond, but that the company would be compelled to provide a sufficient passage for the water, or something to that effect."

"Q. State what fraud, if any, he claimed was perpetrated upon him by Mr. Finley with reference to the railway going through his land on a level with the land.
A. I do not recollect of any such claim of fraud being made by Mr. Joyner, and he made no complaint to me in regard to the grade, but complained of his peanuts and corn, I think, being dug up or cut down before maturity. I think he said he had to cut his corn himself to save it, but do not remember whether he dug up the peanuts or the construction force. He made complaint in regard to the destruction of his crops, however."

Q. What, if any, fraud did Mr. Joyner claim to have been perpetrated upon him by Mr. Finley in inserting in the contract anything about conveying land sufficient for cuts, fills, barrow-pits, etc."
A. He made no claim of fraud in this respect that I recollect."

On cross-examination he says: (pages 13 and 14 and 15)

facts, provided they are false, and are made as of the part's own knowledge."

It is submitted that if the representations in the case of Roker Iron Company vs. Trout, (supra) to the effect that the Company was about to engage extensively in mining, to set at work a large force and employ as many as twenty wagons, etc. was such a false representation as would annul a deed or lease then the false representations made to these people are sufficient to annul these contracts. Certainly they show similar acts of fraud of like character committed by the same party at or near the same time. (Piedmont Bank vs. Hatcher, (supra.)

THE EVIDENCE OF COMPLAINANTS.

To combat the evidence of Joyner and others the railway company have taken the testimony of Finley, agent, who ~~testified~~ denies all fraud and attempts to support it by the testimony of W. H. Hill, John Key and _____ Dalton.

Finley's testimony is not supported by other testimony.

To substantiate the testimony of Finley they introduced the testimony of one W. H. Hill, another agent or attorney for the company, to establish the fact that Joyner did not claim, when he refused to sign the deed, that it was different from the option. An examination of his testimony will show that his memory is very defective. In order to thoroughly appreciate its weakness it will be necessary to state that Joyner contends that when Hill came to his house to get him to sign the deed that his horse was taken from the nuggy and that they first ate dinner and did not take up the matter of the deed until

that might be something of the substance I heard his say.
Q. Did he give the names of the parties who had given rights-of-way for the depot?
A. Yes sir. J. H. English, L. H. Carr, Tom Carr and others. I think he mentioned these three names and others."

It will be noted that this man heard Finley say in his presence in talking to his wife's mother that the others had given him the rights-of-way with the understanding that he was to give them a depot out there on Tom Carr's land.

Now it is true that none of these witnesses required the location of the depot at the designated point to be incorporated in their options and consequently there was no necessity for misreading the paper. Yet, if we take their testimony to be true Finley fraudulently stated that a depot would be located at the desired point and accepted certain conveyances based upon this consideration. Here we have "an affirmation of a fact in contradistinction to an expression of opinion which is ordinarily not presumed to deceive or mislead". The statement was made for the purpose of procuring the contract. It was material. It was untrue, and the party to whom made relied on it, and was induced thereby to enter into the contract.

In *Prewitt vs. Trimble*, 92 Ky. 176; 36 A. S. R. 586, it is said:

"When a person is in a situation to know, and it is his duty to know, whether a statement, upon the faith of which another has been induced to enter into a contract, is true or false, the law imputes such knowledge to him and the statement, if untrue, is held to be fraudulent as regards the person who relied upon it."

And in a note: "Whether representations are made innocently or knowingly, they operate equally as a fraud upon ~~any~~ a party who relies upon them in ignorance of the

Q. Did Mr. Finley promise you as a certainty that the depot would be located at this point. Or did he say that it was probable that it would be there?

A. He told me it would not be more than a mile from me if it was not on my place."

It will be noted that it was only upon the assurances that the depot would be there that he gave his land.

Joe English (rec. 2, page 27) says:

"Q. Mr. English did you sell a right-of-way to Mr. A. J. Finley for the Tidewater Railway across your land?

A. No sir.

Q. How did he get it then?

A. I gave it to him?

Q. Why did you give it to him?

A. Because he promised to put a station in my neighborhood.

Q. About how far from you?

A. About half a mile.

Q. Was that the only consideration that you required for your land?

A. Yes sir.

Q. How much land did you give him?

A. I gave him a right-of-way one hundred feet wide and ten acres ~~more~~ deep.

Q. About what would you have charged for that land had he not promised to put a depot?

A. I am not prepared to say sir. I do not know. It was right through the middle of my best land and my land was not for sale.

Q. Are the depots as now located on the Tidewater Ry. any service to you?

A. None in the world sir.

Q. What depot do you use?

A. For shipping purposes.

Q. Yes.

A. No special. Carrsville is generally my nearest depot."

S. J. Pierce (rec. 3, page 10) says:

"Q. Mr. Pierce did you ever hear Mr. A. J. Finley agent for Tidewater Ry. Co. say anything to the effect that he had acquired rights-of-way in this vicinity in consideration of placing a depot on Mr. Tom Carr's land?

A. Yes sir. On May 17th, 1905, Mr. Finley came to my house to see my wife's mother in regard to a right-of-way across a little farm down the road here just a little bit and in talking with her he asked her for the privilege of a right-of-way, not as to her giving it, she being a widow woman he was disposed to give her something, and said he was going through and others out there had given him the right-of-way with the understanding that he was to give a depot out here on Mr. Tom Carr's farm and she told him she could not exactly give him the right of way but that she would be favorable to the neighborhood and neighbors as to a depot and she would not charge an unreasonable sum. She give him the privilege of a right-of-way for \$25.00 for crossing her place with the understanding that he would place a depot of the company near Mr. Tom Carr's land or on Mr. Tom Carr's place. I think

R. T. Frasier in testifying about the negotiations between Finley and Joe English (rec. 2, page 1) says:

"A. Well Mr. Finley come up there, Mr. English with Mr. Joyner, they come together.

Q. Came up where and when?

A. I think it was the 16th day of May they came up there, Mr. Joe English. And Mr. Finley says to me what road is that out there. I said the Smithfield and Franklin road, the only name I have ever heard for it. He said I told Mr. Carr that I would have a station at this road here and Mr. Carr agreed ~~that~~ to give me a piece of land for this station. That was about all that was said at that time until we went into the house. When we went in the house Mr. English sorter hesitated about signing the option. And finally he did it by Mr. ~~What~~ ^{What is his name} telling him that it would enhance the value of his farm three or four times its value, present value.

Q. What was said about the depot?

A. He told Mr. English there would be ~~some~~ a station there.

Q. What would you say was their contract from your recollection of what you heard them say?

A. He was to give English nothing, the dollar I suppose to seal the bargain. Mr. English give ~~it~~ to me and I cashed the dollar check.

Q. You do not understand me. Why did English give him the right-of-way across his land?

A. Because simply he ~~was~~ ^{was} to have a station there."

Give him the right of way with the understanding that he was

It will be noted that this witness says that he heard Finley say that he had told Carr that a station would be built at the road and that Carr agreed to give a piece of land for this station. He also states that the right-of-way was given with the understanding that there was to be a station there. He further testifies that he was so sure from what he heard that there would be a station at the point named that he bought from Tom Carr one acre of land and paid him \$50.00 for it, when under ordinary circumstances he would not have given anything like that much for it (rec. 2, page 2).

J. M. Ballard (rec. 2, page 17) says:

"Q. What was the consideration to cause you to sell Mr. Finley your right-of-way?

A. Because I thought that I could get my stuff to market in a mile or two and it would be a whole heap more convenient than going four miles. I would have charged him three times as much had I known that I would not be convenient to the railroad. So he fooled me that much.

represented to him that it had been determined to locate a depot very near his land.

S. T. Carr (Rec. 1, page 24) says:

"Q. Tell in your own words just what conversations took place between you and the representative, who came to see you.

A. I was plowing and he (Finley) came up and spoke to my wife on the porch. When I come up he said "Good morning you are blessed to live here at this place. You are going to have a depot at the County road, at the corner of your field. I have been to see L. H. Carr and Joe English and they have given their right-of-way for a depot. Will you be willing to do the same." I told him if he was sure we would have a depot I would. He said "You will certainly have a depot and the railroad will run at a level with your land". I gave him land sufficient for a depot."

This witness expressly says that Finley represented that a depot would be at the County road and that Carr and English had given their rights-of-way for a depot. And on page 27 this witness says:

"Q. And nothing was said in the option about company's being obliged to put depot there?

A. He said it would hold them when I gave land sufficient."

L. H. Carr (rec. 1, page 29) says:

"Q. Why did you give your right-of-way?

A. We had a long way to go to get to a depot and Mr. Finley promised a depot there if I would give the right-of-way.

Q. Did he tell you any provisions had been made for a depot?

A. He said we would get a depot at the County road.

Q. Tell in your own words just what took place between you and Mr. Finley the day you gave him the option?

A. He come to my house with Mr. Joyner and said I have come here to take an option for a right-of-way. He said we have got two lines to run and this is the one we want and we are going to give you a depot down there and you will be blessed. Then he asked me how much I charged for the piece of land and I said I would give it for the depot. He then written the contract and me and my wife signed it."

It will be noted that this witness quotes Finley as saying: "We are going to give you a depot down there and you will be blessed. Then he asked me how much I charged for the piece of land and I said I would give it for the depot. He ~~then~~ written the contract and me and my wife signed it."

At the County road. I thought if he would put a depot there

representations were of matters of expectation or opinion only, and not of matters of fact; and Kerr on Fraud and Mistake, 82, ~~cited~~ is cited as authority for the position that such representations "go for nothing, though they may not be true, as a man is not justified in placing reliance on them." But on pages 80, 81, the same author says: "No man can complain that another has relied too implicitly on the truth of what he himself states." And so, too, this court held in Hull v. Fields and Thomas, 76 Va. 594.

In Grimm vs. Byrd, supra, Staples, J., said: "But even a matter of opinion may amount to an affirmation, and be an inducement to a contract, especially where the parties are not dealing upon equal terms, and one of them has, or is presumed to have, means of information not equally open to the other."

The testimony of other witnesses in regard to similar fraud is as follows: R. J. Cox (Rec. 1 page 21) says:

"A. He came to my house right from Carrsville and he said that he had come there to get a right-of-way. We went out at the corner of the road lying back of my place. He said, "I have come here to get a right-of-way". He said "I have gotten rights-of-way from Mr. Carr and Mr. English and others". He says "it will run through your place right along here". I said, "Mr. Finley, I can't sell you my right-of-way for less than \$700.00. I will have all of my buildings to move." And he said "I can't give you \$700.00. I am going to have a depot right near your land and you can sell off your land and make some money. It is going to be a great help to you people here in this community." He went on to the house. That is about all he said about it. He said he was going to give us a depot. He said you can make money by selling off lots. Q. Did the fact that he guaranteed to locate a depot at the point named influence you in making the sale at all? A. He said it would add to my place about \$2000.00 by having a depot at the County road."

It will be noted that this witness testified that Mr. Finley

Smith vs. Richards, 13 Pet. 26; Adams's Eq. page 177; 2 Parsons on Contracts, 177; Grimm v. Byrd, 52 Gratt. 302; Linhart v. Foreman, 77 Va. 540. In the last-named case at page 545, Hinton, J., said: "It is not necessary that the misrepresentation should be the sole cause of the transaction; it is enough that it may have constituted a material inducement." And in Low v. Trundle, 78 Va. 65, the same judge said: "If one represents as true what is false, in such a way as to induce a reasonable man to believe it, and the representation is meant to be acted upon, and he to whom the representation is made, believing it to be true, acts on it, and thereby sustains damage, there is ground to support an action of deceit at law, and to found a rescission of the transaction in equity."

"It matters not whether the party making the representation knew it to be false or not, so the other party relied and acted on it, as he had a right to do, without further inquiry; Brown v. Rice, 26 Gratt. 473; McMullen vs. Saunders, 79 Va. 356.

It is assigned for error that "the bill should have been dismissed at the hearing upon the complainant's own testimony."

This assignment presents in a double aspect the proposition announced in the first assignment of error. In one sense, it imputes error to the circuit court in overruling the demurrer, and holding that the allegations set forth in the bill made a proper case for equitable relief. In the other sense, it imputes error to that court in holding that the case made by the bill had been sustained by the evidence. The first aspect of the contention has been already sufficiently considered. But it is insisted for the appellant that the alleged

used the following language:

"The first assignment of error is, that the bill attempts to set up a contemporaneous parol agreement, essentially different from and in conflict with the written agreement which was signed and sealed by the parties, for which reason it is insisted the demurrer should have been sustained.

This assignment is clearly founded on a ^{mis}conception, and is wholly untenable. The bill does not set up a different agreement from that contained in the deed of lease, but avers that the deed of lease was itself procured by fraudulent misrepresentations. These representations were of material things well calculated to, and doubtless did, induce the complainants to execute the lease to Lewis and Preston, thereby seriously encumbering a very valuable property without any corresponding benefit to the lessors. The false representations thus made by the lessees, and by means of which an unconscionable advantage was taken of the lessors, were of matters peculiarly within the knowledge of the lessees, and on which the lessors relied and acted, as they had the right to do; and they were deceived and injured by them, because they were false. These false representations were not held ^{out} up as opinions merely, but were positive affirmations especially adapted to the end in view, which was to obtain the lease of the mining privileges aforesaid. By these means they obtained the deed of lease, but the lessors got nothing in return. And it is on this ground that the suit was brought to annul the deed. It is of everyday occurrence that courts of equity cancel contracts on such grounds; See 1 Story's Eq. Jur. sec. 193, note;

In the case of Rorer Iron Company vs. Trout,
83 Va. ³⁹⁷ ~~333~~, 5 A. S. R. 285, the facts are stated by Judge
Richardson as follows:

"The object of the suit was to annul a deed of lease
executed by said Trout and wife on the 29th of April,
1881, granting to said A. Lewis and M. P. Preston the
privilege for twenty years to mine and haul off all iron
and other minerals on their tract of land, the lessees to
pay ten cents a ton for all minerals obtained from the
premises, and to commence developing in sixty days from the
date of the lease. The bill avers, as grounds for such
annulment, that the lessees, in order to induce the com-
plainants to execute the lease, made to them certain
representations which ^{were} ~~are~~ material, and which were relied
on by the complainants as true, but which were false, and
thereby procured the lease; that the representations were,
that certain things existed, the existence whereof was a
matter peculiarly within the lessees' knowledge; that
these things were, that the lessees were about to engage
on a large scale in the business of mining, transporting
to market, and selling iron ores; that they had made, or
were about making, extensive preparations; that they intend-
ed to set to work to mine complainant's ores a large force,
and employ as many as twenty wagons to haul the ore; that
their preparations or means would enable them to transport
and ship as much as from one hundred to five hundred tons
per day; that they would develop in sixty days, and go to
mining and hauling directly afterwards; and that the bonus
of ten cents a ton, which they would allow him, would yield
complainant an income of at least ten dollars a day,
which he might draw every night, if he chose."

In delivering the opinion of the Court Judge Richardson

inference is reasonable that they proceed from the same motive. Large latitude is always given to the admission of evidence where the issue is fraud, "citing the principal case and *Lincoln v. Chaffin*, 7 Hall. 132; *Butler vs. Watkins*, 13 Wall. 456; *Ins. Co. v. Armstrong*, 17 U. S. 591. In *Lillienfeld v. Com.* 98 Va. 818, in a proceeding to revoke a liquor license for selling liquor to minors it was held competent to offer in evidence a number of indictments found in the same court against the same defendant for similar offences and also to receive the evidence of a minor, that within twelve months prior to the time when the license sought to be revoked took effect, the said minor had purchased intoxicating liquor of the defendant, citing the principal case. In *Wilson vs. Carpenter*, 91 Va. 183, it was held that in a suit to rescind a contract for false representations, evidence of similar representations to others, about the same time, is admissible to show the bent of mind of the party making the representations. See generally, 14 Am. & Eng. Enc. Law. (2nd Ed.) 196.

In the case of *Porter vs. Stone*, 62 Iowa 442; 17 N. W. 654, the Court, in speaking of similar representations made by the vendors to other prospective purchasers, said: "Evidence that they had made such representations to those with whom they had negotiated to induce them to enter into a contract, tends to support plaintiff's testimony to the effect that like representations were made to him for that purpose."

The testimony of Joyner and wife is supported by evidence of other frauds of like character committed by the same party at or near the same time.

Is their evidence admissible?

The rule of law is stated in 6 Ency. of Evidence, page 53, as follows:

"Transaction with third person. Other fraudulent acts.

Where the fraudulent intent of a party in the performance of an act is in issue, proof of other similar fraudulent acts is relevant and admissible to establish his intent or motive in the performance of the act in question, when it appears that there is such a connection between such other acts and the act in question as to authorize the inference that both are parts of one scheme or plan, in which the same motive is operative, and it is immaterial whether such other fraudulent acts occurred before or after the act in question, as remoteness in point of time affects only their weight."

In support of this statement the writer cites Tregdon vs. Commonwealth, 31 Gratt. 862; Piedmont Bank vs. Hatcher, 94 Va. 229; 26 S. E. R. 505.

Fraud-admissibility in evidence of other fraudulent acts. In Piedmont Bank vs. Hatcher, 94 Va. 231, the Court lays down the following rule: "Where fraud in the sale or purchase of property is in issue, evidence of other frauds of like character, committed by the same parties, at or near the same time is admissible. Its admissibility is placed upon the ground, that, where transactions of similar nature are executed by the same parties, and closely connected in point of time, the

606; 47 N. W. 448, not to deprive the former of the defense that the written instrument did not express the verbal agreement of the parties.

The rule stated in Maxfield vs. Schwarts, supra, was also applied in Alfred Shrimpton & Sons vs. Philbrick, 58 Minn. 366; 55 N. W. 551, in which the Court relieved a party from liability for his refusal to accept 4 great gross of pins contracted for by a written order which he could not read, but signed relying upon the agent's false statements that it was an order for 4 gross only, as they had agreed.

And in Adolph vs. Minneapolis & E. R. Co. 58 Minn. 178; 59 N. W. 959; the court rescinded a contract giving a railroad company a right-of-way, signed by a woman who was unable to read English and little acquainted with business, induced by a fraudulent representation of the contents and effect of the contract, and a false statement that her husband had sent the party to tell her to sign.

And in Houston vs. T. C. R. Co. vs. Milan (Tex. Civ App.) 58 S. W. 735; which was a similar action to which a release was pleaded, it was held that the Court properly charged the jury that, if the plaintiff failed to read the instrument before signing, he could not avoid its effect, unless he was induced not to read it by the representations of the company's agent, who procured it, that it was only a receipt for partial wages allowed him while he was disabled; and, if the plaintiff relied upon such representations, and, by reason of such reliance, failed to read it, the instrument would be void.

instrument; and he was thereby induced to sign it, which he would not have done if he had known its contents,--- such contract is not binding upon him, unless he subsequently ratifies it with knowledge of the facts."

