

1911-001 Chancery Causes v. Cumberland Lumber Company vs Richard M. Adams v ux v al
Isle of Wight County

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other SURNAMES. Norsworthy,
Johnson, Wingfield, Crocker,
Waters, Rogers

4
Green on last Sunday morning
to Bill and E. L. L. L.
Richard M. Adams et al

2nd. December ruled, 1909.

Process returned executed
on all defendants. Bill
filed. Decree nisi.

1st. January rules, 1910.

Defendants not appearing
to answer, etc. Bill taken
for confessed and case set
down for hearing.

FCS. OFFICE BUILDING
SUFFOLK, VA.

SUFFOLK HERALD CORPORATION PRINT, SUFFOLK, VA.

VIRGINIA, IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.
2nd December Rules, 1909.

Cumberland Lumber Company, a corporation, etc.....Complainant.
vs.

Richard M. Adams, et als.....Defendants.

To the Honorable B. D. White, Judge of said Court:

Your complainant, Cumberland Lumber Company, a corporation duly chartered and existing under and by virtue of the laws of the State of West Virginia, respectfully represents:

(1) That heretofore, to-wit: on the 9th day of September, 1908, one Richard M. Adams, then and now a resident of the County of Isle of Wight, Virginia, was the owner in fee simple of a certain tract of land lying, being and situate in the said County of Isle of Wight, and State of Virginia, bounded as follows:

"All that certain tract or parcel of land in Wardy Magisterial District of Isle of Wight County, Virginia, containing one hundred and thirty-six acres, more or less, adjoining the lands of F. H. Atkins, A. R. and E. C. Gwaltney, R. C. Barlow and others," it being the same land conveyed to said Richard M. Adams by George H. Adams and wife and others by deed dated the 18th day of February, 1908, and duly recorded in the Clerk's Office of said County in D. B. No. 66, page 342. Reference to which is here made for a more accurate and complete description of said land.

(2) That on the day and year aforesaid, to-wit: the 9th day of September, 1908, the said Richard M. Adams, by a certain contract in writing dated as aforesaid, sold to your complainant all the timber on said farm down to ten inches on the stump for the sum of six hundred and fifty dollars, of which sum one dollar was then, to-wit: on the day and year

aforsaid, paid to said Richard M. Adams and the balance of six hundred and forty-nine dollars was to be paid in cash upon the delivery to your complainant "within thirty days one of their regular forms of deeds conveying them this property with good title." It was further agreed that your complainant should have ten years in which to cut said timber with the privilege of a further extension of five years upon the payment of 6% interest on the purchase price, to-wit: six hundred and fifty dollars. All of which agreements are set forth in said writing, a certified copy of which is herewith filed marked exhibit "A" and prayed to be read as a part of this bill.

(3) That the terms, covenants and conditions contained in your complainant's regular form of deed were well known to said defendant Richard M. Adams, a copy of which is herewith filed marked exhibit "B" and prayed to be read as a part of this bill.

(4) That in accordance with an agreement made and entered into between Richard M. Adams and J. S. Horsworthy who was then and there and for that purpose acting as the duly authorized agent of your complainant, your complainant delivered to A. S. Johnson, Clerk of Isle of Wight County, the balance of the purchase price for said timber, to-wit: six hundred and forty-nine dollars and requested him to deliver same to said defendant, Richard M. Adams, upon the delivery to him, for recordation, of a deed in accordance with the agreement hereinabove set forth.

(5) That in pursuance of said agreement between Richard M. Adams and said J. S. Horsworthy, agent as aforesaid of your complainant, the said defendants, Richard M. Adams and Rosa W. Adams, executed, in said Clerk's Office, a deed conveying said timber on your complainant's regular form

of deed in strict accordance with said agreement and took the same to be executed by John W. Adams, who at that time had a deed of trust on said land, so that he might execute the same for the purpose of releasing the timber sold from the lien of said deed of trust.

(6) That said defendant, Richard M. Adams, afterwards failed and refused to deliver said deed conveying said timber, but on the contrary notified the said A. S. Johnson, Clerk as aforesaid, to whom the deed was to be delivered, that he had decided not to sell said timber and has since that time failed and refused to deliver the deed executed by him, although often requested so to do.

(7) That as soon as your complainant was advised that said defendant, Richard M. Adams, declined and refused to carry out said contract as aforesaid, a formal demand was made for said deed upon the 16th day of December, 1908, by G. W. Wingfield and J. S. Morsworthy, then and there and for that purpose acting as the duly authorized agents of your complainant, who at the same time offered to accept said deed ^{that} notwithstanding the lien of said deed of trust had not been released.

(8) That not only did said defendant, Richard M. Adams, then and there and at all times since, fail and refuse to deliver said deed, but on the contrary sold and conveyed the land on which said timber was situated to said John W. Adams, his brother, on the 10th day of February, 1909, by a deed duly recorded in said Clerk's Office in D. E. No. 77, page 162, a certified copy of which is herewith filed marked exhibit "C" and prayed to be read as a part of this bill.

(9) That your complainant alleges that said John W. Adams, who is a brother of said Richard M. Adams, accepted said deed conveying said land to him with full knowl-

edge that the timber thereon had been sold to your complainant and that said conveyance was made by said Richard M. Adams and said deed accepted by said John W. Adams for the purpose of preventing, if possible, the enforcement by your complainant of the said contract of sale of said timber.

(10) That your complainant, therefore, avers that said timber is now held by said John W. Adams subject to said contract of sale and prays that said defendants may be required by this honorable Court to convey the same to your complainant in accordance with said agreement.

(11) That your complainant did not at once institute suit for the specific performance of said written agreement because it did not regard as final the refusal of said defendants to make conveyance. And even after said conveyance to said John W. Adams was made your complainant continued to endeavor to arrange a meeting between said John W. Adams, Richard M. Adams and a representative of said company for the purpose of securing a deed from John W. Adams hoping thereby to avoid the expense and delay of litigation. And it was only until a few weeks ago that your complainant became convinced that said defendants would not convey said timber unless forced to do so.

(12) That your complainant is still ready, willing and anxious, as it has been at all times, to perform said agreement on its part and now offers to bring into Court the said sum of six hundred and forty-nine dollars, the unpaid purchase price of the timber and dispose of the same as this Court may direct.

In consideration whereof, and forasmuch as your complainant is remediless in the premises, save in a Court of equity, your complainant prays that the said Richard M. Adams, Rosa W. Adams, his wife, John W. Adams and R. D. Crocker, trustee, may be made parties defendant to this bill and required to answer the same as fully and particularly in all respects as if the same were repeated and they specially interrogated in reference thereto, answer under oath however being hereby expressly waived; that this honorable court will require and decree the specific performance of the said written agreement; that the said Richard M. Adams do accept from the complainant the said balance of the purchase money and do deliver to complainant a good deed on one of its regular forms conveying to said complainant the said timber as described in said written agreement upon the terms therein set forth; that said John W. Adams be required to release and convey all interests acquired by him in said timber under and by virtue of said deed of ~~trust~~ bargain and sale hereinabove referred to, which was made after said written agreement of sale was entered into; and that your complainant may have such other, further and general relief in the premises as the nature of its case may require and to equity may seem meet.

And your complainant will ever pray, etc.

CUMBERLAND LUMBER COMPANY,

By James H. Durgan
its attorney.

James H. Durgan p.q.

Cumberland Lumber Company, a corporation,

vs.----DEMURRER.

Richard M. Adams et als.

Mann & Mann,
LAW OFFICES.
PETERSBURG, VIRGINIA.

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

Cumberland Lumber Company, a corporation, -----PLAINTIFF.

vs. -----DEMURRER.

Richard M. Adams, et als., -----DEFENDANTS.

The said defendants, by their attorney, come and demur to the plaintiff's bill, and say that the same is not sufficient in law or in equity, and, for grounds of their demurrer, state the following:

1. The writing on which this suit is based, dated September 9th, 1908, and filed with the plaintiff's bill as "Exhibit A", *a contract which has been no meeting of minds, and is not sufficiently complete,* is not ~~sufficiently~~ definite, or specific to enable a court of equity to decree specific performance thereof.

2. Under the allegations of the said bill the plaintiff has been guilty of such laches as will bar relief in equity, if it be otherwise entitled thereto.

3. Under the allegations contained in the said bill, the plaintiff is estopped to assert its contract for the sale of the said timber.

4. Under the allegations contained in the said bill, it is inequitable to decree specific performance as therein prayed.

Richard S. Mann f.d.

Cumberland Lumber Company, a corporation.

vs.-----ANSWER of Jno. W. Adams.

Richard M. Adams et als.

Mann & Mann,
LAW OFFICES.
PETERSBURG, VIRGINIA.

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

Cumberland Lumber Company,

vs.) - - - - ANSWER OF JOHN W. ADAMS. - - -

Richard M. Adams, et als.

The answer of John W. Adams to a certain bill in chancery exhibited against him and others in the Circuit Court of Isle of Wight County, Va., by Cumberland Lumber Company.

THIS RESPONDENT saving, reserving, etc. for answer to the said bill, or to so much and such parts thereof, as he is advised at this time it is material he should answer, answers and says:

That he has read the answer of Richard M. Adams, one of the defendants in this suit, and adopts the same as his answer to the same effect as if the same were herein set out at length.

This respondent for further answer to the said bill says: That a few days after the 20th day of October, 1908, this respondent's brother, Richard M. Adams, visited this respondent at this respondent's residence in the County of Dinwiddie, Va., as set out in the answer of the said Richard M. Adams for the purpose of having this respondent sign the deed conveying the timber on the land of the said Richard M. Adams, on which this respondent then held a deed of trust, so that the same might be released of the lien of the said deed of trust. This respondent declined to allow his security to be depreciated, and as the amount to be paid was not sufficient to satisfy the deed of trust in full, he declined to sign the said deed, so as to release the said timber from the said deed of trust, until he should have been paid in full. This respondent was told by his said brother at that time that he (his brother) had signed a paper writing for the sale of the said timber, but that the same was conditioned upon this respondent's signing the deed for the said timber, so as to release the same from the lien of the said deed of trust, and was executed with that understanding, and his said brother then told this respondent that he had been assured at the time he signed the said writing, and also at the time of the signing

of the deed aforesaid that the said sale would not be valid or binding unless this respondent should sign the said deed so as to release his lien upon the said timber as aforesaid. This respondent having declined the said deed treated the negotiations with respect to the said sale of the said timber as ended. Shortly thereafter this respondent was shown a letter from one A. S. Johnson to his said brother requesting his said brother to advise the said Johnson about the said deed, and this respondent accordingly, at the request of his said brother, wrote to the said A. S. Johnson, a letter stating that his brother had declined to sell the said timber, or deliver the said deed.

About the 20th day of January, 1909, this respondent's said brother visited this respondent at his residence in Dinwiddie County, Va., and, being in need of money, offered to sell the said land to this respondent, and the said sale was agreed upon at the price of two thousand dollars (\$2,000.00), a fair price therefor, and the land was accordingly conveyed to this respondent by his said brother and his wife, by deed dated February 10th, 1909, and duly recorded in the Clerk's Office of Isle of Wight County, Va., on February 20th, 1909. Nothing, at that time, theretofore, or thereafter, was said or intimated with regard to evading by such sale the enforcement of any writing for the sale of the said timber. In fact, it was understood by this respondent, and by his said brother, that the entire matter of the sale of the said timber was at an end, for the reasons set out above, and in the said answer of the said Richard M. Adams, which has been adopted as a part of this answer, and this respondent avers that the matter of evading the enforcement of the said writing for the sale of the said timber, by such conveyance, was not even suggested to the mind of either the said Richard M. Adams, or this respondent.

The consideration for the conveyance of the said property to this respondent by his said brother, amounting to two thousand dollars (\$2,000.), was made up of the release of the bond of one thousand dollars (\$1,000.), and interest thereon, secured by the deed of trust on the said land as aforesaid, the payment in cash of the difference between the said \$1,000.00, and interest, and the sum of \$1500.00, and the lease by this respondent to the said Richard M. Adams of the said

land for the years 1909, 1910, 1911, and 1912, for the remaining five hundred dollars (\$500.00).