Thus in *Cole Bros. vs. Williams*, 12 Neb. 440; 11 N. W. 875; 6 L. R. A. 464, ~~and~~ note, the Court held that the failure of one to read a written contract for the sale of lightning rods was no defence to one who read it, fraudulently misstating the price, at the other party's request, because the latter did not have his glasses and could not see to read without them. And the fact that the defrauded party might easily have procured a pair of glasses, or asked one of his clerks, who was present, to read the contract to him before signing, was held not to change the situation.

In the case of *Warder, B. & G. Co. vs. Whitish*, 77 Wis. 430; 46 N. W. 540; 6 L. R. A. 464 ~~and~~ note, where an agent for farm machinery, who, by fraudulent statements, persuaded an illiterate person who was incapable of reading or writing to execute a contract for purchase of a binder, representing that the paper signed was nothing more than an order for a machine on trial, it was held that his principal could not, in an action for the price of the binder, defend the agent's conduct by saying that, had the party so deceived been more vigilant, he would have discovered the fraud in time to withhold his signature from the contract.

Lack of prudence on the part of the defrauded party in relying upon the statement of the other party to the contract, which the former was unable to read, was held in *Maxfield vs. Schwarts*, 45 Minn. 150; 10 L.R.A.

it true, acts on it, and thereby sustains damage, there is fraud to support an action of deceit at law, and to found a rescission of the transaction in equity.

Fraud----Misrepresentatio may be relied on-----One to whom a representation has been made, is entitled to rely on it quoad the maker, and need make no further inquiry.

In the case of Beck & Bauli Lith. Co. vs. Houppert, (Ala) 53 A. S. R. 77, Judge Colemand in delivering the opinion of the Court, after citing several cases, used the following language:

"In these cases, it was held that the ignorance of the party was attributable to his negligence in not reading the instrument, or in not making proper inquiry of its contents, and where there is an absence of fraud, deceit, or misrepresentation. (Italics mine.) But the rule is otherwise where its execution is obtained by a misrepresentation of its contents (italics mine) the party signing a paper he did not know he was signing, and did not really intend to sign. It is immaterial, in the latter aspect of the case, that the party signing had an opportunity to read the paper, for he may have been prevented from doing so by the very fact that he trusted to the truth of the representation made by the other party with whom he was dealing; Burrough (507) vs. Pacific Guano Co. 81 Ala. 255; Johnson vs. Cook, 73 Ala. 537; Foster vs. Johnson, 70 Ala. 249; Davis vs. Snider, 70 Ala. 315; Kinney vs. Ensmiger, 87 Ala. 340."

In the case of Standard Mnfg. Co. vs. Slot, 121 Wis. 14; 105 Am. St. Rep. 1016; it was said:

"If false statements of fact, made by one party, leading up to the execution of a contract, are of such a character as reasonably to excuse the other party from reading the

or have concealed the truth for the purpose of drawing me into a contract, cannot accuse me of want of caution because I relied implicitly upon your fairness and honesty."

Railroad Co. vs. Kisch, L.R. 2 H. L. 99; 120;
Reynell vs. Sprys, 1 De Gex. M & G at page 710;
Price vs. McCamley, 2 De Gex. M & G 339-346; and
Pol. Cont. 487, 488.

In the case of Brown vs. Rice's Adm. 26 Gratt. 467, where an action was brought on bonds given for a renewal debt, which was barred by the statute of limitations upon the representations that it was due and could be collected, Judge Anderson in delivering the opinion of the Court used the following language:

"Again, it is argued that the defendant should not have relied upon these representations. She ought to have made further inquiry----she had the same means of information that the other party had. That she had the same means of information does not appear from the averments of the pleas. But if she might have had access to accurate information it was not incumbent on her to make further inquiry:

"A man to whom a particular and distinct representation has been made is entitled to rely on the representation, and need not make any further inquiry." "No man can complain that another has relied too implicitly on the truth of what he himself stated."

In the case of Lowe vs. Trundle and als. 78 Va. 65, the syllabus of the Court is as follows:

"Fraud----Rescission---If one represents as true what he knows to be false, in such way as to induce a reasonable man to believe it, and the representation is meant to be acted on, and he, to whom the representation is made, believing

as being put in that paper that I have not read to you?

A. Yes sir.

Q. What was it about?

A. Well he read about the fishpond. He said that bridge would be built over that and he further read that there would be a depot about a mile and a half on the lands of Tom Carr.

Q. Do you remember whether he read anything to you about whether the railroad would be put above the ground or on a level with the ground as it crosses the yard?

A. He said it would be level with this ground.

Q. Are you sure that he read that as a part of the contract?

A. Yes sir he was reading the contract and he read that right along.

Q. When you signed that did you think that was in the contract?

A. Yes sir I certainly did. I did not read the contract but I thought he was reading it right along."

It is true that Mrs. Joyner also acknowledged the paper before Mr. J. A. Johnson, a justice of the peace, but when we take into consideration the fact that it had been read to her and that Johnson only asked her to hold the paper up before her and asked her if it was her signature, it is submitted that her conduct was natural.

Mrs. Joyner says (rec. 2 page 25) in answer to a question if she asked Johnson to read the paper.

"A. No sir I did not ask him to read it. He held the paper up to me and asked me if I signed it for Finley about the railroad right-of-way and I said yes."

Were Joyner and wife negligent in not reading the paper?

In the case of West East Real Estate Company vs. Clayborne, 97 Va. 754; 34 S. E. R. 900, Keith, president, in delivering the opinion of the Court used the following language:

"Where it is established that there have been any fraudulent representations by which a person has been induced to enter into a contract, "It is no answer to his claim to be relieved from it to tell him that he might have known the truth by proper inquiry. He has a right to retort upon his objector, "you, at least, who have stated what is untrue,

Q. When Mr. Finley read this contract to you who was present?

A. My wife.

Q. Was anyone else present?

A. No sir.

Q. When did you next hear of this option paper?

A. It was in September, I do not remember what day.

About five or six or seven days after Mr. Finley left Mr. James A. Johnson came.

Q. What did Mr. Johnson do?

A. He come there and went to the kitchen where my wife and I was, and took a paper out of his pocket and says I got a paper here with your name to it. Then she said (Mr. Corbitt here objects to question and witness in instructed not to tell what she says, and Mr. Burges sayd tell only what Mr. Johnson said and what you said). *Fin* said here is the paper Mr. Finley gave me; I suppose you signed it." Both said yes, we thought it was the same paper Mr. Finley gave us. We did not ask him to read it."

There were no other negotiations between Joyner and the

Company until one W. H. Hill, another agent or attorney

of the company, when to Joyner's house to secure a deed.

Joyner relates this transaction upon cross-examination as

follows: (rec. 4 page 16)

"Question by Mr. Corbitt. How was it you found out about the contract not being as you thought it was?

A. Mr. Hill come there for me to give him a deed for the property, and I went out in the porch and told Mr. Hill to read it to me before I signed it. Mr. Hill commenced to read and by and by he struck where it was nothing like what I had understood and I told him I would not sign that to save his life because it was not like the contract. He said he was going to prove it to me, and he got contract and read to me and it was different and I told him I just was not going to sign it. Mr. Hill went away, and I went to see Mr. W. S. Holland and asked him advise about it.

Q. And the deed that Mr. Hill had for you to sign was not like the contract you signed.

A. Was not like the contract Mr. Finley read to me. It was not."

I shall discuss the matter of damages later.

BRIEF OF ARGUMENT.

The option was misread to Joyner and wife.

In support of this contention we have the testimony of Joyner heretofore given. Mrs. Joyner in describing the option as read to her testifies as follows: (rec. 2, page 22).

"Q. Mrs. Joyner I have now read you all the paper signed by you. Do you remember whether Mr. Finley read anything

"A. He said "here is an option paper I wrote a few minutes ago. I want you to sign it. I will read it to you. I think I can read it better than you can".

He then testified as follows:

"Q. Did you or your wife attempt to read it?

A. We did not. Mr. Finley said he could read it better than we could.

Q. Do you read well?

A. No sir. I am a man with no education. Never had the chance to go to school but 117 days when I was a mighty little boy.

Q. I will now read you the option. I want you to stop me if I read anything that was not in the paper read to you.

(Mr. Burges then read option down to this: "to so much additional land" the paper reading as follows:)

"Together with so much additional land contiguous thereto as may be required for the slopes of cuts, and fills, drainage and barrow-pits".

Q. That was not in the option paper read to me.

Q. Nothing was said about slopes?

A. No sir.

Q. Cuts?

A. No sir.

Q. Fills?

A. No sir.

Q. Drainage?

A. No sir.

Q. Barrow-pits?

A. No sir.

Q. I have now read you all of the contract and you have only stopped me once, I, therefore, understand that he read to you everything in the contract except at the point, at which you stopped me?

A. Yes sir.

Q. Did he read you anything more than I read you?

A. He did.

Q. Tell me what this was.

A. Well in the first place he read that where the railroad crossed the fish-pond of said J. E. T. Joyner that a trestle or bridge should be built, which would rest on piling so as not to interfere with the water in the fish-pond and so that the said J. E. T. Joyner might pass and re-pass under the railroad with his boat.

Q. Did he read anything else that I have not read to you?

A. Yes sir.

Q. What was it?

A. He read that where the railroad crosses the County road, the Smithfield and Franklin road, that a depot would be built for loading and unloading freight on the land of Tom Carr.

Q. How far would this railroad be from your house?

A. It is one mile. According to the measurement on the railroad track. I have never measured it.

Q. Are you sure that he read this about the fishpond and depot as being a part of the option?

A. I am.

having signed a paper but alleging that his signature was obtained thereto by fraud and that he never would have signed the paper had not the agent of the company deceived him by fraudulently ~~misreading the same~~ at the time of its execution. The railway company has filed a general denial to the said cross-bill.

STATEMENT OF DEFENDANT'S CONTENTION.

Joyner claims that on the evening of the 15th day of May, A. J. Finley, agent or attorney of the Tidewater Railway Company, came to his house and spent the night and that the next day he entered into negotiations with him for the purchase of the right-of-way desired. He describes the negotiations as follows: (rec. 1 page 3)

"The agreement between Mr. Finley and myself was. We were going to Mr. Joe English's from my house and Mr. Finley wanted to know why I was so hard. He said the others had given their right-of-way. Going on we got into a conversation and Mr. Finley said "Mr. Joyner, are you going to be the hardest man I have struck to-day"? He said: "I have been talking with you all day, except when I was over yonder talking with some others, and you heard me." I said "Mr. Finley there is one thing sure if you will agree not to interfere with my fish-pond and agree to give me the depot at the road down there where the railroad crosses the County road at Tom Carr's place I will agree to take what you say".

~~Q. What did he say he wanted?"~~

Here counsel for complainant objects to the introduction of oral testimony as to what agreement was finally entered into and also to a statement of negotiations which were finally closed by a written agreement. Joyner then goes on to state the terms of the agreement to the effect that the track would be laid at an even grade with the land and that a trestle would be built across his fish-pond. He then says that Mr. Finley went to his house and prepared the agreement or option and brought it to him saying: (rec. 1 page 5)

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY, VIRGINIA.

Tidewater Railway Company, etc.....Complainant.

vs.

J. E. T. Joyner et al.....Defendants.

BRIEF OF COUNSEL FOR DEFENDANT.

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INTRODUCTION.

J. E. T. Joyner, in September, 1907, instituted in this Court an action of ejectment against the Tidewater Railway Company complaining that it had entered upon and unlawfully withheld from him a strip of land one hundred feet wide extending entirely through his farm and also making claim for certain damages which are set out in his declaration. The Virginian Railway Company, a ^{that} llegal^{ly} ^{it} was the successor of the Tidewater Railway Company, secured an injunction enjoining the prosecution of the ejectment suit alleging that Joyner had, on the 15th day of May, 1905, executed an agreement in writing, in which he promised whenever required in a period of six months from that date to make and deliver a good and sufficient deed conveying the land ~~herein~~ mentioned upon the payment of the purchase price; that the railroad company had demanded compliance ^{with} upon the terms of said agreement and that Joyner had refused to do so. Joyner then filed an answer, which he ~~prays~~ to be treated as a cross-bill, admitting

of the lease by the notary who took the acknowledgment, where it appears that the lessee was a shrewd business man of plausible manners, and knew of the mistake in the lease at the time of its execution, and that the lessor believed that the lessee had drawn the lease according to their verbal agreement. *Wilson vs. Moriarty*, 88 Cal. 207. 26 Pac. 85.

Positive fraud perpetrated upon the maker of a note relieved him from liability, in *Angier vs. Brewster*, 69 Ga. 362, in which it appeared that the maker read the note and objected to certain stipulations therein, and the agent of the payee pretended to strike them out, but in fact erased other provisions, and thereupon the maker signed without further examination.

Lack of prudence on the part of the defrauded party in relying upon the statement of the other party to the contract, which the former was unable to read, was held in *Maxfield vs. Schwartz*, 45 Minn. 150, 10 L. R. A. 606, 47 N. W. 448, not to deprive the former of the defense that the written instrument did not express the verbal agreement *of the parties*.

Copy
The rule stated in *Maxfield vs. Schwartz*, supra, was also applied in *Alfred Shrimpton & Sons vs. Philbrick*, 53 Minn. 366, 55 N. W. 551, in which the court relieved a party from liability for his refusal to accept 4 great gross of pins contracted for by a written order which he could not read, but signed relying upon the agent's false statement that it was an order for 4 gross only, as they had agreed.

And in *Adolph vs. Minneapolis & P. R. Co.* 58 Minn. 178, 59 N. W. 959, the court rescinded a contract giving a railroad company a right of way, signed by a woman who was unable to read English and little acquainted with business, induced by a fraudulent representation of the

98 N. W. 923.

A party to a contract, who has been guilty of fraudulent representations, is in no position to suggest carelessness or want of diligence on the part of the defrauded party in not reading the instrument, and relying on the former's good faith and truthful reading of it, or his statement of its contents. Cole Bros. vs. Williams, 12 Neb. 440, 11 N.W. 875. G.H.P.X.

Thus, in Cole Bros. vs. Williams, ^{supra}, the court held that the failure of one to read a written contract for the sale of lightning rods was no defense to one who read it, fraudulently misstating the price, at the other party's request, because the latter did not have his glasses and could not see to read without them. And the fact that the defrauded party might easily have procured a pair of glasses, or asked one of his clerks, who was present, to read the contract to him before signing, was held not to change the situation.

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And An agent for farm machinery, who, by fraudulent statements, persuaded an illiterate person who was incapable of reading or writing to execute a contract for purchase of a binder, representing that the paper signed was nothing more than an order for a machine on trial, ^{it was held that this principal} cannot, in an ^{the agent} action for the price of the binder, defend his conduct by saying that, had the party so deceived been more vigilant, he would have discovered the fraud in time to withhold his signature from the contract. *Could not*
Warder, B. & G. Co. vs. Whitish, 77 Wis. 430, 46 N. W. 540. (G.H.P.X. - H.G.H. note)

An action to reform a lease brought under a statute providing for the reformation of a contract made through the mistake of one party, which the other party, at the time of the execution, knew or suspected, cannot successfully be defended on the ground that the lessor, who was unable to read or write, did not pay sufficient attention to the reading

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In the case of Beck & Pauli Lith. Co. vs. Houppert, (Ala.) 53 A. S. R. 77, Judge Colemand in delivering the opinion of the Court, after citing several cases, used the following language:

"In these cases, it was held that the ignorance of the party was attributable to his negligence in not reading the instrument, or in not making proper inquiry of its contents, and where there is an absence of fraud, deceit, or misrepresentation. But the rule is otherwise where its execution is obtained by a misrepresentation of its contents, the party signing a paper he did not know he was signing, and did not really intend to sign. It is ⁱⁿ material, in the latter aspect of the case, that the party signing had an opportunity to read the paper, for he may have been prevented from doing so by the very fact that he trusted to the truth of the ~~misrepresentation~~ made by the other party with whom he was dealing; Burrough (507) vs. Pacific Guano Co. 81 Ala. 255; Johnson vs. Cook, 73 Ala. 537; Foster vs. Johnson, 70 Ala. 249; Davis vs. Snider, 70 Ala. 315; Kinney vs. Ensminger, 87 Ala. 340."

In a foot-note to Griffin vs. Roanoke River and Lumber Company, 6 L. R. A. (N.S.) 465, the law is stated as follows:

"If false statements of fact, made by one party, leading up to the execution of a contract, are of such a character as reasonably to excuse the other party from reading the instrument; and he was thereby induced to sign it, which he would not have done if he had known its contents,--such contract is not binding upon him, unless he subsequently ratifies it with knowledge of the facts.

Standard Mnfg. Co. v. Slot, 121 Wis. 14, 105 Am. St. Rep. 1016,

contents and effect of the contract, and a false statement that her husband had sent the party to tell her to sign.

Similar relief was granted in *Stamps vs. Bracy*, 1 How. (Miss) 312, in which one party agreed to pay certain debts for the other party to the contract, which the latter read to the former, omitting two obligations.

And in *Houston vs. T. G. R. Co. v. Milan* (Tex. Civ. App) 58 S. W. 735, which was a similar action to which a release was pleaded, it was held that the court properly charged the jury that, if the plaintiff failed to read the instrument before signing, he could not avoid its effect, unless he was induced not to read it by the ~~misrepresentations~~ ~~misrepresentations~~ representations of the company's agent, who produced it, that it was only a receipt for partial wages allowed him while he was disabled; and, if the plaintiff relied upon such representations, and, by reason of such reliance, failed to read it, the instrument would be void.

It is a question for the jury whether the agent of the payee of a note is guilty of fraud so as to relieve the maker of liability thereon, where it appears that the maker signed the note at night, when he could not see well, relying upon the statement of the agent that it represented the true indebtedness of the maker. *Chapman vs. Atlanta Guano Co.* 91 Ga. 821, 18 S. E. 41."

Evidence of other acts of fraud of a similar character, executed by the same parties and closely connected in point of time, is admissible as showing that the acts proceeded from evil motive.

Piedmont Bank vs. Hatcher, 94 Va. 229.

The rule as to the admissibility of parol proof to

vary written instruments is well settled and is briefly expressed as follows: "Parol contemporaneous evidence is admissible to contradict or vary the terms of a valid written instrument."

It is well settled that parol evidence may be admitted to show that the written instrument is void by reason of fraud, addident or mistake. 1 Greenlief Ev. sec/ 284.

The fraud which will let in such proof must be fraud in the procurement of the instrument, which goes to its validity, or some breach of confidence in using a paper delivered for one purpose and fraudulently perverting it to another."

Allen P. Towner vs. Lucas, 13 Gratt. 716.

"Even in a court of common law fraud may be given in evidence to vacate a deed on the plea of non est factum; if such fraud relate to the execution of the instrument, as, if it be misread to the party or his signature be obtained to an instrument which he did not intend to sign". per Judge Roane in Taylor vs. King, 6 Mnrf. 366. To the same effect see Harrison vs. Middleton, 11 Gratt. ⁵⁴⁹~~539~~; Am. Buttonhole etc. Company vs. Burlock, 35 W. Va. 660; 14 S. E. R. 323. (11 Gratt. 549, in point) see also Morrow vs. Bailey 2 W. Va. 329.