This respondent avers under the circumstances above set forth, and in the said answer of the said Richard M. Adams, it would be inequitable for this honorable Court to enforce the alleged agreement for the sale of the said timber, and specially inequitable to compel this respondent to convey the same to the said plaintiff according to the prayer of the plaintiff's bill. This respondent therefore prays that the writing hereinbefore referred to with reference to the sale of the said timber by the said John W. Adams to the Cumberland Lumber Company, if, at any time valid, be annulled, set aside, and cancelled, for the reasons set forth above, and in the said answer of the said Richard M. Adams; that this answer including the said answer of the said Richard M. Adams, in so far as the same may be necessary for the purpose, be treated as a cross-bill, and that the said plaintiff be required to answer the same, answer under oath being hereby expressly waived as to it; that proper process may issue, and that such other, further, and general relief may be afforded this respondent as the nature of his case may require, or to equity shall seem meet.

And now having fully answered, this respondent prays to be hence dismissed, etc.

Cumberland Lumber Company, a cor-
vs. ----ANSWER of R. D. Crocker,
Trustee.

Richard M. Adams et als.

Mann & Mann,
LAW OFFICES.
PETERSBURG, VIRGINIA.

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

Cumberland Lumber Company, a corporation,-----PLAINTIFF.

vs.----ANSWER of R. D. Crocker, Trustee.

Richard M. Adams, et al,-----DEFENDANT.

The answer of R. D. Crocker, Trustee, to a bill of complaint exhibited against him and others in the court aforesaid by Cumberland Lumber Company.

This respondent, for answer to the said bill, or to so much or such parts thereof as he is advised it is material at this time he should answer, answering, says:

This respondent was trustee under a certain deed of trust from Richard M. Adams and wife to secure a certain loan to the said Richard M. Adams by said John W. Adams on the said land.

This respondent is not advised as to the truth or falsity of any of the matters stated in the bill, and therefore neither affirms nor denies the same.

This respondent holds himself ready to comply with any order which the court may make in this cause.

And, now having fully answered, this respondent prays to be hence dismissed with his reasonable costs in this behalf expended.

Richard M. Adams, Jr.

Cumberland Lumber Company, a corporation.

vs.--- Answer of Rosa W. Adams.

Richard M. Adams et als.

Mann & Mann,
LAW OFFICES,
PETERSBURG, VIRGINIA.

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

Cumberland Lumber Company, a corporation,-----PLAINTIFF.

vs.-----ANSWER of Rosa W. Adams.

Richard M. Adams et als.

The answer of Rosa W. Adams to a certain bill in chancery exhibited against her and others in the Circuit Court of Isle of Wight County by Cumberland Lumber Company.

This respondent, saving, reserving, &c., for answer to the said bill, or to so much or such parts thereof as she is advised, at this time, it is material she should answer, answering, says:-

This respondent has read the answer of her husband, Richard M. Adams, one of the defendants in this suit, to the said bill, and adopts the same as her answer, to be read and considered with the same force and effect as if the same were herein set out at length.

This respondent, further answering, says: that it is true that her said husband, Richard M. Adams, and this respondent executed, in the Clerk's Office of Isle of Wight County, a deed conveying the timber described in the plaintiff's bill; but, had this respondent known what the terms of the said deed were, or fully understood the same, she would have never signed a deed to convey the said timber. While the said deed was read over to this respondent and her said husband by the said A. S. Johnson, Clerk of the said County, such reading was hurriedly done, and this respondent was ill from a sick headache, and did not then understand, nor does she believe that her said husband then understood, the provisions of the said deed according to their true intent and meaning. And this respondent further avers that, at the time her said husband and this respondent signed the said deed, the said A. S. Johnson stated that the same would not be valid, unless her said husband's brother, the defendant, John W. Adams, signed the same for the purpose of releasing the lien of his deed of trust thereon.

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And this respondent avers that both her said husband and this respondent signed the same on the faith of the said statement so made by the said A. S. Johnson, and that without such statement neither her said husband nor this respondent would have signed the same.

This respondent emphatically denies that the conveyance of the land upon which the said timber is situated by her said husband and herself to the defendant, John W. Adams, was made with any view whatsoever to defeat the sale of the timber on the same to the said plaintiff as set out in the plaintiff's bill.

This respondent alleges that all of the parties to the said deed considered that the transaction with reference to the said timber between the said plaintiff and this respondent and her said husband were, and had for sometime been, at an end; as the same had been conditioned upon the willingness of the said John W. Adams to sign the deed conveying the said timber as aforesaid.

And now having fully answered, this respondent prays to be hence dismissed with her reasonable costs in this behalf expended.

Richard H. Mason *fd.*

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

Cumberland Lumber Company

vs.----Answer of R. M. Adams.

Richard M. Adams et als.

Filed Oct 2/1910

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Mann & Mann,
LAW OFFICES,
PETERSBURG, VIRGINIA.

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ture of his case may require, or to equity shall seem meet.

And now, having fully answered, this respondent prays to be hence dismissed with his reasonable costs in this behalf expended.

signature thereto, to which he replied that it was. In this way and under these circumstances, this respondent presumes that this statement was what induced the said G. W. Wingfield and J. S. Horsworthy solemnly to certify at the foot of the said paper writing that this respondent had acknowledged it before them on the 16th day of December, 1908.

On or about the 20th day of January, 1909, this respondent, being in need of money, and thinking that the entire matter with regard to the sale of the timber had been ended, went to Dinwiddie County, Virginia, where his brother, John W. Adams, resides, and offered to sell the said John W. Adams his said land; and the said sale was agreed upon at the price of Two Thousand Dollars (\$2,000.00), a fair price therefor; and the land was accordingly conveyed to the said John W. Adams by deed dated February 10th, 1909. Nothing at that time, therefore or thereafter, was said or intimated with regard to evading, by such sale, the enforcement of any writing for the sale of the said timber. In fact, it was understood by this respondent that the entire matter of the sale of the said timber was at an end for the reasons heretofore set out in this answer; and this respondent believes, and therefore avers, that the matter of evading the enforcement of the said writing for the sale of the said timber was not even suggested to the mind of the said John W. Adams.

This respondent avers that, under the circumstances set forth above, it would be inequitable for this honorable court to enforce the alleged agreement for the sale of the said timber, or to compel the said John W. Adams to convey the same to the said plaintiff according to the prayer of the plaintiff's bill.