~~Virginia authorities.~~

In the case of West End Real Estate Company vs. Clayborne, 97 Va. 734; 34 S. E. R. 900; Keith, president, in delivering the opinion of the Court used the following language:

Where it is established that there have been any fraudulent representations by which a person has been induced to enter into a contract, "it is no answer to his claim to be relieved from it to tell him that he might have known the truth by proper inquiry. He has a right to retort upon his objector, 'you, at least, who have stated what is untrue, or have concealed the truth for the purpose of drawing me into a contract, cannot accuse me of want of caution because I relied implicitly upon your fairness and honesty,'"

Railroad Co. vs. Kisch, xxxxxx. L. R. 2 H. L. 99, 120;
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In the case of Brown vs. Rice's Admr. 26 Gratt. 467, where an action was brought on bonds given for a renewal debt, which was barred by the statute of limitations upon the representations that it was due and could be collected, Judge Adderson in delivering the opinion of the Court used the following language:

Again, it is argued that the defendant should not have relied upon these representations. She ought to have made further inquiry---she had the same means of information that the other party had. That she had the same means of information does not appear from the averments of the pleas. But if she might have had access to accurate information it was not incumbent on her to make further inquiry. "A man to whom a particular and distinct representation has been made is entitled to rely on the representation, and need not make any further inquiry." "No man can complain that another has relied too implicitly on the truth of what he himself stated."

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In the case of Lowe vs. Trundle and als, 78 Va. 65, the Syllabus of the Court is as follows:

Fraud--Rescission---If one represents as true what he knows is false, in such way as to induce a reasonable man to believe it, and the representation is meant to be acted on, and he, to whom the representation is made, believing it true, acts on it, and thereby sustains damage, there is fraud to support an action of deceit at law, and to found a rescission of the transaction in equity.

Fraud-----Misrepresentation may be relied on-----One to whom a representation has been made, is entitled to rely on it quoad the maker, and need make no further inquiry.

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Virginia Ry. Co.

vs.
J. C. T. Joyner

WESTERN MFG. COMPANY

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versus

L. L. VELLINES.

12 L. R. A. (N.S.) 428.

In the case of Western Mfg. Company vs. Cotton & Long (Ky.) the syllabus of the Court is as follows:

Contract--fraud--failure to read instructions.

1. The words, "Read this", and, "I have read this contract, have had delivered to me by your salesman a copy of same, and this is all of the contract between us," conspicuously printed upon the face of a contract, do not prevent setting aside the contract for fraud in securing its execution, where the party sought to be charged did not read the contract, but relied on a false reading by the agent, who did not call attention to such words.

Same--estoppel.

2. Failure to read a contract before signing it will not prevent a party from taking advantage of the fact that the other party misread it to him, so as to create the impression that it contained the same matter as that embraced in the oral agreement, or wrote a contract different from that agreed upon.

Same--fraud of agent.

3. A party is bound by the conduct of his agent in procuring a contract, although in violation of his positive instructions, if he seeks to take advantage of the contract.

HOWELL VS. CRAMER.

In the case of Medlin vs. Buford, 20 S. E. R. (N.C.)

⁴⁶³
~~450~~ the syllabus of the court is as follows:

"Where a person who has a good education executes a mortgage without reading it, or requesting that it be read, supposing that it is a "lien" of some kind different from a mortgage, and is induced to execute it by the false representation of a third person that it is not a mortgage, and that they "could do away with it in 30 days", the mortgage is not void in the hands of an innocent purchaser."

In the case of Griffin et al. v. Roanoke R. & Lumber Co. (North Carolina) 53 S.E.R. 307, the syllabus of the court is as follows:

"Fraud in factum-fraud in treaty.

Where plaintiffs, by a parol agreement for the sale of certain timber, reserved a part thereof, and were thereafter fraudulently induced by defendant's agent to sign a deed for the timber under the assurance that the reservation stipulated for was contained therein, the fraud was in the representation or treaty, and not in the factum; and hence the deed was not ~~in the factum~~ absolutely void, precluding an action against defendant for the fraud.

~~xFraud-negligence-failure-to-read-deed-xeffect.~~

Fraud-damages-measure of damages-value-market value.

Where plaintiffs were induced to sign a deed to certain timber by fraudulent representations of defendant's agent, who prepared the deed, that the same contained a reservation of a proportion of the timber as stipulated for, an instruction that plaintiff's measure of recovery was the value of the timber at the date of the deed, and that while the market value should be considered as evidence of value, it was not controlling, was correct. "

Howell vs. Cramer.

Judge Connor in delivering the opinion of the court said:

"Defendant, however, insists that the fraud practiced by its agent in procuring the execution of the deed was in the factum, and not in the treaty. That the deed was absolutely void was not the act and deed of plaintiffs, and its vendee ~~acquired~~ no title to the long-leaf pine. It is true that the courts recognize the distinction between the two classes of fraud. It is possible that if defendants' contention was correct, the measure of damages might be different. We are, however, of the opinion that the fraud practiced upon the plaintiff's is in the representation or treaty; the plaintiffs signed the paper writing which they intended to sign, the fraud consists in the false representation by which such signatures were obtained. The distinction is pointed out by Battlem J., in McArthur v. Johnson, 61 N. C. 317, 93 Am. Dec. 593, in which he says: "An instance of fraud in the factum is when the grantor intends to execute a certain deed, and another is surreptitiously substituted for it". Referring to instances of fraud in the treaty or representation, he says: "In all of them it will be seen that the party knowingly executes the very instrument which he intended, but is induced to do so by means of some fraud in the treaty or some fraudulent representation or pretense." Shepherd, C. J., discussing the question in Medlin v. Buford, 115 N. C. 270, 20 S. E. R. 463, says: "A deed made by this species of fraud is said to be void, but it will be found upon examination that this term is indiscriminately used in connection with any deed, which may be avoided either ^{at} by law or in equity..... The distinction between void and voidable deeds becomes highly important in its consequences to third persons, because nothing can be founded upon a deed that is absolutely void; whereas from those which are only voidable, fair titled may flow".

Howell vs. Cramer.

THE PERSON CHARGING FRAUD MUST BE GUILTY OF LACHES.

In the case of *Hutt vs. Miller*, (Va.) 95 Va. 32, 27 S. E. 831 the syllabus of the court is as follows:

"A purchaser of land lost his right to rescind for fraud where he remained silent for nearly two years after discovering the facts, and in the meantime the land had greatly depreciated in value, and an innocent third person had acquired a vendor's lien note given by the purchaser for the land."

Judge Cardwell in delivering the opinion of the court said:

"In the case of *Hudson v. Waugh*, 93 Va. 518, 25 S. E. R. 530, the false representations or mutual mistake alleged to have been made was as to the amount due on an incumbrance assumed by the vendee of the property, and that although it was shown that the lots purchased were bound by the incumbrance for \$4,181, instead of \$2,796, and that the vendee waited only a few months after discovering the fraud or mistake before in- of the contract, this court held that he was not entitled to a stituting his suit for rescission; that he had not acted with that promptness in discovering the fraud or mistake, or in repudiating the contract after he made the discovery, that was required to entitle him to a rescission of his contract, ~~after he made the discovery~~ he having delayed till the rents of the property were reduced from \$72. to \$43 per month.

rescission

A party who intends to repudiate a contract on the ground of fraud should do so as soon as he discovers the fraud; for if, after discovery of the fraud, he treats the contract as a subsisting contract, or if, in the interval while he is deliberating, an innocent third ~~person~~ party has acquired an interest in the property, or if, in consequence of his delay, the position even of

Howell vs. Cramer.

the wrongdoer is affected, he will be deemed to have waived his right of repudiation. And whenever a party to a contract has a right to elect whether he will avoid it or treat it as a subsisting contract, his election may be manifested by acts as well as by words, and, when once made, is final, and cannot be retracted. 2 Add. Cont. 772; Kerr, Fraud & M. 306; Improvement Co. v. Brady, 92 Va. 71 22 S. E. 845; ~~Howell v. Glendy~~ Powell v. Berry, 91 Va. 568, 22 S. E. 365; Morgan v. Glendy, 92 Va. 86, 22 S.E. 854; Darling v. Cummings' Ex'r 92 Va. 521, 23 S. E. 880; Slothower v. Land Co. (~~decided at then present term~~) 27 S.E. 466

Suit

We have seen that appellants do not even claim to have notified their vendor of their intention to repudiate the contract ~~sued~~ on prior to the institution of this suit; that the only reason they give for not doing so is that ~~the~~ no demand was made upon them for payment of their note; that they held title to the lot and the possession thereof for more than two years without demanding a rescission, although they discovered the cause for which they ask a rescission long prior to the filing of their answer and cross bill in this suit, and before the lot became totally unsalable, as they say. They must, therefore, be considered as having, by their acts after discovering their alleged cause of complaint, made an election to treat the contract as a subsisting contract, which election could not afterwards be retracted."

And again in Hurt vs. Miller, it is held:

"The mere fact that payment of the overdue price was not demanded of the purchaser of land will not excuse laches on his part in declaring his intention to rescind the contract on the ground of fraud."

Howell vs. Cramer.

In the case of National Mut. Building & Loan Asso. vs. Blair,
³⁶
~~36~~ S. E. R. 515, Judge Harrison in delivering the opinion
of the court said:

"The rule is general that where there has been a
change of circumstances or relations which would render
either an execution or rescission of a contract a hardship
to the defendant, and this change grows out of an unexcused
delay on the part of the plaintiff, the change and delay
together will constitute a sufficient ground for denying
equitable relief. Darling v. Cumming's Ex'r, 92 Va. 521;
23 S. E. 880; Hurt vs. Miller, 95 Va. 32; 27 S.E. 831;"

~~XXXXXXXXXXXXXXXXXXXX~~

DAMAGES FOR DECEIT.

In note on fraud in Ist. Pat. and H., page 445, the follow-
ing proposition of law is stated:

"Waiver by acts and words.

It is well settled that where a party intends
to repudiate a contract on the ground of fraud, he should
do so as soon as he discovers the fraud; or if after the
discovery he treats the contract as existing, he will
be deemed to have waived his right of repudiation, and must
then bring an action ~~of repudiation~~ for damages for
deceit. This election may be manifested by acts as well
as by words, and when once made, is final and cannot be
retracted. Campbell v. Eastern, etc. Asso., 98 Va. 729;
37 S. E. R. 350; Max Meadows, etc., v. McGavock, 98 Va. 411;
36 S. E. R. 409; Rouzie v. Daingerfield 97 Va. 708;
34 S. E. R. 899; West End Co. V. Claiborne, 97 Va. 734,
34 S. E. R. 900."

In the case of Campbell v. Eastern Building ~~xxxx~~ & Loan
Asso. 98 Va. 729; 37 S. E. R. 350: Judge Harrison in deliver-
ing the opinion of the court used the following language:

Howell vs. Cramer.

"Apart, however, from these considerations, it is too well settled to need citation of authority that where a party intends to repudiate a contract on the ground of fraud, he should do so as he ~~discovers~~ discovers the fraud; for if, after the discovery of the fraud, he treats the contract as a subsisting contract, he will be deemed to have waived his right of repudiation, and must then bring an action for damages for the deceit. And whenever a party to a contract has a right to elect whether he will avoid it or treat it as a subsisting contract, his election may be manifested by acts as well as by words, and, when once made, is final, and cannot be retracted. Improvement Co. v. Brady, supra."

In the case of West End Real Estate Company vs. Claiborne, 97 Va. ^{34 S. E. 906.} 754; Judge Keith in delivering the opinion of the court cites from 2 Pom. Eq. Jur. as follows:

"But mere opportunity or means of obtaining knowledge is not enough where there has been an antecedent representation of fact upon which a party has been induced to rely to his prejudice. "Mere opportunity or means of investigation are not sufficient in such a case. Undoubtedly, if there had been no representation, they (that is, the opportunity or means of knowledge) might or would have put the party upon inquiry, and would therefore amount in law to a constructive notice of the facts which might have been learned by such inquiry; but the positive representation of a fact cannot be counteracted by such implication. It must be shown that the party proceeded, in some measure, to avail himself of the opportunity; that he took some steps in making an independent investigation. In other words, it must appear that, through the opportunity and means of inquiry, he received some information concerning the actual facts, so that, from considerations of expediency, he should not be allowed to allege his

Howell vs. Cramer.

failure to obtain all the knowledge which he might have acquired." Section 895.

A contract tainted with fraud is not void, but voidable. Therefore great punctuality and promptness of action are required by the deceived party upon his discovery of the fraud. "The person who has been misled is required, as soon as he learns the truth, with all reasonable diligence to disaffirm the contract or abandon the transaction, and give the other party an opportunity of rescinding it, and of restoring both of them to their original position. He is not allowed to go on and derive all possible benefits from the transaction, and then claim to be relieved from his own obligations by a rescission or a refusal to perform on his own part. If, after discovering the untruth of the representations, he conducts himself with reference to the transaction as though it were still subsisting and binding, he thereby waives all benefit of an relief from the misrepresentations". Section 897. And this duty promptly to disaffirm a fraudulent transaction is not dependent upon the proof of injury by the delay to the other party.

Conceding, for the sake of the argument, that there was a fraudulent representation in the ~~case~~ case before us; that there was evidence of the ratification of the transaction after knowledge of ~~that~~ fraud, -it would still remain to consider whether or not the affirmance of acquiescence was induced by a promise upon the part of the company or its agents to expurgate the fraud and its consequences from the transaction, and make an arrangements with respect to it satisfactory to the defendant."

to rescind it, or else he will be bound by it.

In Fry. Spec. Perf. 703, it is stated that, "in the case of a transaction grounded on fraud, the party deceived must, on the discovery of the fraud, elect to rescind or to treat the transaction as a contract".

WHEN A CONTRACT SHOULD BE REPUDIATED.

In the case of Max Meadows Land & Improvement Co., vs. Brady, supra, President Keith in delivering the opinion of the court said:

In 2 Add. Cont. p. 772 et seq. it is said that "a party who intends to repudiate a contract on the grounds of fraud should do so as soon as he discovered the fraud; for if, after the discovery of the fraud, he treats the contract as a subsisting contract, or if, ~~after the discovery~~ ~~of the fraud~~ in the interval whilst he is deliberating an innocent third party has acquired an interest in the property or if, in consequence of his delay, the position even of the wrongdoer is affected, he will be deemed to have waived his right of repudiation, and must then bring an action for damages for the deceit. And whenever a party to a contract has a right to elect whether he will avoid it, or treat it as a subsisting contract, his election may be manifested by acts as well as by words, and, when once made, is final, and cannot be retracted." And, ~~further on~~ further on, the same author ~~says~~ says "the discovery of the new incident in the fraud, which only strengthens the evidence of the original fraud, cannot revive a right of repudiation which has once been waived." These propositions of law are, indeed, elementary, and it is hardly necessary to fortify them by the citation of authority.

THE PERSON CHARGING FRAUD MUST BE GUILTY OF LACHES.

In the case of Eupt vs. Miller, 95 Va. 32; 27 S.E.R. 831, the syllabus of the court is as follows:

A purchaser of land lost his right to rescind for fraud where he remained silent for nearly two years after discovering the facts, and in the meantime the land had greatly depreciated in value, and an innocent third person had acquired a vendor's lien note given by the purchaser for the land.

Judge Cardwell in delivering the opinion of the court said:

In the case of Hudson v. Waugh, 93 Va. 518; 25 S.E.R. 530, the false representations or mutual mistake alleged to have been made was as to the amount due on an incumbrance assumed by the vendee of the property, and that although it was shown that the lots purchased were bound by the incumbrance for \$4,181 instead of \$2,796, and that the vendee waited only a few months after discovering the fraud or mistake before instituting his suit for rescission of the contract, this court held that he was not entitled to a rescission; that he had not acted with that promptness in discovering the fraud or mistake, or in repudiating the contract after he made the discovery, that was required to entitle him to a rescission of his contract, he having delayed till the rents of the property were reduced from \$72.00 to \$43.00 per month.

A party who intends to repudiate a contract on the ground of fraud should do so as soon as he discovers the fraud; ~~for if~~ ^{if}, after discovery of the fraud, he treats the contract as a subsisting contract, or if, in the interval while he is deliberating, an innocent third party has acquired an interest in the property, or if, in consequence of his delay, the position even of

DAMAGES FOR DECEIT.

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Waiver by acts and words.

It is well settled that where a party intends to repudiate a contract on the ground of fraud, he should do so as soon as he discovered the fraud; or if after the discovery he treats the contract as existing, he will be deemed to have waived his right of repudiation, and must then bring an action for damages for deceit. This election may be manifested by acts as well as by words, and when once made, is final and cannot be retracted.

Campbell vs. Eastern, etc., Asso. 98 Va. 729;
37 S.E.R. 350; Max Meadows, etc. v. McGavock, 98 Va. 411
36 S.E.R. 409; Rouzie v. Gaingerfield 97 Va. 708;
34 S.E.R. 899; West Ebd Co. v. Claiborne, 97 Va. 734;
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In the case of Campbell vs. Eastern Building & Loan Association 98 Va. 729; 37 S.E.R. 350; Judge Harrison in delivering the opinion of the court used the following language:

Apart, however, from these considerations, it is too well settled to need citation of authority that, where a party intends to repudiate a contract on the ground of fraud, he should do so as ^{soon as} he discovers the fraud; for if, after the discovery of the fraud, he treats the contract as a subsisting contract, he will be deemed to have waived his right of repudiation, and must then bring an action for damages for the deceit. And whenever a party to a contract has a right to elect whether he will avoid it or treat it as a subsisting contract, his election may be manifested by acts as well as by words, and, when once made, is final, and cannot be retracted.

Improvement Co. v. Brady, supra.

Election to affirm is final.

If a party who has been defrauded, elect, on the discovery of fraud, to affirm the contract, his election is final and conclusive. He has but one election to rescind, and having once elected to affirm the contract, he cannot thereafter disaffirm it, but must abide by the decision he has made. W

Wilson v. Hundley, 96 Va. 96;
30 S.E.R. 492;
27 S.E.R. 831;
25 S.E.R. 530.

Hurt vs. Miller, 95 Va. 32;
Hudson v. Waugh, 93 Va. 518;

Election to affirm by defense by special pleas.

Where a vendee of land does not ask a rescission for fraud in the transaction, but defends an action at law for the purchase price, he may file special pleas under sec. 3299 of the Code, and claim the benefit of any setoff by way of damages to which he may be entitled, because of the fraudulent statements of the vendor.

Watkins vs. West, etc. Co. 92 Va. 1/ 22 S.E.R. 554.

MISTAKE.