This respondent, therefore, prays that the writing hereinbefore referred to with reference to the sale of the said timber by this respondent to the Cumberland Lumber Company, if at any time valid, be annulled, set aside and cancelled for the reasons hereinbefore set forth; and this answer, in so far as the same may be necessary for the purpose, be treated as a cross bill, and that the said plaintiff be required to answer the same, answer under oath being hereby expressly waived as to it; that proper process may issue; and that such other, further, and general relief may be afforded this respondent as the na-

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

Cumberland Lumber Company

vs.-----ANSWER of Richard M. Adams.

Richard M. Adams et als.

The answer of Richard M. Adams to a certain bill in chancery exhibited against him and others in the Circuit Court of Isle of Wight County by Cumberland Lumber Company.

This respondent, saving, reserving, &c., for answer to the said bill, or to so much or such parts thereof as he is advised, at this time, it is material he should answer, answering says:

1. It is true that on the 9th day of September, 1908, he was the owner in fee simple of a tract of land in the said county of Isle of Wight, Virginia, containing one hundred and thirty-six (136) acres, more or less, and described in paragraph one of the plaintiff's bill.

2. It is further true that on or about the 9th day of September, 1908, this respondent signed a certain writing with respect to the sale of certain timber on his farm to the said Cumberland Lumber Company; and, as far as this respondent is advised, he accepts the writing filed with the said bill and marked "Exhibit A" as the writing signed by him as aforesaid. But this respondent denies that the said writing was unqualifiedly delivered to the said plaintiff; and, on the contrary, avers that, at the time of its execution and delivery, it was thoroughly understood and agreed by the said Cumberland Lumber Company by and through its agent, J. S. Norsworthy, and this respondent, that the said writing should be of no effect unless this respondent's brother, John W. Adams, should agree to and sign a deed conveying the timber aforesaid in accordance therewith; and the said plaintiff, by and through its said agent, J. S. Norsworthy, before he signed said writing, then and there assured this

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respondent that the said writing would be of no effect unless his said brother should agree to the sale of the said timber and sign the deed for the same, as hereinbefore stated; and this respondent signed the same on the faith of this assurance.

This respondent further avers that, at the time the said writing was signed and delivered by him as aforesaid, its true intent, purport and meaning was not known to, or understood by, this respondent; and, had he understood the same, he would not have signed the said writing, or any other writing of a like kind or character for the sale of the said timber.

3. This respondent denies that the terms, covenants and conditions contained in the plaintiff's regular form of deed, or any one or more of them, were known to this respondent at the time he signed the writing aforesaid; and, on the contrary, avers that the same and every part thereof were wholly and totally unknown to him; and he had no reason to believe that they contained the many additional strictures with regard to this respondent's real estate at the time he signed the writing aforesaid, or this respondent would, under no circumstances, have signed the said writing, had he known the contents thereof. As a matter of fact, this respondent has never seen one of the plaintiff's regular forms of deed, unless the one signed by him, but withheld for the signature of his brother, John W. Adams, be one of the said deeds; and the first time this respondent had ever seen that specific deed was on the day of its execution, to-wit, on the 20th day of October, 1909.

4. This respondent, while not admitting, does not deny the allegations contained in paragraph four of the plaintiff's bill to the effect that the plaintiff delivered to A. S. Johnson, the Clerk of Isle of Wight County, the balance of the purchase price for the said timber, and therefore accepts the same as true.

5. This respondent admits that the respondent and his wife, Rosa W. Adams, signed, in the clerk's office, a deed conveying certain timber; but whether the same was on one of the plain-

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tiff's regular forms of deed, this respondent is unable to say.

This respondent further admits that he retained the deed so signed by him and his wife for execution by the said John W. Adams, who, at that time, had a deed of trust on the said land, so that he might sign the same for the purpose of releasing the timber aforesaid from the lien of the said deed of trust.

This respondent, however, avers that on the day the said deed was signed, to-wit, on the 20th day of October, 1908, and before the same was signed by this respondent and his wife, this respondent was assured by the said A. S. Johnson that the deed would be of no effect unless his said brother, John W. Adams, should sign the same, and that he signed the same on the faith of such assurance.

6. This respondent admits that he failed and refused to deliver the said deed conveying the said timber, and that the said A. S. Johnson was notified that this respondent and his brother, John W. Adams, had decided not to sell the said timber. This respondent, however, denies that he has been often requested to deliver the deed signed by him, and avers that he has been requested only once so to do, but admits that he has refused to deliver the deed signed by him for the reasons hereinafter more fully stated.

7. This respondent admits that on the 16th day of December, 1908, G. W. Wingfield and J. S. Norsworthy then and there, and for that purpose, acting as the duly authorized agents of the plaintiff, made a demand of this respondent for the delivery of the deed aforesaid, and that this respondent then and there declined and refused to deliver the same, and declined and refused to sell the said timber; but this respondent denies that the said Wingfield and Norsworthy, or either of them, at that time, or at any other time, offered to accept said deed, notwithstanding that the lien of the said deed of trust had not been released. It is true that an inquiry was made by the said Wingfield and Norsworthy as to

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whether or not this respondent would be willing to allow a portion of the debt secured by the deed of trust to be paid with the proceeds of the timber, and the balance, Three Hundred and Fifty Dollars (\$350.00), to be bought over by the plaintiff, which this respondent declined to allow to be done; but no offer was then or thereafter made as to the same.

8. This respondent admits that he has, at all times since the said 16th day of December, 1908, failed to deliver the said deed, and that he did, on the 10th day of February, 1909, convey the land on which the said timber is situated to his brother, the said John W. Adams, by deed duly recorded in the said clerk's office in Deed Book No. 77, at page 162, - a certified copy of which is marked "Exhibit C", and filed with said plaintiff's bill in this cause.

This respondent denies that the said John W. Adams accepted said deed conveying said land to him with any knowledge whatsoever that the timber thereon had been sold to the plaintiff, and indignantly denies that said conveyance was made by this respondent, or said deed accepted by the said John W. Adams, for the purpose of preventing, if possible, the enforcement by the plaintiff of the alleged contract of sale of said timber. On the contrary, this respondent avers that the said sale of the said land made by him to the said John W. Adams was an absolute, full, complete and bona fide sale; that a fair and adequate compensation was paid therefor; and that the matter of the alleged sale of the said timber to the plaintiff figured in no way in the sale of the said land, nor did the same furnish any reason whatsoever for the sale of the same.

10. This respondent denies that the said timber is now held for the said John W. Adams subject to the said alleged contract of sale; but, on the contrary, avers that he is in no way whatsoever obligated to convey the said timber to the said plaintiff in accordance with the said alleged agreement.

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11. This respondent denies that the reasons given in paragraph eleven for not at once instituting suit for the specific performance of the said alleged written agreement was because the plaintiff did not regard as final the refusal of the said defendants, or either of them, to make conveyance. As a matter of fact, this respondent, on the 16th day of December, 1908, flatly and finally informed the said G. W. Wingfield and J. S. Norsworthy, who were then and there acting as the agents of the plaintiff, that he would not convey the said timber to the plaintiff, or deliver the deed theretofore written with respect to the same. This respondent is at a loss to understand how a flat refusal, under these circumstances, could not be considered final. This respondent further denies that, after said conveyance, the said plaintiff continued to endeavor to arrange a meeting between John W. Adams, Richard M. Adams and a representative of said company for the purpose of securing a deed for the said timber from John W. Adams; and this denial is based upon two reasons: First, because not having endeavored to arrange the meeting aforesaid, they could not, in the nature of things, continue so to do; Secondly, because neither this respondent, nor his said brother, John W. Adams, have ever been requested to arrange a meeting between the parties aforesaid; nor has, as this respondent avers, the said John W. Adams ever been approached, or written to, in any way whatsoever by the said plaintiff, or its agents, prior to the institution of this suit; and what developed a few weeks prior to the institution of the said suit that caused the plaintiff to become convinced that the said defendants would not convey the said timber unless forced to do so, is a matter beyond this respondent's ken.

And now, that the court may be advised as to the true facts with regard to the matters involved in this suit, this respondent states the following: Sometime prior to the 9th day of September, 1908, the said J. S. Norsworthy, acting for the said plaintiff, approached this respondent for the purpose of purchas-

#6.

ing for the said plaintiff the timber situated upon this respondent's land, hereinafter more fully described. On the day prior to the signing of the writing marked "Exhibit A" and filed with the said bill, this respondent, being absent from his residence on the land aforesaid, was told, on his return, that the said J. S. Norsworthy had visited the said residence in his absence, and left a message for this respondent to drive over to see the said Norsworthy on the following day. This respondent accordingly did so; and the said Norsworthy offered to buy of this respondent the timber on the said land down to 10 inches on the stump; and this respondent stated he would accept the sum of Six Hundred and Fifty Dollars (\$650.00) therefor, and to give ten (10) years within which to cut and remove the same, with the privilege of five years extension, on the payment of 6% interest on the purchase price, provided his brother, John W. Adams, who held a deed secured by a deed of trust upon the said land, would sign a deed for the same, releasing the said timber from the said deed of trust; and the said J. S. Norsworthy then and there assured this respondent that the sale would not be valid unless this respondent's said brother should be willing to sign the deed aforesaid, and the writing marked "Exhibit A" as aforesaid was signed by this respondent with that understanding, and upon the faith of the said J. S. Norsworthy's said assurance. At the time this respondent signed the said writing, he had never seen one of the regular forms of deed of the said plaintiff, nor was he advised as to the contents thereof, and he did not understand that it contained, in addition to the conveyance of the said timber, such sweeping provisions with regard to the free right of way for railroads and the right to erect on said land mills, factories, and buildings and other fixtures deemed necessary or useful in conducting a lumber business, and the right of way for the construction and operation of temporary or permanent railroads, of ordinary width, over and across the said land, or the right to burn over trash, tree tops, grass and other light substances, for a distance of fifty (50) yards on each side of any

#7.

railway track or right of way to be granted; nor did he understand that the said regular form of deed included a provision allowing the plaintiff to cut, without limit as to size, such logs or trees as may be required by them for the purpose of cutting, maintaining and operating tram roads and railroads across said land, or for opening and clearing roads and for other purposes connected with the cutting, manufacturing and removing the timber to be conveyed, or any other timber then owned by them or which they might thereafter acquire.

This respondent further did not understand that said deed would include the right to a further period of not exceeding five years from the end of the said term of ten years within which to cut and remove the said timber; and that said plaintiff, its representatives or assigns, should pay the said respondent at the rate of Thirty-nine Dollars (\$39.00) per annum for each year during which they should exercise said privilege over and above the term of ten (10) years first mentioned, the same being 6% upon the purchase price therein named; especially as this respondent had provided in a previous writing that only the timber on his farm to ten (10) inches on the stump should be cut, and that there should be the privilege of a five years extension on the payment of the purchase price, and nothing was stated about a lesser period.

This respondent further did not understand that the said deed should be dated the 20th day of October, 1908, and that the time should begin to run from said date, as the said paper writing signed by him on the 9th day of September, 1908, provided for ten (10) years ostensibly from September 9th, 1908, and not from October 20th, 1908.

On or sometime about the 20th day of October, 1908, this respondent received a message that the money for the said timber was ready at the office of A. S. Johnson, Clerk of Isle of Wight County. And this respondent, accordingly, on the 20th day of October, 1908, went over to the said clerk's office and carried with him his wife, the said Rosa W. Adams, for the purpose of signing

#8.

and acknowledging the said deed and receiving the same, in order that it might be forwarded to this respondent's brother, John W. Adams, for the release of the deed of trust on the said timber. After their arrival at the said clerk's office, the said deed was drawn up by the said A. S. Johnson, and this respondent was assured by the said A. S. Johnson that the said deed would be of no effect unless and until it was signed by the said John W. Adams; and he and his wife, upon the faith of such assurance, accordingly signed and acknowledged the same and took the said deed for the purpose of carrying the same to the said John W. Adams. The said A. S. Johnson read the same over to this respondent and his said wife; but the same was so hurriedly read that this respondent, being unlearned and ignorant as to such matters, did not catch the various provisions involved in the same; and, when a few days thereafter, he carried the same to his brother, John W. Adams, for his signature, in order that the said timber might be released from the said deed of trust, his said brother then explained fully to this respondent the meaning of the said deed; and this respondent, then, for the first time, understood the same according to its true intent and meaning. And then the said John W. Adams declined to sign the same; and this respondent determined to decline to deliver the same or sell the timber according to the writing first aforesaid; and, sometime thereafter, the said A. S. Johnson wrote this respondent a letter, requesting to be advised about the deed, and this respondent's brother undertook to advise the said A. S. Johnson that this respondent declined to sell the said timber or to deliver the said deed; and, as this respondent is informed and believes, accordingly did so.