The mistake may consist either in the circumstance that the instrument by which the parties desired to express their intention does not so express it, or does not express it accurately; or in the circumstance that the intention of the parties, tho' correctly expressed, has, nevertheless, been reached through some misapprehension or mistake. In the first case the intention is erroneously expressed; in the other the intention is founded on error. The relief pertinent to the first case is correction; to the second, rescission. Wash. W. p. 277.

The following authorities bear out the text.

- (1) Smith v. Ins. Co., 93 N. C. 35
- (1) Thompson v. Ins. Co., 136 N. C. 286.
- (2) Rogers v. Rogers, 84 Va. 303, 304.
- (2) Alexander v. Dixon, 3 Leigh 113.
- (1) Curdine v. Merrill, 40 Gratt. 219.
- (1) Lord v. Will, 4 Rand. 571.
- (1) (2) Parker v. Stewart, 21 Grant. 606.
- (2) Gray v. Sellers, 25 Gratt. 541.
- (1) Alexander v. Weston, 2 Gratt. 268
- (1) Smith v. Ins. Co. v. 93 N. C. 35
- (1) Rogers v. Richardson, 95 N. C. 234.
- () Rogers v. Mills, 94 Va. 303.
- (2) New Building Co. v. Lewis, 70 Va. 192.
- (2) Carter v. Co. v. Western Assurance Co., 105 N. C. 591.
- (1) Beach v. Sellers, 104 Va. 170

89-4-12
P. K. R. 1001
J. S. R. L.
H. R.
J. W. R.

Note the figures (1) (2) indicate which of Prof. Bigsbee's grounds of mistake were involved.

In *Mauzy v. Sellers*, 20 Cratt. at p. 545, Judge Staples, delivering the opinion of the court said: "That it is competent for a court of equity to correct a mistake in a deed or other writing upon parcel evidence, cannot now be questioned. No branch of equity jurisprudence is more fully established than this: none is established by a greater array of authorities, English and American".

In *Mauzy v. Sellers*, supra. and in *Beach v. Ballwood*, supra, the court quotes with approval from 1 Story Eq. Juris. sec. 152, as follows: "One of the most common classes of cases in which relief is sought in equity on account of mistake of fact is that of written agreements either executed or executory. Sometimes by mistake the written agreement contains less than the parties intended; sometimes it contains more; sometimes it simply varies from their intent by expressing something different in substance from the truth. In all such cases if the mistake is clearly made out by proof entirely satisfactory, equity will reform the contract so as to make it conformable to the precise intent of the parties". (*See also Puleski Iron Co. v. Palmer*, 89 Va. 384)

It is admitted that the proof of a mutual mistake must be clear and convincing.

Assuming a Mutual } Hypothesis

If the hypothesis be that Howell and Holland did not know that the words relating to an extension were in the contract. That is to say, that the contract, as written, did not accurately express the intention and real agreement of the parties. Is this true? What was the antecedent verbal agreement between the parties with reference to the time granted within which the timber was to be cut?

Complainants evidence.

Defendants evidence.

Suppose Howell did not know and Holland did know, that the words were in the contract.

"In all cases, however, where mistake alone is set up as a ground for relief, the mistake must be mutual. But the same relief is afforded where there has been a mistake on one side accompanied by fraud or other inequitable conduct on the other". Lewis, P. in Grayson v. Buchanan, 28 Va. at p. 256.

If defendant knew it and acted quietly -

"The authorities all agree that equity has jurisdiction to reform written instruments in two well defined classes of cases only, viz: (1) where there has been an innocent omission or insertion of a material stipulation, contrary to the intention of both parties and under a mutual mistake; and (2) where there has been a mistake of one party accompanied by fraud or other inequitable conduct of the remaining parties". Lewis P. in W. P. R. Co. vs. Dunlop, 86 Va. at p. 351.

To same effect, Baldwin, J. in Blessing v. Beatty, 1 Rob. p. 298; Hull v. Watts, 95 V. 12; Boschen v. Jorgen, 92 Va. 756; Jones v. Robertson, 2 Munf. 187.

The relief to be granted is reformation. Bisph. Wq. supra.
S. V. P. R. Co. v. Dunlop, supra; Blessing v. Beatty, supra;
Hull v. Watts, supra; Boschen v. Jorgen, supra.

Equity will reform such mistake not only against the other party but against third parties claiming through him.

Mauzy v. Sellers, 26 Cratt. 641. ✓

Irvine v. Greaver, 32 Cratt. 417. ✓

classell v. Thomas, 3 Leigh 113. ✓

Jones v. Robertson, 2 Monf. 187, a woman signed and acknowledged in the presence of three witnesses a deed of gift and afterwards filed a bill alleging that she had sent for the defendant to write her will but he wrote an instrument which, until very lately she thought was a will but to her astonishment it turned out to be a deed of gift to sundry parties. The answer of the defendant denied the allegations of the bill and set out that the instrument was not only read to her but was placed in her hands to be read by herself. Under the then practice neither part was allowed to testify. About the only evidence in the case were previous declarations of the complainant that she intended to make a will and an admission by one of the grantees who was not present at the execution of the instrument, that she believed the complainant intended to make a will. Held, "the deed sought to be set aside was executed through mistake on the part of the appellee, and obtained by fraud on the part of the appellant". And the court adjudged the deed null and void, and decreed that it be set aside accordingly".

Pulatti vs Pulatti 59 Va 384 -

Equity will reform such mistake not only as against the other party but against third parties claiming through him. 32 Cratt. 417; 28 Cratt 437; 26 Cratt 641; 3 Leigh 113.

WATERBURY RAILROAD CO.
vs.

J. E. JOYNER.

STATEMENT OF FACTS.

A. J. Finley went to the residence of J. E. Joyner on the 18th day of May, 1915, about five o'clock in the afternoon and in the presence of Mr. Joyner and Mrs. Joyner and no one else, said he would read the option which he had filled up or written out a few minutes before and in reading the paper he did not read the words.

"Together with so much additional land contiguous thereto as may be required for slopes, cuts, fills, drainage and borrow pits"

Nothing was said about any additional land other than the strip one hundred feet wide or fifty feet from the center line which was called the Right of way. And the said A. J. Finley misread the option by reading that is not in the recorded option substantially as follows:

(1) He read that where the railroad crossed the Fish pond on the lands of the said J. E. Joyner that a trestle or bridge should be built which would rest on piling so as not to interfere with the water in the pond and so that the said J. E. Joyner might pass and repass under the railroad with his boat.

(2) He further read in the said option that a depot for loading and unloading freight would be built at the point where the railroad crossed the Smithfield and Franklin Road at the lands of Tom Carr.

This depot would be about one and one-fourth miles going down the road or if a road was made along side the railroad it would be less than a mile.

(3) He further misread by reading as a part of the option that the railroad would run at even grade or level

with the land was passed through the fields of J. E.
I. Joyner.

Mr. and Mrs. Joyner say that they relied upon his
reading of the paper when they signed it and believed he read
it as it was written. They say that neither of them attempt-
ed to read one line in the paper when they signed it, but
relied wholly upon the reading of the said Finley. He said
in the beginning that he did not think they could read it,
but that he could read it better than they could.

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AGREEMENT

BETWEEN

Geo. E. F. Jaynes

AND

TIDEWATER RAILWAY CO.

Dated May 16 1905

John of Wight County.

Received for record this 1st

day of June 1905

N. F. Yanny Clerk.

Recorded in Deed Book No. 71

Page 518

Examined by Virginia Clerk.

[Faint handwritten notes and signatures on the right side of the page, including a large signature that appears to be 'John of Wight']

the damage to buildings and to any crops that is now or may be growing on said strip of land and which said sum shall be paid upon the execution and delivery of an apt and proper deed as herein set forth. The party of the second part shall have the privilege of shifting said center line to either side a distance of 50 feet provided however should the said center line be so shifted as to include the barn on said premises the party of the second part shall pay a damage to be determined hereafter.

The parties of the first part shall have the privilege of removing any buildings now on said strip of land at any time prior to the beginning of the construction of said road on said premises.

It is understood and agreed that the said party of the second part is given a period of 180 days from the date hereof in which, at its option, to demand a deed for the strip of land hereinabove mentioned: it is provided, however, that should the said party of the second part, at any time before the expiration of said period, notify the said party of the first part in writing of its intention to demand said deed and to complete this contract, the same shall thereupon be considered closed, and the party of the second part shall have a reasonable time after such expiration as aforesaid in which to make necessary surveys and examination of title, upon completion of which the said party of the first part shall execute and deliver to the said party of the second part, on demand, an apt and proper deed for said property in accordance with the terms hereinbefore set out; should said party of the second part fail to demand said deed, or, in lieu thereof, give said notice of its intention to demand same, within

the time above specified, this agreement shall become null and void and the rights of all parties hereunder shall cease and determine.

The party of the second part may, at any time on and after the date hereof, enter upon the land herein described and commence, continue and complete the construction of its railway over and through the same.

Witness the following signatures and seals:

A. J. Hindley, Witness *Geo. E. S. Jaynes* SEAL.
Laura V. Jaynes SEAL.
SEAL.

STATE OF VIRGINIA,

COUNTY OF *Isle of Wight*

To-wit:

I, *Geo. A. Johnson* a Justice of the Peace in and for the County aforesaid, in the State of Virginia, do certify that *Geo. E. S. Jaynes*

and *Laura V. Jaynes*

his wife

whose names are signed to the writing above and hereto annexed, bearing date on the 16th day of *May* 1905, have acknowledged the same before me, in my County aforesaid.

Given under my hand this 19th day of *May* 1905.

(My term of office expires on _____ 190__.)

In the Clerk's office of the Circuit Court of Isle of Wight County, this 1st day of *June* 1905 at one o'clock P.M. this deed was received and with the certificate annexed and mailed to *Geo. E. S. Jaynes & Co.*

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THIS AGREEMENT, Made this 16th day of May 1905

between As. E. J. Foyner and Lassa
Foyner, His wife
of the County of Isles of Wight and State of

Virginia, parties of the first part, and the TIDEWATER RAILWAY COMPANY, a Corporation chartered and organized under the laws of the State of Virginia, party of the second part.

Whereas, The party of the second part proposes to build a line of railway from the West Virginia State line, at or near New River, through Southern Virginia and to Tidewater; and

Whereas, The parties of the first part own a certain tract of land situate in the District of Windsor, County of Isles of Wight, and State of Virginia, on the waters of Blackwater River and bounded on the North by the lands of W. D. Est on the East by the lands of L. H. Co & J. H. English on the South by the lands of J. P. Holland and on the West by the lands of Joseph Johnson containing about 332 acres.

Now; Therefore, This Agreement Witnesseth: That for and in consideration of One
(\$1.00) Dollars, cash, to the parties of the first part, in hand paid, the receipt of which is hereby acknowledged, and in consideration that the party of the second part shall adopt as a location of its said proposed railway or a branch thereof, a line crossing the said lands of the parties of the first part, the said parties of the first part do hereby covenant and agree to grant and convey unto the said party of the second part, its successors or assigns, with covenants of general warranty of title, free from encumbrances, upon demand, a strip of land for a right of way 100 feet wide, that is to say 50 feet on each side of the center line of the railway of the party of the second part or a branch thereof, as finally located through the said lands of the parties of the first part, together with so much additional land contiguous thereto as may be required for the slopes of cuts and fills, drainage, waste-banks and borrow-pits.

The parties of the second part shall pay to the parties of the first part the sum of Four hundred and seventy five
(\$475.00) dollars for said strip of land so taken; which sum shall be in full for said strip of land

I served the evidence received by
delivering a true copy thereof to James
E. T. Jaynes, in person, in Dale of
Night County, Virginia, on the 22nd
day of September 1905

Given under my hand this 22nd
day of September 1905

Wm H. Hill

I do hereby subscribe and swear to before
the undersigned a Notary Public in
and for the City of Norfolk and State
of Virginia, this 28th day of Sept. 1906

John J. Cantel
Notary Public

My Commission expires June 12, 1909

Exhibit B

FORM 162

TIDEWATER RAILWAY COMPANY
LEGAL DEPARTMENT

NOTICE

To Geo. E. J. Payne
Isle of Wight County Va

YOU WILL PLEASE TAKE NOTICE, THAT A CERTAIN OPTIONAL CONTRACT

OF PURCHASE OF LAND MADE BY YOU ON THE 16th DAY OF May, 1905, TO THE TIDEWATER RAILWAY COMPANY,

A VIRGINIA CORPORATION, AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF Isle of Wight COUNTY, VIRGINIA, IN DEED BOOK NO. 71, PAGE NO. 1518, IS HEREBY ACCEPTED UPON THE TERMS AND CONDITIONS SET OUT IN SAID

WRITTEN CONTRACT, SUBJECT TO THE PROVISIONS THEREIN CONTAINED THAT CONVEYANCE SHALL BE WITH COVENANTS OF GENERAL WARRANTY OF TITLE, FREE FROM INCUMBRANCES. AND YOU ARE HEREBY NOTIFIED THAT IT IS THE INTENTION OF THE TIDEWATER RAILWAY COMPANY TO DEMAND FROM YOU A DEED WITH THE COVENANTS AS AFORESAID FOR THE LAND SET FORTH AND DESCRIBED IN SAID WRITTEN CONTRACT, AND TO IN ALL RESPECTS COMPLETE THE SAID CONTRACT: RESERVING, HOWEVER, UNTO THE SAID COMPANY THE RIGHT, UNDER SUCH CONTRACT SECURED TO IT, TO HAVE A REASONABLE TIME IN WHICH TO MAKE NECESSARY SURVEYS AND EXAMINATION OF TITLE.

THIS 22nd DAY OF September 1905

TIDEWATER RAILWAY COMPANY.

BY Wm H. Hill
Agent

J. N. Burgess pg.

J. E. J. Jones

B. Declaration to ~~Exhibit~~
The Virginian Railway Co
Potomac Railway Co

A copy for
Mr. J. H. Smith atty
for defendants

Such service of the within papers as can be
gotten by an order of publication duly
published and posted is hereby authorized this
12th day of September 1907
The Virginian Railway Company
Potomac Railway Company
By J. H. Smith, their attorney.

IN THE CIRCUIT COURT OF THE COUNTY
OF ISLE OF WIGHT.

J. B. T. Joyner.....Plaintiff.

vs.:

The Virginian Railway Company, a corporation,
and Tidewater Railway Company, a corporation...Defendants.

Statement of damages demanded by plaintiff
of defendants, which is filed with
declaration hereto attached.

The plaintiff demands of the defendants damages as
follows, to-wit:

For destroying the crops growing upon said land for the
year 1905 and for preventing the cultivation of the same since
possession was taken.

For digging and removing valuable dirt therefrom.

For removing and destroying the fences upon the land
taken and thereby permitting the entrance of stock upon the
crops of other land enclosed by said fences causing the
partial destruction of said crops.

For profits that would have accrued from the use of the
land from the 16th day of August, 1905.

For digging deep trenches on each side of said roadbed
and causing stagnant water to remain therein which is
offensive, dangerous and injurious to the health of the
plaintiff.

For constructing said railroad in such close proximity
to said plaintiff's dwelling house and out-buildings as to
render the use thereof dangerous, inconvenient and im-
practicable.

For constructing an embankment across a valuable fish
pond belonging to said plaintiff, and thereby rendering same
useless.

All of which is done to the great damage of the plain-
tiff of \$1500.00.

railway is as follows: Entering said premises of said plaintiff where the same adjoins the lands of L. H. Carr at station 2449 of said located center line; thence on a tangent S 85 degrees 16 minutes W 4000 feet to station 2489 on the boundary line between other lands of plaintiff and Joseph H. Johnson; the said strip or parcel of land containing 9.18 acres, more or less.

And the said plaintiff saith that he being so possessed of said tract or parcel of land the said defendants afterwards, to-wit: on the 16th day of August, 1905, entered into the same and unlawfully withheld, and still unlawfully withholds from the said plaintiff the possession thereof to the great damage of the plaintiff of fifteen hundred dollars (\$1500.00) as shown by statement of damages herewith filed as a part of this declaration, and therefore he brings his suite.

_____ P. Q.

To the Virginian Railway Company, a corporation, and the Tidewater Railway Company, a corporation:

You, and each of you, are hereby notified that the foregoing declaration in ejectment against you, with the statement of damages filed herewith will be filed in the Clerk's Office of Isle of Wight County on the first day of the rules to be holden for said Court on the Third Monday in September, next, to-wit: the 16th day of September, 1907.

Very respectfully,

"Exhibit C"

IN THE CIRCUIT COURT OF THE COUNTY
OF ISLE OF WIGHT.

J. E. T. Joyner.....Plaintiff.

vs.

The Virginian Railway Company, a corporation,
and Tidewater Railway Company, a corporation,..Defendants.

J. E. T. Joyner complains of the Virginian Railway Company, a corporation duly organized and doing business under the laws of the State of Virginia, and the Tidewater Railway Company, a corporation duly organized and doing business under the laws of the State of Virginia, of a plea of trespass; for this, to-wit: that heretofore, to-wit: on the first day of May, in the year 1905, the said plaintiff was possessed of an estate in fee simple absolute of a certain tract or parcel of land lying and being in Windsor Magisterial District, of Isle of Wight County, Virginia, near Black Water River, which is bounded and described as follows:

A strip of land one hundred feet (100 ft.) in width, that is to say fifty feet (50 ft.) on each side of the center line of the railway owned by said defendants, as now located and staked; being all of the lands that lie within a strip one hundred feet (100 ft.) wide and included between two parallel lines, one on each side of said center line of said railway and parallel to and distant fifty feet (50 ft.) therefrom. Said center line, parallel lines and strip included, extending entirely through and across the lands of said plaintiff which lie adjoining the lands of L. H. Carr and J. H. English on the East, and Joseph H. Johnson on the West. It being a part of the land which was acquired by said plaintiff from George W. Cornell and which was conveyed to him by deed duly recorded in the Clerk's Office of Isle of Wight County. The said center line of said

IN THE CIRCUIT COURT OF THE COUNTY
OF ISLE OF WIGHT.

J. B. T. Joyner.....Plaintiff.

vs.:

The Virginian Railway Company, a corporation,
and Tidewater Railway Company, a corporation...Defendants.

Statement of damages demanded by plaintiff
of defendants, which is filed with
declaration hereto attached.

The plaintiff demands of the defendants damages as
follows, to-wit:

For destroying the crops growing upon said land for the
year 1905 and for preventing the cultivation of the same since
possession was taken.

For digging and removing valuable dirt therefrom.

For removing and destroying the fences upon the land
taken and thereby permitting the entrance of stock upon the
crops of other land enclosed by said fences causing the
partial destruction of said crops.

For profits that would have accrued from the use of the
land from the 16th day of August, 1905.

For digging deep trenches on each side of said roadbed
and causing stagnant water to remain therein which is
offensive, dangerous and injurious to the health of the
plaintiff.

For constructing said railroad in such close proximity
to said plaintiff's dwelling house and out-buildings as to
render the use thereof dangerous, inconvenient and im-
practicable.