This respondent heard nothing further from the matter until the 16th day of December, 1908, when he was approached by the said G. W. Wingfield and J. S. Norsworthy, who inquired why he did not make a settlement for the said timber; and he, in reply, flatly and firmly stated that he would not sell the timber and had declined to sell the same or deliver the deed therefor. At the same time, they showed this respondent the original of the paper marked "Exhibit A", and filed with the plaintiff's bill, and asked if his was the

#9.

signature thereto, to which he replied that it was. In this way and under these circumstances, this respondent presumes that this statement was what induced the said G. W. Wingfield and J. S. Norsworthy solemnly to certify at the foot of the said paper writing that this respondent had acknowledged it before them on the 16th day of December, 1908.

On or about the 20th day of January, 1909, this respondent being in need of money, and thinking that the entire matter with regard to the sale of the timber had been ended, went to Dinwiddie County, Virginia, where his brother, John W. Adams resides, for the purpose of securing an additional loan over and above the sum of One Thousand Dollars (\$1,000.00), then due by this respondent to the said John W. Adams and secured by a deed of trust upon the said land, upon which the said timber was situated. The said John W. Adams, being then unwilling to advance this respondent more money, this respondent offered to sell the said John W. Adams his said land; and the said sale was agreed upon at the price of Two Thousand Dollars (\$2,000.00), a fair price therefor; and the land was accordingly conveyed to the said John W. Adams by deed dated February 10th, 1909. Nothing at that time, theretofore or thereafter, was said or intimated with regard to evading, by such sale, the enforcement of any writing for the sale of the said timber. In fact, it was understood by this respondent that the entire matter of the sale of the said timber was at an end for the reasons heretofore set out in this answer; and this respondent believes, and therefore avers, that the matter of evading the enforcement of the said writing for the sale of the said timber was not even suggested to the mind of the said John W. Adams.

This respondent avers that, under the circumstances set forth above, it would be inequitable for this honorable court to enforce the alleged agreement for the sale of the said timber, or to compel the said John W. Adams to convey the same to the said plaintiff according to the prayer of the plaintiff's bill.

This respondent, therefore, prays that writing hereinbefore referred to with reference to the sale of the said timber by this respondent to the Cumberland Lumber Company, if at any time val-

#10.

id, be annulled, set aside and cancelled for the reasons hereinbefore set forth; and this answer, in so far as the same may be necessary for the purpose, be treated as a cross bill, and that the said plaintiff be required to answer the same, answer under oath being hereby expressly waived as to it; that proper process may issue; and that such other, further and general relief may be afforded this respondent as the nature of his case may require, or to equity shall seem meet.

And now, having fully answered, this respondent prays to be hence dismissed with his reasonable costs in this behalf expended.

Richard William *for*

Richard M. Adams,
by Counsel

Cumberland Lumber Co.

Answer of Cumberland
Lbr. Co. to cross-bill
of H. W. Adams

Richard M. Adams et al

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

SUFFOLK HERALD CORPORATION PRINT, SUFFOLK, VA.

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

Cumberland Lumber Company,

vs.....Answer of Cumberland Lumber Co.

Richard M. Adams et als.

The answer of the Cumberland Lumber Company to a certain cross-bill in chancery exhibited against it in the Circuit Court of Isle of Wight County, Virginia, by John W. Adams.

This respondent, saving, reserving, etc. for answer to the said bill, or to so much ~~thd~~ such parts thereof, as it is ~~advised~~ at this time it is material it should answer, answers and says:

That the said John W. Adams had notice both actual and constructive of the contract of sale between Richard M. Adams and this respondent at the time that said land was purchased.

And now having fully answered this respondent prays to be hence dismissed with its reasonable costs in this behalf expended.

Cumberland Lumber Company,

By

James H. Deery
its attorney.

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

Cumberland Lumber Company,

vs.....Answer of Cumberland Lumber Co.
Richard M. Adams et als.

The answer of the Cumberland Lumber Company
to a certain cross-bill in chancery exhibited against it in
the Circuit Court of Isle of Wight County, Virginia, by
John W. Adams.

This respondent, saving, reserving, etc. for
answer to the said bill, or to so much and such parts thereof,
as it is ~~advised~~ at this time it is material it should answer,
answers and says:

That the said John W. Adams had notice both
actual and constructive of the contract of sale between
Richard M. Adams and this respondent at the time that said
land was purchased.

And now having fully answered this respondent
prays to be hence dismissed with its reasonable costs in this
behalf expended.

Cumberland Lumber Company,

By _____

its attorney.

Cumberland Lumber Co.

Avenue of Cumberland
Lumber Co. to cross-
hill of Richard M.
Almond.

Richard M. Almond & Co.

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

SUFFOLK HERALD CORPORATION PRINT, SUFFOLK, VA.

Adams, that he would then advise them as to whether or not he would deliver the deed, and that the said Richard M. Adams afterwards failed to so notify the said Norsworthy or Winfield.

It is not true that said John W. Adams was not advised of said sale, but on the other hand, was notified that said defendant Richard M. Adams has signed a contract and agreed to sell the timber.

This respondent denies that said Richard M. Adams was not advised as to the provisions of its regular form of deed and is at a loss to understand why the said Richard M. Adams objects to deliver a deed prepared under his instructions and in accordance with his agreement. It was not incumbent upon this respondent to prepare any form of deed, the said Richard M. Adams having agreed to deliver in thirty days from the 9th day of September, 1908, a deed conveying said property with the usual covenants and agreements set forth in the regular form of deed used by this respondent. This the said Richard M. Adams failed to do and now seeks to excuse himself by objecting to a form of a deed prepared at his request by A. S. Johnson, who was only authorized to pay over the balance of the purchase price upon the receipt of a deed properly executed in accordance with said agreement.

And now having fully answered this respondent prays to be hence dismissed with its reasonable costs in this behalf expended.

Cumberland Lumber Company,

By James H. Dwyer
its attorney.

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

Cumberland Lumber Company.

vs.....Answer of Cumberland Lumber Company.

Richard M. Adams et als.

The answer of the Cumberland Lumber Company to a certain cross-bill in chancery exhibited against it in the Circuit Court of Isle of Wight County, Virginia, by Richard M. Adams.

This respondent, saving, reserving, etc. for answer to the said bill, or to so much and such parts thereof, as it is advised at this time it is material it should answer, answers and says:

That there was no agreement or understanding that said option or deed should be of no effect unless the same was signed by John W. Adams, but on the other hand, it was merely stated that it would be necessary for John W. Adams to sign the same in order to give a good title. It is not true that said defendant, Richard M. Adams, ever declined or refused to deliver a deed in accordance with said option, and while the said John W. Adams addressed a letter to Mr. A. S. Johnson, Clerk of Isle of Wight County, saying that his brother, Richard M. Adams, had decided not to sell his timber, no agent or employee of this respondent was so notified, but on the other hand, J. S. Norsworthy and G. W. Winfield then, and for that purpose, acting as agents for this respondent were told by said Richard M. Adams that after he consulted his brother, John W.

Adams, that he would then advise them as to whether or not he would deliver the deed, and that the said Richard M. Adams afterwards failed to so notify the said Horsworthy or Winfield.

It is not true that said John W. Adams was not advised of said sale, but on the other hand, was notified that said defendant Richard M. Adams has signed a contract and agreed to sell the timber.

This respondent denies that said Richard M. Adams was not advised as to the provisions of its regular form of deed and is at a loss to understand why the said Richard M. Adams objects to deliver a deed prepared under his instructions and in accordance with his agreement. It was not incumbent upon this respondent to prepare any form of deed the said Richard M. Adams, having agreed to deliver in thirty days from the 9th day of September, 1908, a deed conveying said property with the usual covenants and agreements set forth in the regular form of deed used by this respondent. This the said Richard M. Adams failed to do and now seeks to excuse himself by objecting to a form of a deed prepared at his request by A. S. Johnson, who was only authorized to pay over the balance of the purchase price upon the receipt of a deed properly executed in accordance with said agreement.

And now having fully answered this respondent prays to be hence dismissed with its reasonable costs in this behalf expended.

Cumberland Lumber Company,

By _____
its attorney.

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

Cumberland Lumber Company,

vs.....Answer of Cumberland Lumber Company.

Richard M. Adams et als.

The answer of the Cumberland Lumber Company to a certain cross-bill in chancery exhibited against it in the Circuit Court of Isle of Wight County, Virginia, by Richard M. Adams.

This respondent, saving, reserving, etc. for answer to the said bill, or to so much and such parts thereof, as it is advised at this time it is material it should answer, answers and says:

That there was no agreement or understanding that said option or deed should be of no effect unless the same was signed by John W. Adams, but on the other hand, it was merely stated that it would be necessary for John W. Adams to sign the same in order to give a good title. It is not true that said defendant, Richard M. Adams, ever declined or refused to deliver a deed in accordance with said option, and while the said John W. Adams addressed a letter to Mr. A. S. Johnson, Clerk of Isle of Wight County, saying that his brother, Richard M. Adams, had decided not to sell his timber, no agent or employee of this respondent was so notified, but on the other hand, J. S. Norsworthy and G. W. Winfield then, and for that purpose, acting as agents for this respondent were told by said Richard M. Adams that after he consulted his brother, John W.

To Richard W. Adams,
Rosa W. Adams,
John W. Adams:

NOTICE that on Tuesday, the 28th day
of March, 1910, at the office of James H. Purges, in the
Postoffice building, in the town of Suffolk, Virginia,
between the hours of 11 A. M. and 6 P. M. of that day,
I shall proceed to take the depositions of C. W. Winfield,
J. B. Horsworthy and A. S. Johnson to be read as evidence
in my behalf in a certain suit in equity depending in the
Circuit Court of Isle of Wight County, Virginia, wherein
I am complainant and you are defendant. And if from any
cause the taking of said depositions be not commenced, or
if commenced be not concluded on that day, the taking thereof
will be adjourned from day to day at the same place and be-
tween the same hours until the same shall be completed.

Given under my hand this 28th day of February,
1910.

Cumberland Timber Company
by James H. Purges
its attorney

We accept legal service of the above notice
this 14 day of March, 1910.

Richard W. Adams, Rosa W. Adams
& John W. Adams.
by Richard Williams, their atty.

Executed the within process November
16th 1909, by serving the copies thereof on Richard
M. Adams, Rosa W. Adams, & R. A. Crockett
Trustee, in person, at their residence in the
borough of Southampton.

W. A. Edwards Sheriff
of Southampton County

1
Cumberland Timber Co

vs.

SUBPOENA
IN
CHANCERY.

Richard M. Adams et al

J. M. Burgess p. 9

To J. M. Burgess Rules,

Circuit Court.

1909

B 33119

In the Clerk's Office of the
SUPREME COURT,
OF THE
COUNTY OF ISLE OF WIGHT

this 18th day of Novm 1909

Returned Filed

Sub. Johnson

Shffs. Fee \$1.50

The Commonwealth of Virginia,

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

WE COMMAND YOU that you summon

*Richard M Adams, Rosa
W Adams, John W Adams and R H Crocker
Trustee*

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 *December* 1909,
to answer a bill in chancery, exhibited against *them* in our said court ~~for~~
by Cumberland Lumber Company, a corpo-
ration.

And have then there this writ. Witness *A. S. Johnson* NATHANIEL F. YOUNG, Clerk of our said court, at
the court-house, the *11th* day of *November* 1909, and in the *12th*
year of the Commonwealth.

Test. A. S. Johnson Clerk

Cumberland P. Co

vs.

SUBPOENA
IN
CHANCERY.

Richard M. Adams

et al.

J. M. Burgess p. 9

To J. M. Burgess Rules,

Isle of Wight Circuit Court.