For constructing an embankment across a valuable fish
pond belonging to said plaintiff, and thereby rendering same
useless.

All of which is done to the great damage of the plain

W. J. P. 1905

railway is as follows: Entering said premises of said plaintiff where the same adjoins the lands of L. H. Carr at station 2449 of said located center line; thence on a tangent S 85 degrees 16 minutes W 4000 feet to station 2489 on the boundary line between other lands of plaintiff and Joseph H. Johnson; the said strip or parcel of land containing 9.18 acres, more or less.

And the said plaintiff saith that he being so possessed of said tract or parcel of land the said defendants afterwards, to-wit: on the 16th day of August, 1905, entered into the same and unlawfully withheld, and still unlawfully withholds from the said plaintiff the possession thereof to the great damage of the plaintiff of fifteen hundred dollars (\$1500.00) as shown by statement of damages herewith filed as a part of this declaration, and therefore he brings his suite.

_____ P. q.

To the Virginian Railway Company, a corporation, and the Tidewater Railway Company, a corporation:

You, and each of you, are hereby notified that the foregoing declaration in ejectment against you, with the statement of damages filed herewith will be filed in the Clerk's Office of Isle of Wight County on the first day of the rules to be holden for said Court on the Third Monday in September, next, to-wit: the 16th day of September, 1907.

Very respectfully,

IN THE CIRCUIT COURT OF THE COUNTY
OF ISLE OF WIGHT.

J. E. T. Joyner.....Plaintiff.

vs.

The Virginian Railway Company, a corporation,
and Tidewater Railway Company, a corporation,..Defendants.

J. E. T. Joyner complains of the Virginian Railway Company, a corporation duly organized and doing business under the laws of the State of Virginia, and the Tidewater Railway Company, a corporation duly organized and doing business under the laws of the State of Virginia, of a plea of trespass; for this, to-wit: that heretofore, to-wit: on the first day of May, in the year 1905, the said plaintiff was possessed of an estate in fee simple absolute of a certain tract or parcel of land lying and being in Windsor Magisterial District, of Isle of Wight County, Virginia, near Black Water River, which is bounded and described as follows:

A strip of land one hundred feet (100 ft.) in width, that is to say fifty feet (50 ft.) on each side of the center line of the railway owned by said defendants, as now located and staked; being all of the lands that lie within a strip one hundred feet (100 ft.) wide and included between two parallel lines, one on each side of said center line of said railway and parallel to and distant fifty feet (50 ft.) therefrom. Said center line, parallel lines and strip included, extending entirely through and across the lands of said plaintiff which lie adjoining the lands of L. H. Carr and J. H. English on the East, and Joseph H. Johnson on the West. It being a part of the land which was acquired by said plaintiff from George W. Cornell and which was conveyed to him by deed duly recorded in the Clerk's Office of Isle of Wight County. The said center line of said

The parties of the first part shall have the privilege of removing any buildings now on said strip of land, at any time prior to the beginning of the construction of said road in said premises.

To have and to hold the lands above granted, unto the said party of the second part, its successors and assigns, in fee simple.

The party of the second part shall have the right under this deed to shift or change the centre line above described to either side, to a distance of not more than fifty feet at any point; provided, however should the said centre line be so shifted as to include the barn on said premises, then the party of the second part shall pay an additional damage to be determined hereafter; and in event such change is made, this conveyance shall be construed to include a strip 100 feet in width, being fifty feet on each side of the changed centre line; provided, however, that if by reason of such change a larger quantity of land is required for the 100 foot right of way than is embraced within the present location, such additional land shall be paid for at the rate of ----- Dollars, per acre.

And the part--- of the first part hereby covenant that ----- will warrant generally the property hereby conveyed.

Witness the following signatures and seals:

(Seal)

THIS DEED, Made this 11th day of September 1905, between Jas. E. T. Joyner and Jaura V. Joyner his wife, of the County of Isle of Wight and State of Virginia, parties of the first part, and the Tidewater Railway Company, a corporation chartered and organized under the laws of the State of Virginia, party of the second part.

WITNESSETH: That for and in consideration of the sum of four hundred and seventy-five (475) dollars to the parties of the first part in hand paid, the receipt whereof is hereby acknowledged, the said parties of the first part do hereby grant and convey unto the said Tidewater Railway Company, party of the second part, its successors and assigns, the following property, to-wit: a certain strip or parcel of land, lying and being in the District of Windsor, County of Isle of Wight and State of Virginia, on the waters of Blackwater River and being a part of the land on which -----now resides, and described as follows: A strip of land 100 feet in width that is to say 50 feet on each side of the centre line of the Tidewater Railway as now located and staked; being all the lands of the parties of the first part that may lie within a strip 100 feet wide and included between two lines, one on each side of said centre line of said railway and parellel to and distant 50 feet, therefrom, said centre line, parellel lines and strip included extending entirely through and across the lands of said parties of the first part, which lie adjoining the lands of L. H. Carr and J. H. English on the East, and Joseph H. Johnson on the West, and were acquired by the said parties of the first part by deed from Geo. W. Cornell of record in the Circuit Court for the County of Isle of Wight; together with so much additional land contiguous thereto as may be required for the slopes of cuts and fills, drainage and barrow pits; which centre line of Tidewater Railway Company is described as follows:

Entering said premises of the said parties of the first part where the same adjoins the lands of L. H. Carr at station 2449 of said located centre line; thence on a S 85° 16' W 4000 feet to station 2489 on the boundary line between the lands of the said parties of the first part and Joseph Johnson, the said strip, piece or parcel of land containing 9.18 acres, more or less.

Extrait No 1

Received, 29th day of May, 1908, of J. I. Jones, \$ One dollar, in consideration of which we grant him, and his assigns, the option of buying at any time within 30 days from this date, for the sum of \$ 8000⁰⁰, My farm estimated at 332 acres, more or less, located in Isle of Wight County, Virginia, and bounded as follows: On the North by Currywalk Swamp; on the East by Jacob Bradshaw; on the South by J. P. Holland; on the West by J. B. Bland & Others

And should the said J. I. Jones, or his assigns, decide to purchase the said property at the price named, we bind ourselves to execute to him, or his assigns, a good and valid deed for said property, upon the payment of the purchase price. Property to be turned over 12th day of Jan 1909 if sale is consummated.
Witness the following signatures and seals:

J. C. Y. Jaynes (SEAL)
Laura Y. Jaynes (SEAL)

May 29th / 08

I consider that my farm is worth at least ten thousand dollars (\$10,000⁰⁰) and I would not sell for less but for the hard times, as I consider this the fair Market value.

J. C. Y. Jaynes

I served the within notice by delivering a true copy thereof to James E. T. Joyner, in person, in Isle Of Wight County, Virginia, on the 22nd day of September, 1905.
Given under my hand this 22nd day of Sept., 1905.

Wm. Hill

Taken, subscribed and sworn to before the undersigned
a Notary Public in and for the City of Norfolk and State
of Virginia, this 28th day of Sept. 1906.

John G. ...

NOTARY PUBLIC

My Commission Expires Nov 12, 1903.

TIDEWATER RAILWAY COMPANY
LEGAL DEPARTMENT

FORM L. 4

*J. W. Burgess Atty
Suppose V-*

(copy)

NOTICE.

To *Jos. E. P. Joyner*

Sale of Wright County, Va

You will Please Take Notice, That a certain optional contract of purchase of land made by you on the *16th* day of *May*, 190*5*, to the TIDEWATER RAILWAY COMPANY, a Virginia corporation, and recorded in the office of the Clerk of the Circuit Court of *Sale of Wright* County, Virginia, in Deed Book No. *71*, Page No. *578*, is hereby accepted upon the terms and conditions set out in said written contract, subject to the provisions therein contained that conveyance shall be with covenants of general warranty of title, free from incumbrances. And you are hereby notified that it is the intention of the TIDEWATER RAILWAY COMPANY to demand from you a deed with the covenants as aforesaid for the land set forth and described in said written contract, and to in all respects complete the said contract; reserving, however, unto the said Company the right, under such contract secured to it, to have a reasonable time in which to make necessary surveys and examination of title.

This *22nd* day of *September* 190*5*.

TIDEWATER RAILWAY COMPANY

By *W. H. Vick*
agent.

"Exhibit No 3" +
310

AGREEMENT

BETWEEN

Jas. E. Joyner

AND

Tidewater Railway Co.

Dated *May 16* 190*5*

Sal's of Micht County.

Received for record this *1st*

day of *June* 190*5*
at one o'clock P.M.

N. J. Young Clerk.

Recorded in Deed Book No. *41*

Page *518*

EXAMINED AND VERIFIED,
Clerk.

Jay J. 12.10

Faint, illegible text on the right page, possibly bleed-through or a second document.

buildings and to any crops, that is now
or may be growing on said strip of land,
and which said sum shall be paid
upon the execution and delivery of
an apt and proper deed as herein set
forth

The party of the second part shall have
the privilege of shifting said center
line to either side a distance of
50 feet, provided however should the
said center line be so shifted as to
include the barn on said premises
the party of the second part shall pay
a damage, to be determined hereafter

The parties of the first part shall have
the privilege of removing any buildings
now on said strip of land at any time
prior to the beginning of the construction
of said road on said premises,

It is understood and agreed that the said party of the second part is given a period of
180 days from the date hereof in which, at its option, to demand a deed for the
strip of land hereinabove mentioned: it is provided, however, that should the said party of
the second part, at any time before the expiration of said period, notify the said parties of the
first part in writing of its intention to demand said deed and to complete this contract, the same
shall thereupon be considered closed, and the party of the second part shall have a reasonable
time after such expiration as aforesaid in which to make necessary surveys and examination of
title, upon completion of which the said parties of the first part shall execute and deliver to
the said party of the second part, on demand, an apt and proper deed for said property in
accordance with the terms hereinbefore set out; should said party of the second part fail to
demand said deed, or, in lieu thereof, give said notice of its intention to demand same, within

the time above specified, this agreement shall become null and void and the rights of all parties
hereunder shall cease and determine.

The party of the second part may, at any time on and after the date hereof, enter upon
the land herein described and commence, continue and complete the construction of its railway
over and through the same.

Witness the following signature and seals.

A. J. Findley: witness

Jas. E. Joyner

[SEAL.]

Laura V. Joyner

[SEAL.]

[SEAL.]

STATE OF VIRGINIA

COUNTY OF Isles of Wight

To-wit:

I, Jas. A. Johnson a Justice of the Peace in and for the County
aforesaid, in the state of Virginia, do certify that Jas. E. Joyner

and Laura V. Joyner
his wife

whose names are signed to the writing above and hereto annexed, bearing date on the
16th day of May 1905, have acknowledged the same before me, in my
county aforesaid.

Given under my hand this 19th day of May 1905
Jas. A. Johnson J.P.
(My term of office expires on 190)

In the Clerk's Office of the Circuit Court of Isle of
Wight County, this 1st. day of June 1905, at one o'clock P. M. this
deed was received and with the certificate annexed, admitted to
record.

TESTE: A. D. Yarnall C.C.

This Agreement, Made this 16th day of May 1905

between Jas. E. T. Joyner and Laura T. Joyner his wife

of the County of Isles of Might and State of Virginia, parties of the first part, and the TIDEWATER RAILWAY COMPANY, a Corporation chartered and organized under the laws of the State of Virginia, party of the second part.

Whereas, The party of the second part proposes to build a line of railway from the West Virginia State line at or near New River, through Southern Virginia and to Tidewater; and

Whereas, The parties of the first part own a certain tract of land situate in the District of Windsor, County of Isles of Might, and State of Virginia, on the waters of Black water river and bounded on the North by the lands of Dr. Duck's Est on the East by the lands of L. H. Car & J. H. English on the South by the lands of J. P. Holloman and on the West by the lands of Joseph Johnson containing about 332 acres.

Now; Therefore, This Agreement Witnesseth: That for and in consideration of one hundred (\$100) Dollars, cash, to the parties of the first part, in hand paid, the receipt of which is hereby acknowledged, and in consideration that the party of the second part shall adopt as a location of its said proposed railway or a branch thereof, a line crossing the said lands of the parties of the first part, the said parties of the first part do hereby covenant and agree to grant and convey unto the said party of the second part, its successors or assigns, with covenants of general warranty of title, free from encumbrances, upon demand, a strip of land for a right of way 100 feet wide, that is to say 5'0 feet on each side of the center line of the railway of the party of the second part or a branch thereof, as finally located through the said lands of the parties of the first part, together with so much additional land contiguous thereto as may be required for the slopes of cuts and fills, drainage, and borrow-pits.

The parties of the second part shall pay to the parties of the first part the sum of Four hundred and seventy five (\$475.00) dollars for said strip of land so taken; which sum shall be in full for said strip of land, the damage to

"Exhibit 3"

JOS. JOHNSON.

J. E. T. JOYNER.

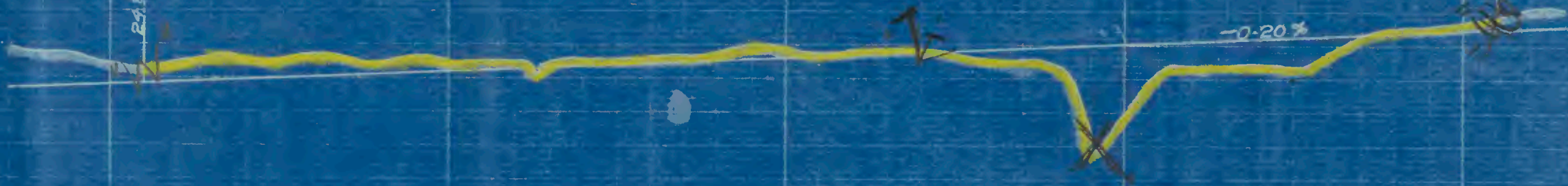
L. H. CARR.

500

500

2485100 N15°50'W

2485100 S31°10'E



0.0

0.0

THE VIRGINIAN RAILWAY CO

Profile of main line through the lands of

J. E. T. JOYNER.

Isle of Wight County, Va. — Containing 920 Acres.

M.P. 45. Hor. 1"=400' Norfolk, Va. 5/29/05.

Scales Vert. 1"=20'

Approved, 
Chief Engineer.

← To Deepwater

S. 85° 15' W.

To Sewall's Point →

2480

2480

2470

2460

2460

Original

Demanded for Deed
From

J. E. T. Joyner

Isle of Wight Co's

This the 2nd day of

TIDEWATER RAILWAY COMPANY

land containing 9.18 acres, more or less.

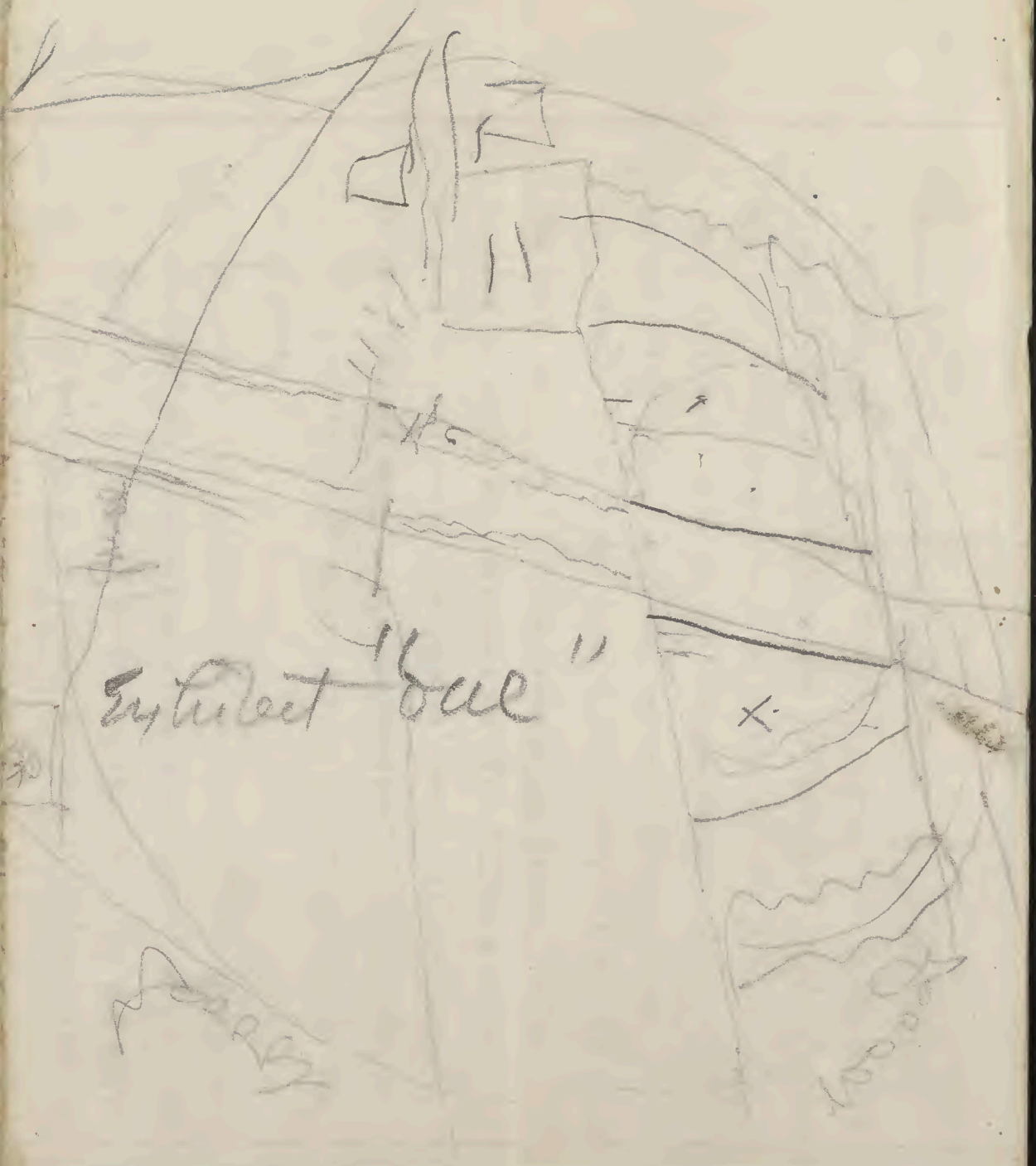
1908

part and Joseph Johnson; the said strip or parcel of
boundary line between the lands of the said parties of the
part and S. 89 1/2, W. 4000 ft. to station 2488 on the
part on S. 89 1/2 of said located center line; fence on a
part and the said strip on the lands of S. 2. 1/2. part of

Entering said premises of the parties of the first
water Railway is described as follows:

drainage and borrowings; which said center line of the Tide-
as may be required for the slopes of cuts and fills,

43.



#3.

as may be required for the slopes of cuts and fills, drainage and borrowpits; which said center line of the Tidewater Railway is described as follows:

Entering said premises of the parties of the first part where the same adjoins the lands of E. H. Carr at station 2449 of said located center line; thence on a tangent S. 85° 16' W. 4000 ft. to station 2489 on the boundary line between the lands of the said parties of the first part and Joseph Johnson; the said strip or parcel of land containing 9.18 acres, more or less.

This the 5th day of Nov. 1905.

TIDEWATER RAILWAY COMPANY

By

A. J. Dudley
Agent.

#2.

set forth.

It was further agreed the Tidewater Railway Company "is given a period of one hundred and eighty days (180) from the date" of said agreement, in which at its option, to demand a deed for the strip of land herein above mentioned, and hereafter more particularly described.

The Tidewater Railway Company now at this time and this date the 8th day of Nov. 1905, demands a deed from you for the strip of land hereinbefore mentioned, and hereinafter more particularly set out in accordance with the terms and conditions, according to said optional agreement; which agreement is of record in the office of the Clerk of Isle of Wight County, Va., in D. B. #71, at page 518.

The land agreed to be conveyed is more particularly set out as follows:

A certain strip or parcel of land lying and being in the District of Windsor, County of Isle of Wight and State of Virginia, on the waters of Black Water River, and being a part of the land on which you now reside, and described as follows:

A strip of land 100 feet in width, that is to say 50 feet on each side of the center line of the Tidewater Railway as now located and staked, being all the lands of parties of the first part that may lie within a strip 100 feet wide and included between two lines, one on each side of said center line of said Railway, and parallel to and distant 50 feet therefrom, said center line, parallel lines and strip included extending entirely through and across the lands of the said parties of the first part, which lie adjoining the lands of L. H. Carr and J. H. English on the east, and Joseph Johnson on the west; together with so much additional land contiguous thereto

To James E. T. Joyner and Laura V. Joyner, of Isle of Wight County, Virginia.

On the 16th. day of May, 1905, in and for a consideration of One (\$1.00) Dollar in hand paid, the receipt of which you acknowledged, and the further consideration that the Tidewater Railway Company should adopt as a location of its proposed railway, or a branch thereof, a line crossing your lands, you agreed "to grant and convey unto the said party of the second part, (that is the Tidewater Railway Company) their successors and assigns, with covenants of general warr anty, free from encumbrances, upon demand, a strip of land for a right of way, 100 feet wide, that is to say 50 feet on each side of the center line of the railway of the party of the second part, or a branch thereof, as finally located through" your lands "together with so much additional land contiguous thereto as may be required for the slopes of cuts and fills, drainage and borrowpits".

It was further agreed the party of the second part "should have the privilege of shifting said center line to either side a distance of 50 feet, provided, however, should the said center line be so shifted as to include the barn on said premises, the party of the second part shall pay a damage to be determined hereafter".

And you are given the privilege of removing any buildings now on said strip of land at any time prior to the beginning of the construction of said road on your premises, *and* for which land agreed to be conveyed, the Tidewater Railway Company was to pay Four hundred and seventy five (\$475.00) Dollars; "which sum shall be in full for said strip of land, *and* ~~to~~ damage to the buildings, and to any crops that may be growing on said strip of land, and which said sum ~~must~~ ^{is to} be paid upon the execution ^{and delivery} of an apt and proper deed as herein

TIDEWATER RAILWAY COMPANY

LEGAL DEPARTMENT

NORFOLK, VA. September 1st, 1906.

Mr. J. U. Burges,
Suffolk, Virginia.

Dear Sir:

Replying to your letter of the 31st in regard to the drainage of the land of J. E. T. Joyner, we beg to say that we have referred your communication to the Engineering Department and we think we can assure you that the matter will be investigated at once.

As to the cattle guards, we are not certain that they have yet been put in and have asked the Engineering Department that they take up this matter and investigate it at the same time.

Yours very truly,

Logan Taylor

Division Counsel.

LEGAL DEPARTMENT

NORFOLK, VA Sept. 19th, 1906.

Mr. J. U. Burges,
Attorney at Law,
Suffolk, Virginia.

Dear Sir:

We beg to advise you that the Engineering Department of the Tidewater Railway Company has reported to us that the complaint of your client Mr. Joyner, in regard to his land, has been arranged and we trust that the matter is satisfactory to you.

Yours very truly,

Lynn Taylor

Division Counsel.

September 20th, 1906.

Mr. J. E. T. Joyner,
Dardenn, Va.

Dear Sir:

Please find enclosed copy of letter that I have this day received from Messrs. Loyall & Taylor, Div. Counsel of Tidewater Ry. Company. If the drains and cattle guards are not satisfactory to you kindly notify me.

I have

also arranged to have your suit tried and settled as early as possible.

Yours very truly,

J. H. Bergyns

B/M

September 20th, 1906.

Messrs. Loyall & Taylor,

Division Counsel Tidewater Ry. Co.,

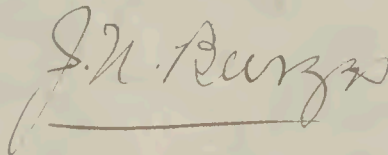
Norfolk, Va.

Gentlemen:

Please accept my thanks for your favor of the
19th inst. I am to-day advising Mr. Joyner of the con-
tents of your letter and if he has any other objections
I will notify you.

Yours very truly,

B/M

A handwritten signature in cursive script, reading "J. H. Burzow", with a horizontal line underneath the name.

September 22nd, 1906.

Messrs. Loyall & Taylor,

Division Counsel Tidewater Ry. Co.,
Norfolk, Virginia.

Gentlemen:

Referring to your letter of the 19th inst. in regard to complaint of J. E. T. Joyner. I hand you herewith copy of a letter, which I to-day received from Mr. Joyner. I will thank you very much to have some one investigate the conditions about which he writes and advise me definitely what will be done.

Yours very truly,

B/M

Enclosure.

October 9th, 1906.

Messrs. Loyall & Taylor,
Division Counsel, Tidewater Ry. Co.,
Norfolk, Va.

Gentlemen:

Referring to my letter of the 22nd ult. in regard to complaint of J. E. T. Joyner. I beg to advise that Mr. Joyner informs me that the cattle guards constructed and used by you on his farm are insufficient to prevent the passage of stock. He says that unless something is done that his crops will be entirely ruined and it would be necessary for him to make claim for damage.

Yours very truly,

E/M

November 8th, 1906.

Mr. George Reith,

Supt. Tidewater Ry. Company,

Suffolk, Virginia.

My dear Sir:

Please accept my thanks for your favor of the 7th inst. in regard to cattle guards on land of S. B. T. Joyner. Mr. Joyner is still complaining that his crops are being badly injured daily by stock. I hope, therefore, that it will not be long before the defective guards can be remedied.

Yours very truly,

B/M

GEORGE REITH
SUPERINTENDENT

SUFFOLK, VA.

Nov 7 - 06

Mr. J. A. Bunge

Attorney - Suffolk Va

Dear Sir:

Your 9th to Loyall & Taylor
has been referred to me x

We have ordered a supply of
Cattle guards of all patterns
in the market x

When they come we will
take out the wooden guards on
J. E. J. Joyner's farm & put in
iron guards.
Yours truly, Geo Reith supt

February 28th, 1907.

Mr. J. E. T. Joyner,

Dardons, Va.

My dear Sir:

The Tidewater Ry. Company has asked me to make them a proposition of settlement of your suit stating that they would prefer paying you a reasonable amount for the damage done you and have you make them a deed to the right-of-way. You can write me what will satisfy you or if you prefer it I will meet you at Isle of Wight Court House on Monday and talk over the matter with you.

Yours very truly,

B/A

March 5th, 1907.

Mr. James H. Corbitt,
Attorney for Tidewater Ry. Co.,
Suffolk, Virginia.

My dear Sir:

Referring to our conversation in the matter of the suit of J. B. T. Joyner vs. Tidewater Railway Company.

I saw Mr. Joyner on yesterday and told him to give me the lowest figures at which he would settle with your company. After some consideration he authorized me to make you three propositions.

1st. That he would sell his farm to you for \$8,000.00. He claims that he was offered this for it just prior to the time that your road was constructed.

2nd. He agrees to accept \$2,000.00 damages, provided you will move the houses as he may direct.

3rd. He will accept \$3,000.00 in full settlement of all damages and move the houses himself. These are the best propositions I can get from him.

I am inclined to think that this matter can be more readily adjusted by the parties themselves than for them to enter into negotiations ~~with~~ us. If you wish to have a representative of the road confer with Mr. Joyner I will write him advising him to make settlement if he feels that he can consistently do so. Yours very truly,

March 5th, 1907.

Mr. J. E. T. Joyner,
Dardens, Va.

My dear Mr. Joyner:

I submitted your proposition to Mr. Corbitt, who represents the Tidewater Railway Company, and he said that he was sure that his clients would not accept it. I told him that if he cared to do so that he could have a representative of his company go up to see you; look over the damages; and talk with you about it. You can safely discuss with him the amount of damages. If you think you could reach an agreement I would suggest that you make an engagement to meet him in Suffolk and I will see that the transaction is properly conducted.

Yours very truly,

B/M

JAMES L. McLEMORE.

JAMES H. CORBITT.

McLEMORE & CORBITT,
ATTORNEYS AT LAW,
SUFFOLK, VA.

May 3, 1907.

Mr. J. U. Burges,
Attorney at Law,
Suffolk, Virginia.

Dear Sir:

In re J. E. T. Joyner v. Tidewater
Railway Company.

We have your favor of April 25th with re-
ference to this matter. As I advised you sometime
ago the Company has been endeavoring to send a man
to see Mr. Joyner with a view to making a settlement,
if possible. We cannot say just when Mr. Joyner
will be seen. If he is unwilling to let the mat-
ter stand in its present condition any longer, of
course, there is nothing for you to do but institute
suit.

Very truly,

James H. Corbett

JHC/J

May 4th, 1907.

Mr. James H. Corbitt,
Attorney-at-law,
Suffolk, Va.

My dear Sir:

In re J. E. T. Joyner vs. Tidewater
Railway Company.

I beg to acknowledge the receipt
of yours of the 3rd inst. in reply to my letter
of the 25th ult. If I can secure service of
process I shall endeavor to have this case heard
at the June term of Court. Mr. Joyner is insist-
ing that the matter be closed.

I saw Walter Taylor a few days ago
and asked him when he thought the matter would
be settled. He replied: "Write me a letter before
taking action and I will
endeavor to have it adjusted."

I would, therefore, request that you notify him of
the contents of this letter.

Yours very truly,

B/M

May 22nd, 1907.

Mr. James H. Corbitt,
Attorney for Tidewater Ry. Company,
Suffolk, Virginia.

My dear Sir:

Referring to our conversation of to-day.
Mr. Joyner has authorized me to accept \$2000.00
damages, provided you will move the houses as he may
direct, or he will accept \$3000.00 in full settlement
of all damages and move the houses himself. As I told
you, I feel sure that I shall not be able to get from
him a better proposition. However, if you are in a
position to make an offer of a few hundred dollars less
I will submit it to him and advise him to accept it.
I will also be willing to leave the matter of damages
to be ascertained by three disinterested parties, one
of them being a non-resident of Isle of Wight County.
Please let me hear from you definitely so that the
matter may be closed.

Yours very truly,

B/M

JAMES L. MELEMORE. JAMES H. CORBITT.
MELEMORE & CORBITT,
ATTORNEYS AT LAW,
SUFFOLK, VA.

June 17, 1907.

Mr. J. U. Burges,
Attorney at Law,
Suffolk, Va.

Dear Sir:

Replying to yours of the 22d ultimo, with reference to the claim of Mr. J. E. T. Joyner against the Tidewater Railway Company, I beg to advise that I have gone over this matter carefully, and the Company is unwilling to consider either proposition made by Mr. Joyner. The figures he names are so much above what the Company would be willing to pay, I see no chance of making a settlement so long as he persists in making such demands. Neither will it be satisfactory to the Company that the matter of damages be ascertained as suggested by you.

I am very sorry we seem to be unable to reach an agreement in this matter.

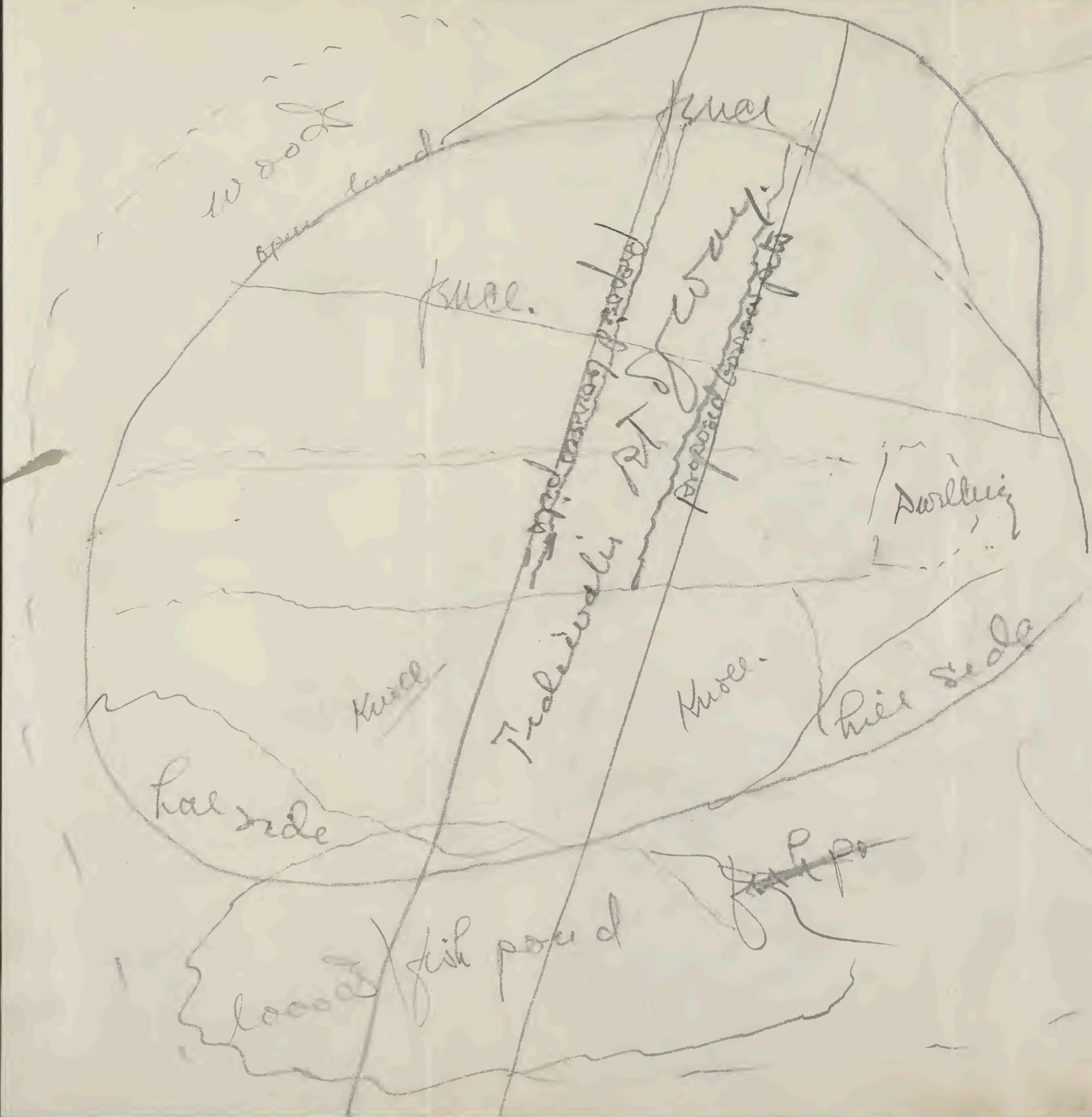
Very truly,

JHC/L

James H. Corbett

J. U. BURGESS
ATTORNEY AT LAW.
ATTORNEY FOR THE CORPORATION OF SUFFOLK,
SUFFOLK, VA.

open land
that does not
belong to
Jofner



4-
500
1000

70
- 110-50.

E. S. Hancock -

Oliver -

Daisy -

76 7th - 284

81 7th - 236.

92 11 377

2 Bart. - 1125.

1167.

August 7th, 1907.

Mr. J. E. T. Joyner,

Dardons, Va.

My dear Sir:

I have instituted suit against the Tidewater Railway Company and am preparing all papers in the case.

In addition to the action of ejection I am asking damages

For tearing down and taking fences from your land.

For digging deep trenches on each side of their roadbed and causing stagnant water to remain therein, which is exceedingly dangerous and injurious to the health of your family.

For constructing said railroad so near your dwelling house and out buildings as to render the use thereof dangerous, inconvenient and impracticable.

For constructing an embankment across your fish-pond and thereby rendering the same useless.

else

If there is anything for which you claim damages please write me so that I may put it in the papers.

I expect to have this suit tried at the October term of Court.

Yours very truly,

B/M

Barroville Va
Aug 11th 1907

Dear Sir

In reply to your letter I received it Saturday & went to Windsor & tryed to talk to you & could not for all of the fones was out of order. I would perfure for you to come up here & let me show you somethings & measure the land & if you can not write me by return mail & I will come & see you. if you can come I wish you would bring a tape line to measure it with. if you come you can get hear at 11 o'clock A.M. & leave 2 o'clock P.M. & you can get off at Brackshaw riding & at my fish pond.

Yours truly
J. E. J. Jayner

August 13th, 1907.

Mr. J. E. T. Joyner,
Carrsville, Va.

My dear Sir:

Your letter of the 10th inst. has just been received. It will be impossible for me to come to your place right away. It is not necessary that we should be especially accurate in the notice of the suit. We can get all this information in time for the trial. I only want to know how in general terms what they have done to cause you damage. Just write it out as if you were telling any body about it without giving figures and be sure to let me know about what day they began constructing the roadbed.

Yours very truly,

B/M

August 23rd/ 1907.

Mr. J. E. T. Joyner,
Carrsville, Va.

My dear Sir:

I am now at home and can see you almost
any day.

Yours very truly,

B/M

Carrollville Va
Sept. 2. 1907

Mr J. W. Burgess
Suffolk
Va.

Dear Sir,

I got Mr. W. R. Johnson to help me measure the railroad from one fence to the other and I found that all the fence is on my land. And I want that to go in to them fence it in about June 15 1906. ~~It~~ ^{is done to my crop.} Damages for putting up ^{the} fence in 1906 and the stock going in my field from the time of steel was laid ~~out~~ until the fence was put is \$50.00. This don't mean the damages in 1905 it mean 1906. They dug a piece of land over the 100 ft. in filling up the fishpond,

Yours Very Truly
J. E. Thomas

September 3rd, 1907.

Mr. J. E. T. Joyner,
Carrsville, Va.

My dear Sir:

Yours of the 2nd inst. to hand and noted.

I will see that your claims are properly presented
to the Court.

Yours very truly,

A/M

December 23rd, 1907.

Mr. J. S. T. Joyner,
Carrsville, Va.

My dear Sir:

I am just in receipt of a letter from Mr. J. M. Corbitt, attorney for the Virginian Railway Company, saying that complaint is made that you were removing dirt from the Company's right-of-way through your property. I think it would be much better if you will let this matter stand as it is until it is finally decided by the Court. Just as soon as I can do so, which will be about the middle of January, I will take our testimony in this case and will arrange to have it finally heard at the March term of Court. I will be out of town the balance of this week, but can see you any time after that.

Yours very truly,

B/A

JAMES H. CORBITT
ATTORNEY AND COUNSELLOR AT LAW
SUFFOLK, VIRGINIA

LONG DISTANCE PHONE 98

Dec/23/1907.

Mr. J. U. Burges,
Attorney at Law,
Suffolk, Virginia.

Dear Sir:

I am advised by the officials of the Virginian Railway Co, formerly the Tidewater Railway Co., that your client, Mr. J. E. T. Joyner, is removing dirt from the Company's right of way through his property. You can readily understand that the railway company will take steps to protect their right of way and have this damage stopped by injunction if Mr. Joyner will not stop it otherwise.

Please let me hear from you at once in order that I may know how to act.

Very truly,

James H. Corbett

February 12th, 1908.

Mr. J. E. T. Joyner,
Dardens, Va.

My dear Sir:

I expect to take the depositions in your case against the Tidewater Railway Company within the next week or ten days. Will you please send me the names of your witnesses and also write me what day it would be convenient for you to bring them to Suffolk. I think we can take all the testimony in one day.

Yours very truly,

B/M

February 13th, 1908.

Mr. J. E. F. Joyner,

Carrsville, Va.

My dear Sir:

Replying to yours of the 13th inst.

I am very sorry that you cannot get your witnesses here on Saturday, but if there is nothing else to do we will come to such place as you may name. Please appoint a day next week, say Thursday or Friday, and we will come there.

In regard to the option paper. The Tidewater Railway Company instituted a suit requiring you to make them a deed. This was dismissed by the Court. However, in order for us to get an order ejecting this from the land it will be necessary to prove that the paper you and your wife signed was procured by fraud. We will then take up the matter of the value of the property. I will wish mainly, the day we come up there, to take the testimony of those witnesses who were misled by Mr. Finley when they signed the paper. Please write me at once if you can have your witnesses on Thursday or Friday.

B/X

Yours very truly,

Carrsville Va
Feb 11, 1908

Mr. J. W. Byrnes

Suffolk Va

Dear Sir -

I have not heard from you what day we should meet, and I understood you to say at Mr. J. W. Knuck said that we had nothing to do with that optium paper, and I want you to explain to me why that has got to come in this time for. You said I had the right to talk the matter over to any of the Railroad men about sitting with them and on the 6 day of May in 1907 Lawer Elett came to my house and offered me \$500.00 and I told him that wasnt any offer and he ask me what would I take and I told him that I would take \$3000.00 and he told me that he would ^{let} me hear from him in a few day and I have not heard from him yet, how many Lawers

represent the ~~railroad~~ railroad in
this case and let me know by return mail.
I can get some of my witnesses to support
and the most of them say that they
won't come to Suffolk but if you will
have it up here they will go any day
you say so. I am sorry that I had
such little time ~~to~~ to talk to you the
other morning, when I got to the depot
I didn't have time to get a ticket.

Your Very Truly

M. J. C. Joyner

R. F. #1 Carrsville.

Box 61.

February 18th, 1906.

Mr. J. B. T. Joyner,
Carrsville, Va.

My dear Sir:

If Friday, the 21st, will be convenient
for you I will take the testimony of your witness
here in Suffolk on that day.

Yours very truly,

B/M

February 24th, 1908.

Mr. J. E. T. Joyner,
Carrsville, Va.

My dear Sir:

We will be up there Friday morning to take the
depositions. Please have your witnesses present.

Yours very truly,

B/M

April 17th, 1908.

Mr. J. H. Corbitt,

Attorney for the Virginian Railway Company,
Suffolk, Virginia.

My dear Sir:

In re Virginian Ry. Co., vs.
J. E. T. Joyner.

I beg to call your attention to the fact that notwithstanding you obtained an injunction in this cause several months ago you have so far taken no testimony for the complainant. Representing the defendant I proceeded to take my testimony and notified you several weeks ago that I had completed the taking of same. You are hereby notified that after the expiration of twenty days from the receipt of this letter I shall apply to the Circuit Court of Isle of Wight County for a dissolution of said injunction.

Yours very truly,

B/E

Attorney for J. E. T. Joyner.

To Mr. J. H. Corbitt,

Attorney for the Virginian Railway Company,
Suffolk, Virginia.

My dear Sir:

You are hereby notified that on Monday, June 1st, 1908, at eleven o'clock A. M. at the Court House of Isle of Wight County, Virginia, I will move the Judge of the Circuit Court of said County to dissolve the injunction heretofore granted in the cause of Virginian Railway Company vs. J. E. T. Joyner enjoining the further prosecution of an action of ejectment instituted by J. E. T. Joyner vs. Virginian Railway Company and Tidewater Railway Company now pending in said Court.

Yours respectfully,

Attorney for J. E. T. Joyner

June 5th, 1908.

Mr. James H. Corbitt,
Attorney for Virginian Railway Company,
Suffolk, Virginia.

My dear Sir:

In re Virginian Ry. Company vs. J. W. T.
Joyner.

Judge White requests me to say to you that he would hear the above styled cause on the 19th or 20th of June, or the 1st, 2nd or 3rd of July. Will you please advise me which day will be most convenient for you so that we can make an appointment with the Judge.

Yours very truly,

B/M

A copy to Hon. B. D. White,
for his information.

Atty. for J. W. T. Joyner.

June 5th, 1908.

Hon. B. D. White,
Norfolk, Va.

My dear Judge:

I enclose herewith copy of letter that I
this day delivered to Mr. James H. Corbitt, attorney for
the Virginian Railway Company.

Yours very truly,

B/M

Enclosure.

June 8th, 1908.

Hon. B. D. White,
Norfolk, Va.

My dear Judge:

In re Virginian Ry. Company vs. J. B. W.
Joyner.

Agreeably to my promise to you on Thursday I addressed a letter to Mr. Corbitt on Friday setting forth the dates that it would be convenient for you to hear us in this case and took it to him in person. He stated to me that he did not know whether these days would be convenient for him or not as he did not know whether he would have finished his testimony by that time. I then asked him to address a letter to you stating his position and to let me have a copy of it. He said he would write you in a few days. As my client is exceedingly anxious that this matter should be disposed of at this term and as it has been standing for a long time without any steps whatever being taken by the Virginian Railway Company, I am forced to ask that you enter some order to speed the cause. I will be glad to prepare and send to you any order that you may suggest. I regret exceedingly having to be so persistent in this matter but feel sure that the case will never be heard unless some such steps are taken. Judge

2.....Hon. B. D. White.

Boykin had promised me that an order would be entered at the March term, but as he was taken sick I did not insist upon it at that time.

Yours very truly,

B/M

A J N Burgess Sept 21th 1904
Suffolk Co

Dear sir

in reply to yours
to day that they have
dressed the borrow pit
as soon as they cut it deeper
but the ditch that goes a
cross the road is fill up
& the water is ponded back
on the land & they have not
touch the cattle guards yet
& the stock is on me every day
& night I have warn them
that I was going to stop it

up but the section men
keeps telling me that they
are going to fix it in a few
days but they dont seem
to do any towards it &
I am getting tired of the
stock coming in

yours very truly
J. B. V. Jayner.

June 8th, 1908.

Mr. J. U. Burges,
Atty. at Law,
Suffolk, Va.

Dear Sir:

In re Virginian Ry. Company vs. J. E. T.
Joyner.

I have your favor of the 5th inst. with reference to this matter. I am unwilling at this time to agree upon a day to argue this case upon the merits. Your answer filed, and asked to be treated as a cross-bill, set up new matter, and I am entitled to reasonable time under all circumstances to prepare my evidence. I have already assured you that I am giving this attention. I am anxious that all the evidence should be in as speedily as possible, but I am unwilling to agree on a date for the hearing and run the risk of prejudicing the rights of my client.

Very truly,

James H. Corbitt.

JAMES H. CORBITT
ATTORNEY AND COUNSELLOR AT LAW
SUFFOLK, VIRGINIA

June 8, 1908.

LONG DISTANCE PHONE 98

Mr. J. U. Burges,
Attorney at Law,
Suffolk, Virginia.

Dear Sir:

In re Virginian Ry. Co. v. J.E. T. Joyner:

I have your favor of the 5th inst. with reference to this matter. I am unwilling at this time to agree upon a day to argue this case upon the merits. Your answer filed, and asked to be treated as a cross bill, set up new matter, and I am entitled to reasonable time under all circumstances to prepare my evidence. I have already assured you that I am giving this attention. I am anxious that all the evidence should be in as speedily as possible, but I am unwilling to agree on a date for the hearing and run the risk of prejudicing the rights of my client.

Very truly,

James H. Corbitt

B. D. WHITE
JUDGE 28TH JUDICIAL CIRCUIT
SEABOARD BANK BUILDING
NORFOLK, VIRGINIA

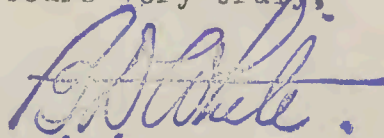
June 9, 1908.

Mr. J. U. Burgess,
Suffolk, Va.

My Dear Sir:-

I beg leave to acknowledge your favors of the 5th and 8th insts., with reference to the case of the Virginia Railway Co., vs. J. E. T. Joyner, and also enclosing a copy of a letter written to Mr. Corbitt, as well as Mr. Corbitt's reply to you, which latter letter I herewith return for your files. With reference to this matter I would say that I would be willing to take up this case, either the first, second or third of July, tho, of course, I would not be willing to do so except by consent, the case not having been set on the first day of the term. Should you so desire you could give Mr. Corbitt notice of your intention to apply for a decree to speed the cause: or, you might make it a vacation cause by consent, and I could take up the matter sometime later in July. I sending Mr. Corbitt a copy of this letter.

Yours very truly,



June 9th, 1908.

Mr. J. E. T. Joyner,
Warrsville, Va.

My dear Sir:

I find that this man Jones, who has been to see you, is working in the next office to Mr. Corbitt and they are connected in the same land scheme. Now should he come to see you again just tell him to come to see me and if he has any proposition to make to make it through me. I would not talk to him about it. Tell him you are willing to sell your farm but you don't propose to be caught in any snap.

Yours very truly,

B/M

June 9th, 1908.

Hon. B. D. White,
Norfolk, Virginia.

My dear Judge:

In re Virginian Railway Company vs.
James S. T. Joyner.

I enclose herewith original letter, which I have just received from Mr. James M. Corbitt. I will briefly state the history of this case:

This land was taken by the Company in the latter part of the year 1905. After various efforts to reach a settlement I instituted an action of ejectment returnable to 2nd September Rules, 1907. The prosecution of this suit was enjoined by the defendant company. No further steps were taken until February, 1908, at which time I filed my answer and completed the taking of all my testimony. Since then the defendant company has taken no testimony. On April 17th, I addressed a letter to Mr. Corbitt notifying him that after twenty days I would ask for a rule to speed the cause. Upon his assurances that there would be no unnecessary delay I waited until just prior to the June term of Court when I told him that I would insist upon a hearing at this term. You are familiar with my efforts since that time.

2.....Hon. B. D. White.

Now while I have no disposition to be unreasonable I feel that the defendant company have not made proper efforts to try this case.

The new matter referred to in Mr. Corbitt's letter is simply the request that if the Court decided adversely to the company's claim that they were illegally possessed of the land that proper damages be awarded for the land taken as well as other damages to the crops, etc. of the said Joyner. That is, the same damages asked for in the action of ejectment. I would not be so persistent but my client is urging me daily to close the matter. He has had a railroad within seventy-five yards of his front door for nearly three years and has received no compensation. Consequently he is very much disgusted with the "laws delay". I should regret very much to have this case go over to the October term of Court.

Yours very respectfully,

B/K

Enclosure.

June 11th, 1908.

Hon. B. D. White,

Norfolk, Virginia.

In re Virginian Railway Company
vs. J. E. T. Joyner.

My dear Sir:

I am in receipt of yours of the
9th inst. As this case has already been made
a vacation cause I will make further efforts
to prevail upon Mr. Corbitt for a hearing
before asking for a rule to speed.

Yours very truly,

B/M

Darden, Virginia
April 10, 1906.

Mr. J. W. Burgess,
Suffolk, Va.

Dear Sir:—

Mr. Scott and
one of the contractors, a
Mr. Burgess, came to see
me this afternoon in
regards to getting more
land for borrow pits.

They say if I will
not give the land, the
pits will be cut through
my yard.

Which shall I do,
let them cut through the
yard and pay damages

or let them have more
land. Please advise me
by return mail. They will
be here again about Thurs

Very truly yours
J. E. T. Joyner.

P. S.

If you think best to
give more land, on what
grounds shall I let them
have it? I think there
should be some written
statement. If necessary
fix up a paper for
them to sign and send
me.

Carrsville Va
June 12th 1908

Mr. J. U. Burges,
Suffolk
Va

Dear Sir:-

I received your letter of the 9th in regard to that man Mr Jones He was at my house the next morning after Court before ten o'clock and wanted me to extend the time from 30 days to 40 days but I would not he also wanted me to sign a letter to carry to Michigan but I would not do that. And he tried to hire me to go with him to Mr. Hollands. And I would not do that. He come in the field

where I was at work with my hands and we did not have any private talk. I told him that I did not believe he was telling me the truth. I believed he was working for the Railroad Co. and he swore he was not. I hope we will get the matter through court as soon as possible. I hate to see a strange man come for they worry me so bad. I don't see any pleasure

Yours truly
J. E. T. J. of nev.

To Mr. James H. Corbitt,
Attorney for Virginian Railway Company,
Suffolk, Virginia.

You are hereby notified that on
Monday, the 6th day of July, 1908, at eleven o'clock
A. M. at the Court House of Isle of Wight County,
Virginia, I shall apply to the Judge of the Circuit
Court of said County for a decree to speed the cause of
Virginian Railway Company vs. J. E. T. Joyner, in which
said cause you are attorney for the complainant.

Yours respectfully,

Atty. for J. E. T. Joyner.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND COUNTY.

The Virginian Railway Company, a corporation,
formerly known as the Tidewater Railway
Company, a corporation.....Complainant.

versus

J. E. T. Joyner et al.....Defendants.

This cause came on this day to be heard
on the complainant's bill and the exhibits filed
therewith, the answer of J. E. T. Joyner, defendant,
^{with}~~the~~ general replications thereto, the testimony of
defendants' witnesses, and notice to complainant by
defendants of an application for a decree to speed
the cause, and was argued by Counsel.

On consideration whereof, the Court doth
adjudge, order and decree that the complainant, the
Virginian Railway Company, a corporation, formerly
known as the Tidewater Railway Company a corporation,

λ

June 29th, 1908.

Mr. A. H. Baker,

Sheriff of Nansemond County,

Suffolk, Virginia.

My dear Sir:

Please serve copy of the enclosed notice upon Mr. J. H. Corbitt in person and ~~hand~~ return show such service thereof. I would thank you to do this to-morrow if convenient for you to do so.

Yours very truly,

B/E

Enclosures.

July 6th, 1908.

Hon. B. D. White,

Judge of Circuit Court of Isle of Wight County,
Isle of Wight, Virginia.

My dear Judge:

I enclose herewith notice which has been duly served on Mr. Corbitt, attorney for Virginian Railway Company, together with draft of decree. Mr. Corbitt has informed me that he would complete the taking of his testimony on the 9th, and, therefore, there is no reason why he should not be ready for the hearing by the 1st of September. Yet I am exceedingly anxious that some order should be entered so that there will be no further unnecessary delay.

Yours very respectfully,

B/M

Enclosure.

Crossville Va
July 13, 1908

J. W. Burger
Suffolk Va

Dear Sir-

When Mr. Hill goes on the stand, ask him we did he have any trouble in getting me and my wife to sign that deed we give you him, Being part of the Butter farm. Mr. Hill got here about quarter to 12 o'clock, dinner being nearly ready Mr. Hill said that we would eat dinner before we fix up the paper after dinner being over him and I and Mr. James A. Johnson went in the front porch, and I told him to read the deed. That was the time I refuse to sign, the deed that being in Sept. 1908

If this ^{question} will do you any good
you can use it and if not
throw it in the wast basket.
After you get thru with Mr.
Will let me hear from you

Your truly
J. E. J. Jaynes

Suffolk, Va., July 14th, 1908.

Mr. J. E. T. Joyner,
Carrsville, Va.

Dear Sir:

Your letter has just been received and
contents noted. As soon as I have examined Mr. Hill,
I will write you.

Yours very truly,

B/X

Carrsville Pa
July 20, 1809

Mrs M Burger
Suffolk ^{Co}

Dear sir -

I received your
letter of the 17th applying to the
evidence of Mr. Hill, I have
~~so~~ been to see Mr. A. Johnson
and he said the he would come
^{to Suffolk} every day you said so except
Friday the 24 of July Please write
me what day Johnson & I can
see you in your office write
by return mail. I have
got testimony around hear
what Corbett has been doing
and I want to explain it to
you at once

Your truly
J. E. S. Jaynes,

B. D. WHITE
JUDGE 28TH JUDICIAL CIRCUIT
SEABOARD BANK BUILDING
NORFOLK, VIRGINIA

July 14, 1908.

Mr. J. U. Burgess,
Suffolk, Va.,

My dear Sir:-

I should have written to you before this with reference to the decree in the case of the Virginian Ry., v. Joyner, which I did not enter. I found that the cause was a vacation cause, and if Mr. Corbitt finished his testimony on the 9th, as expected, there would be no need for a decree to speed the cause; however, should he not take his testimony as expected and you should desire such a decree, I can some day run up to Suffolk and give you a hearing in the matter. I will write Mr. Corbitt to this effect.

Very truly yours,

B. D. White

*Have been very busy hence
the delay in writing you.*

Suffolk, Va., July 15th, 1908.

Judge B. D. White,
Norfolk, Va.

My dear Judge:

I am just in receipt of yours of the
14th inst. in regard to decree in the case of Virginian
Railway Company versus Joyner, for which I thank you.
I will take up the application for the decree with Mr.
Corbitt as soon as the term of court here is over.

Yours very truly,

B/Y

Suffolk, Va., July 17th, 1908.

Mr. J. K. E. Joyner,
Carrsville, Va.

My dear Sir:

I took the testimony of Mr. Hill and asked him the questions mentioned in your letter. Mr. Hill testifies that you did not claim to him that the option was different from what you thought it was, but that you simply said that you would not sign it because you did not get enough money. He said you said nothing, whatever, about not understanding the option. Now, it will be necessary for you to see J. A. Johnson and talk over this matter with him. I think from what you tell me that he was present, heard the conversation and will testify that you did refuse to sign the deed because you said it was different from the option paper and that he then read to you the option paper and you told him it was different from the paper you signed.

If you can get Mr. Johnson to come to my office the first time he is in Suffolk, I would like to talk with him.

As soon as Mr. Hill's evidence is written out I will let you know and when you come to Suffolk I will read it over to you.

Yours very truly,

Suffolk, Va., July 20th, 1908.

Mr. J. G. T. Joyner,

Carrsville, Va.

My dear Sir:

Your letter received.

There has been some delay in writing out
Mr. Hill's evidence. As soon as I can get it, I will
write you.

Yours very truly,

B/K

Suffolk, Va., July 27th, 1908.

Mr. J. E. T. Joyner,
Carrsville, Va.

Dear Sir:-

The bearers of this letter wish to examine your farm for the purpose of testifying for the Tidewater Railroad Company as to the damages. Please show them over the farm and give them any information that they may desire.

Yours very truly,

B/1

Suffolk, Va., July 29th, 1908.

Mr. J. E. T. Joyner,
Carrsville, Va.

Dear Sir:-

If you will come down on Saturday, I will go over Mr. Hill's testimony with you.

I understand that Mr. Corbitt will complete the taking of his testimony on that date. If convenient, you might bring J. A. Johnson with you, but we would not be able to take his testimony.

Yours very truly,

B/K

September 17th, 1908.

Mr. J. E. T. Joyner,
Carrsville, Va.

My dear Sir:

I want to take the testimony of Mr. J. A. Johnson on Monday, the 22th, As there will be a circus in town on that day I feel sure that you and he will be glad for an excuse to come. We can take the testimony in the morning in one or two hours and you can then go to the circus. I have gone over the evidence and do not believe that the Court will let me introduce evidence of your general reputation for truth and veracity as there is no evidence in the record charging you with misstating the facts, nor has there been any attack made upon your reputation. It will, therefore, be useless to put in the evidence of Dr. Rawles and others. If you know of any other witness, who you think will be of value to us as to the facts, write me.

Yours very truly,

B/M

To Tidewater Railway Company, a corporation,

and

Virginian Railway Company, a corporation.

TAKING NOTICE that on _____, the
_____ day of September, in the year 1908, at the office
_____, in the town of _____
between the hours of nine A. M. and six P. M. of that day, I shall
proceed to take the depositions of Dr. Gavin Rawles, J. A. Johnson
and others, to be read as evidence in my behalf in a certain
action at law or suit in equity depending in the Circuit Court
of Isle of Wight County, wherein I am plaintiff and you are
defendants, it being an action of ejectment which has been
enjoined by you. If for any cause the depositions be not
commenced, or if commenced be not completed, on that day, the
taking thereof will be adjourned from day to day at the same place,
and between the same hours, until the same shall be completed.

Given under my hand this _____ day of September,
1908.

J. E. T. Joyner,

by _____

his attorney.

Carrsville, Va.

Sept, 30, 1918.

Hon. J. W. Burges
Suffolk Va.

Dear Sir;

I saw Mr Jas.
A. Johnson Monday night.
His wife was sick
lost Monday and he
could not go to Suffolk.
He will be there Fri.
at 10 o'clock A. M.

Yours truly
J. E. J. Joyner.

November 18th, 1908.

Judge B. D. White,
Norfolk, Va.

My dear Judge:

In re Virginian Railway Company vs.
J. W. T. Joyner.

Mr. Corbitt to-day handed me a copy of his brief and I fear that I shall be unable to prepare my reply by the 25th as I have engagements for every day this week and for Monday and Tuesday of next week. I was under the impression that you would not decide the case at that time and that you only wished to talk informally with us on the 25th in regard to it. If I am in error as to this please write me at once and I will do the best I can towards the preparation of my reply.

Mr. Corbitt saw me a few days ago and referred to a previous conversation that we had had in regard to a settlement. I told him that in view of the fact that you had spoken to me about the case that I would prefer his talking with you before we entered into further negotiations. This he expected to do some days ago but has been unable to see you.

Yours truly,

Nov. 23, 1908.

Mr. Jas. H. Corbitt,
Suffolk, Va.

My Dear Sir:-

Please pardon my delay in acknowledging receipt of your favors of the 17 and the 18 insts., with reference to the Virginian Railway Co. vs. Joyner, but all last week I was engaged in Princess Anne Court and my mail was not forwarded to me, hence the delay, today being the first day that I have been in my office. I am also in receipt of a letter of the 18th inst., from Mr. Burges with reference to the same case, a copy of which was sent you, in which he states that he has engagements for every day last week and for Monday and Tuesday of this week and he was under the impression that I would not decide the case at this time, and inasmuch as he desires a little time for the preparation of a reply to your brief, I would suggest that you let the matter go over until the next term of Isle of Wight Court, at which time I think I will be prepared to decide the case. I did have an idea that it would be possible by getting you and Mr. Burges together that the matter might be adjusted along a line that has occurred to me, and if it is convenient for you gentlemen, sometime during the week beginning the first of December, come to Norfolk some evening, ^{we can talk over} ~~consult with~~ the matter and see if it could be settled in a way that seems to me to be fair

to both parties: I say after the first, because Of the fact
that on and after that date I will be living in Portsmouth
and it will be more convenient for me to meet you here.

Yours very truly,

B. D. WHITE
NORFOLK, VA.

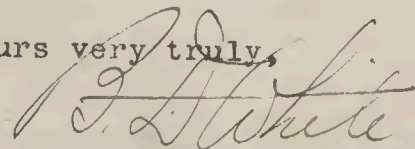
Nov. 23, 1908.

Mr. J. U. Burges,
Suffolk, Va.

Dear Sir:-

I should have replied to your favor of the 18th inst., with reference to the Virginian Railway Co vs. Joyner, but for the fact that I was in Princess Anne Court the entire week and today is the first day I have been in my office. I have just written a letter to Mr. Corbitt, a copy of which is enclosed, and if you both desire I will meet you here as suggested in that letter, during the week of Dec. 1st.

Yours very truly,



November 30th, 1908.

Hon. B. D. White,

Norfolk, Va.

My dear Judge:

As Thursday afternoon will be about the only day this week, except Saturday that I can come down to Norfolk with Corbitt to see you I suggested to him that he write you that we would come down that day if it would be convenient for you to see us.

I have not forgotten the case of Johnson's Trustees vs. Johnson and will be ready any day next week. We would all much prefer your hearing us in your office to going to Isle of Wight.

I would suggest that we take it up some day the latter part of next week.

I have recently gone in the photography business and would be glad to receive any suggestions from you that you think would be of benefit to me.

I confine myself exclusively to taking pictures of murder scenes.

Yours very sincerely,

COPY

Nov. 30, 1908.

Hon. B. D. White,
Norfolk, Virginia.

Dear Judge:

In re Virginian Ry. Co. v. J. E. T. Joyner:

Mr. Burges has just been in to see me about this matter. By reason of our engagements it will be rather difficult for us to be at Isle of Wight Court the same day, and if it is agreeable to you we will come to Norfolk Thursday afternoon of this week, in order to hear you in the above matter. Mr. Burges prefers not going further into the compromise until after we have had a talk. Kindly let me hear from you so that Mr. Burges and myself may know whether to come Thursday afternoon or not.

Very truly,

James W. Corbin
J.

December 29th, 1908.

Judge B. D. White,
Norfolk, Va.

My dear Judge:

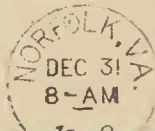
In re Joyner vs. Tidewater Ry. Co.

I have been unable to get Corbitt to agree to anything. I am afraid too many Christmas dinners have had a bad effect upon his temperament. I would like to have an order entered in this case as soon as practicable. I believe you were of the opinion that if you did not allow us any amount that you would give us a certain amount for the damage to the crops and the interest. As no tender was made I think they should also pay the costs. I would like very much to submit to you, if possible, a draft of the decree before January 4th.

Yours very sincerely,

B/A

P. S. I am very glad to say that we have settle the suit of Letimer vs. Griffin. I am to-day sending Ernest Williams draft of decree dismissing the same.



POSTAL CARD

THE SPACE BELOW IS FOR THE ADDRESS ONLY

Mr. J. A. Burgess
Suffolk Co. Va.

Sorry, but I can't, at this time, decide
Johnson & Johnson, Jr. DePole has taken
all the time & I'm up a tree - will see him &
get the brief he took & try to decide the case for you
next week - the record can be entered in vacation.
Mr. Corbett was in to see me this evening
& will see you tomorrow about the Jaynes
matter. Sorry too, that you will not be over
with us next Monday. Have been in Court all
day & am now going thru about eight
Chancery records & other records - & have three
cases in which to read evidence on motions for
new trials - all must be finished this week so.
Come down, help me. Most truly
Yours J. D. White

THE SPACE BELOW MAY BE USED FOR CORRESPONDENCE



POSTAL CARD

THE SPACE BELOW IS FOR THE ADDRESS ONLY.

*Mr. J. C. Burgess.
Suffolk, Va.*

Have your letter. Will meet you at
Court Thursday evening some
time. But should not get to my office
by six o'clock, will ask that you call
up the Clerk's office of Norfolk County.
Bell phone 2215 & I will arrange an
hour so you can catch the evening
train home. Have just sentenced a
negro to be relectricuted, & of course don't feel
extra good.

July 22, 1901
J. D. White

December 31st, 1908.

Judge B. D. White,

Norfolk, Va.

My dear Judge:

Your postal was duly received this morning. Corbitt has just been to see me and said he was preparing, under your instructions, a decree perpetuating the injunction in the Joyner case. He said that you ~~are under the~~ impression that this is the only question raised by the pleadings; and the payment of the purchase price, interest, etc. is not involved in this suit. I would like very much to be heard before such a decree is entered if you have not already made up your mind. If you enter the decree prepared by Corbitt I would ask that the usual terms providing for an appeal be incorporated therein.

Yours very truly,

B/M

January 2nd, 1909.

Judge B. D. White,
Norfolk, Va.

My dear Judge:

Yours of the 1st instant was duly received this morning. I handed same to Corbitt. If we can reach no agreement I will prepare a decree in accordance with your letter and send it to you.

I am sorry that I cannot come down to the Banquet to-night but am too busy to drink champagne.

Yours very sincerely,

B/M

January 4th, 1909.

Judge B. D. White,

Norfolk, Va.

My dear Judge:

Miss Marshall has just delivered your message. So far as I am now advised, I can run down almost any afternoon this week, and unless I hear from you to the contrary, I will call at your office on Wednesday afternoon immediately upon the arrival of the Norfolk & Western train, which is due in Norfolk at 5.20.

I am sorry that I could not go to Isle of Wight to-day, but have arranged to ~~turn~~ turned over the gas properties to the purchasers and am expecting them all to-day

Yours very sincerely,

B/M

Jan. 4, 1909.

Judge B. D. White,
Norfolk, Va.

Dear Judge:

In re Virginia Ry. Co. v. J. E. T. Joyner:

In accordance with your request I am herewith enclosing separate bills of Miss E. W. Jordan, Miss Path Marshall and Mr. F. W. Lloyd for taking depositions in this case.

I am also enclosing statement from Miss E. W. Jordan as to the attendance and mileage of witnesses John Kee, Jas. A. Dalton, A. J. Hindley and Th. H. Hill.

I take it that you will, of course, direct the Clerk as to taxing in the costs the witnesses attendance and mileage, and the bills for taking and transcribing depositions.

I did not have an opportunity to carefully examine the addition made by you to the decree I submitted until to-day.

While I am of the opinion that this addition probably covers a matter outside of the pleadings, nevertheless if it is made, it certainly should be changed so as to require Joyner and wife not only to convey a right of way through the farm, but the land itself upon which the right of way is located, and also require Joyner and wife to convey all other rights etc. mentioned in the contract. You will find from an examination of the contract that the land itself is to be conveyed, and the contract also provides for other things.

In an effort to satisfy Mr. Farges I am willing to say that when the decree, as amended in accordance with the above suggestion, has been entered, and upon the execution and delivery of

Judge B. D. White --2-

a deed conforming to the terms of the contract and upon the payment by his client of all the Court costs, including witnesses attendance and mileage, and stenographers' fees for taking and transcribing testimony, the Railway Company will pay his client in addition to the \$475.00 a further sum of \$50.00. Of course, I do not recognize any legal or equitable claim on the part of his client to anything more than \$475.00, but I will make the further payment of \$50.00 on the terms above mentioned, in order that the suit may be finally terminated and no appeal taken.

You are aware that the contract provided for the damage to crops and for the borrow pit, and it is a well settled rule of law that a contract is to be construed most strongly against the grantor. See the recent case of South & Western Ry. Co. v. Mann (decided Sept. 10th, 1908) 2nd Virginia Appeals 365, involving a similar question.

In referring to the examination in chief of J. E. T. Joyner on page 9, you will find that Mr. Joyner in describing the piece of land taken for a borrow pit says: "There was a piece in there I suppose larger than this room (indicating the larger room of Mr. Burgess' suite of offices over R. L. Brewer's Jewelry Store, Suffolk, Va.)" This room is not to exceed 12 feet x 18 feet.

Very truly,

CC-
Mr. Burgess.

(over)

-3-

P. S.

Since dictating the above I have seen Mr. Burges, and he thinks it best for himself and me to appear before you and have you decide upon the decree. I stated to him this morning that you had requested me to say that you would see him any day this week except Tuesday, as you wanted to talk with him, of course, before the decree was entered. As soon as he advises me what day he can come down I shall either telephone or write to you.

April 11th, 1906.

Mr. J. R. T. Feyner,
Gardens, Va.

My dear Sir:

Replying to yours of the 10th inst. I would not sign any papers that may be offered you by any one representing the Tidewater Railway Company. I can't understand why they should threaten to cut through your yard if you do not let them have any more land. If they can cut through your yard without your consent why can't they cut borrowits any where they choose. I would suggest that you say to them that the matter is in my hand and that you will make no agreement nor sign any paper until it had been submitted to me. If they offer you a paper to sign mail it to me at once and be careful what you say to them.

Yours very truly,

B./A.

B. J. Feyner

Dear Burgess:-

I have taken this matter
up but cannot tell you what has been
done about it.

Yours,

J. H. Corbett

Friday A. M.

4/20/06

Carrsville Va

June 8, 1889

Wm. U. Burger

Suffolk

Dear Sir. - When I thought
over it was not sure that
I understood about that \$50
business. Does it mean that
they will give \$50 more on
the \$475; or what. Write me
at once, and make no
arrangement for settlement
until you hear from me

Your Truly
J. C. V. Sawyer

June 9th, 1909.

Mr. J. B. T. Joyner,
Carrsville, Va.

My dear Sir:

Replying to yours of the 8th instant.

The \$50.00 offered was in addition to the \$475.00. This offer was made provided you sign the deed and no appeal is taken. I could not make the settlement without your consent for no settlement could be made without your signing the deed. The only thing that you have to fear is that the Judge will enter a decree directing some one else to make the deed and then, of course, you would not get the \$50.00.

Yours very truly,

B/A

June 15th, 1909.

Mr. J. E. T. Joyner,

Carrsville, Va.

My dear Sir:

Judge White has sent me a letter from Mr. Walter H. Taylor in reference to a depot, a copy of which I herewith enclose. I am also informed that they will take out the word "barrow-pits" and will write the deed to read:

"So much land as may be necessary for cuts and fills on said land."

In other words, they could not dig dirt on your farm to be used for any other purpose except for fills on the farm. They offer in the event that you sign a deed and no appeal is taken to pay \$50.00 in addition to the \$475.00. Judge White has entered a decree directing that a deed be signed within within sixty days by you and your wife. If you fail to do this within that time he will have a deed made by a Commissioner of the Court. You also have sixty days in which to take an appeal if you wish to do so. Of course, you will not get the extra \$50.00 unless this matter is settled within sixty days. As soon as the deed is prepared I will mail it to you.

B/M

Yours very truly,

June 17th, 1909.

J. E. T. Joyner vs.
Virginian Ry. Co.

Mr. A. S. Johnson,

Isle ofight, Va.

My dear Sydney:

I hand you herewith all Court papers that I have in my office in this case. I remember that on the last day I was at Court Judge White showed me a decree he was going to enter and it was lying on his desk the last time I saw it. He may have taken it with him.

Yours very truly,

L/H

Enclosures.

Carrsville Va

June 22, 1909

Mr. J. W. Burger
Suffolk Va

Dear Sir -

I have decided not
to sign a deed for 3 times \$50
such deed as that. If you think
there is any chance for me carry
it to a higher Court. if you
wont any ^{one} to help ~~me~~ ^{you} I wont
the very best that can be got.
The reason why I have not
answered before your letter
got mesentand I never got it
in time.

Your Truly
J. E. T. Taylor

June 24th, 1909.

Mr. J. E. T. Joyner,
Carrollville, Va.

My dear Sir:

Your letter just received. I would like for you to come down to see me at your earliest convenience. I expect to be home every day next week but you had better drop me a postal before coming.

Yours very truly,

B/M

3

Virginian Railway Company,

vs) Injunction Bond.

J.E.T. Joyner,

A copy,

Executed & filed
July 6th 1908
Dist. Johnson, ed

\$ 500.00

Know all Men by These Presents, That we, E. H. Williams, Principal, and Virginia Safe Deposit and Trust Corporation

SURETY, ARE HELD AND FIRMLY BOUND UNTO THE COMMONWEALTH OF VIRGINIA,

in the just and full sum of FIVE HUNDRED Dollars,

to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

IN TESTIMONY WHEREOF, The said E. H. Williams principal, hereto sets his hand and seal, and the said Virginia Safe Deposit and Trust Corporation

surety by Geo. K. Nelms its duly authorized agent and attorney in fact, has caused its corporate name and seal to be hereunto affixed, the same to be attested by the signature of Geo. K. Nelms its said attorney in fact, this, the 6th day of January A. D., 1908

The condition of the above obligation is such that whereas the above bound E. H. Williams who gives bond as principal for The Virginian Railway Company, a Corporation, formerly known as the Tidewater Railway Company, which said corporation is plaintiff in a certain Bill in Chancery against J. E. T. Joyner, addressed to the Judge of the Circuit Court of the County of Isle of Wight, and has obtained from the said Judge an injunction to enjoin and restrain the said J. E. T. Joyner, his agents and attorneys from prosecuting the said action of ejectment recently brought in the Circuit Court of Isle of Wight County by the said J. E. T. Joyner against the Virginian Railway Company until the further order of this Court, and that the said complainant shall pay all such costs and damages as may be awarded against it and all such damages as shall be incurred in case the said injunction shall be dissolved.

Now, if the said shall faithfully discharge the duties of his office or trust as aforesaid, then the above obligation is void, else to remain in full force and virtue.

E. H. Williams SEAL

Virginian Safe Deposit and Trust Corporation.

By Geo. K. Nelms its duly authorized Agent and Attorney in Fact.

Attest, Geo. K. Nelms,

Signed, sealed and acknowledged before me this 6th. day of January, 1908.

A copy [Handwritten signature]

Teste, A. S. Johnson, C.C.