1909

B 33119

Executed this 30th day
of Nov. 1909 by
delivering a true copy
of within summons
to Geo. W. Adams in
person -
W. J. Allen the S. C.
By J. H. Allen the D. C.

In the Clerk's Office of the
Circuit Court,

COUNTY OF ISLE OF WIGHT

this 6 day of Dec 1909.

Subscribed
J. H. Allen

The Commonwealth of Virginia,

Dimwiddie

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

WE COMMAND YOU that you summon *Richard M Adams, Rosa*
H Adams, John H Adams, and R W Crooks,
Trustee

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 *December* 1909,
to answer a bill in chancery, exhibited against *them* in our said court ~~for~~
by Lumbertland Lumber Company, a corporation.

And have then there this writ. Witness *A. S. Johnson*
NATHANIEL E. YOUNG, Clerk of our said court, at
the court-house, the *11th* day of *November* 1909, and in the *12th*
year of the Commonwealth.

Test. Johnson Clerk

Chaussy
Cumberland Tunnel Co
75 of Depositors
R M Adams

Filed Oct. 3/1910
Inst. Johnson

Dendron, Virginia, Feby. 19, 1910

This is to certify that I am, and have been for some years, the Superintendent of the Cumberland Lumber Company, with full power and authority to purchase timber, land, etc. in person or by agents; that sometime prior to the 9th, day of September, 1908, I authorized and empowered J. S. Norsworthy and G. W. Winfield to purchase the timber of Richard M. Adams in the bill and proceedings mentioned in the cause of the Cumberland Lumber Company vs. Richard M. Adams et als for the price and in the manner set forth in said bill; and further that some days previous to the 16th, day of December, 1908, as Superintendent of the said Cumberland Lumber Company I delivered to J. S. Norsworthy and G. W. Winfield the sum of Six Hundred and Forty-nine (\$649.00) Dollars and authorized them, as agents for said Company, to tender said sum to Richard M. Adams in payment of the balance of the purchase price of the timber herein above mentioned.

Given under my hand this 19th day of February, 1910.

Edward Rogers
Superintendent of the Cumberland Lumber Company

Sworn to and subscribed
before me this 19 day of
February, 1910

Arthur Rogers N. P.

My Commission expires August 4, 1911.

J. S. Hershworthy, 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. J. S. Hershworthy, sixty-four years of age, Isle of Wight County and I know the parties to this suit.

Q. This is a suit instituted for the purpose of requiring Richard M. Adams to comply with a contract entered into with the Cumberland Lumber Company for the sale of certain standing timber on his farm. If you know anything about this contract please start at the beginning and state in your own words anything that you may know.

A. It was sometime I think about the 1st of September I was coming from Smithfield, somewhere near the bridge and Dr. Marshall's corner when Mr. Adams stopped me and wanted to know if I wanted to buy his timber. I told him I did not know. "Well" he said "I have decided to sell it". "There is another party who wants it and as you all bought it sometime ago I will give you the refusal of it at the figure you agreed to buy it at."

I said "Dick, I can't tell you just now I will have to consult Mr. Rogers." I called Mr. Rogers over the 'phone and stated the circumstances and he authorized me to purchase.

I think that some day I went up to see Mr. Adams in regard to it and he was not at home. I filled out receipts at the price we had agreed upon prior to that and left them with his wife for him to sign.

Q. I now hand you the paper, which is filed in this suit, marked exhibit "A". Will you please examine same and tell me if it is a copy of the paper which he signed.

(The paper is handed to Mr. Horsworthy.)

A. Yes sir this is a copy of the paper.

(Said paper is handed back to Counsel and made a part of the depositions).

A. He, R. M. Adams, come down to my house, probably the next day or a couple of days thereafter, I don't remember exactly, with the paper unsigned and he asked me what sort of a deed would it be. I told him it would be the same as the one he signed when we bought it before. The same that every body signed.

He said "all right I will sign it".

Q. I now hand you a paper, which is filed in this suit with the other papers, which is marked exhibit "B" and made a part of these depositions. Will you please examine this paper and tell me if this is the form of deed to which you referred

A. Yes sir it is. (Examining the paper)

Q. Is this the same form that was used in your negotiations with Adams?

A. Yes sir.

Q. During the negotiations, did he have occasion to read this form?

A. He had chance to read it.

Q. Do you know whether or not he read it?

A. He had chance to read it. It was left in his possession for some time. I know it was read to him.

He remarked "I have decided to sell it any way. He, (John W. Adams, his brother,) has been charging me 8%, but since he failed to sign that deed prior to this he has cut it down to 7%, but I have decided to borrow the money and take the deed up. I am going to sell this timber".

Q. Were there any further conversations between you in reference to this contract?

A. None at all.

Q. When did you next see Mr. Richard Adams?

A. I don't exactly remember, but I think it was sometime in October. They were picking peas. I was over at Nick Gweltney's, in front of his place.

Q. Tell us what took place with reference to this contract at that time.

A. Mr. Winfield and I were together and went over there and asked him if we paid him the money would he sign the deed and he said "I don't know, I will have to see my brother". We then presented the receipt which he had signed and I asked him if that was his signature and he said it was.

Q. This receipt purports to have been acknowledged on the 16th day of December, 1908, is that the date to which you refer?

A. I think it was in October that we saw him. They were picking peas. I don't recall exactly. I could not tell.

Q. Go ahead with your conversation with Mr. Adams at that time?

A. I think I have stated about all. Mr. Winfield asked him if we were to deliver the money if he would sign the deed. He said he would have to consult his brother. That is about all that was said.

Q. Did you see him any more after that?

A. No sir, we went to his place I think twice, possibly four times, after that but he was not at home. We left word with *his* wife for him to let us know where we could see him, any place that was most convenient for him, in regard to this business.

Q. Did you ever receive any reply from him?

A. No sir not to my knowledge.

Q. During your negotiations with Mr. Richard Adams was anything said about the deal being dependent upon his brother's consent?

A. Not during the deal. He told me that he was going to borrow the money to pay off the deed of trust in favor of his brother. Said he was going to sell any way, if his brother would not ~~sign~~ he would borrow the money and pay his brother's deed of trust.

CROSS-EXAMINATION.

Q. We are you acting for the Cumberland Lumber Company?

A. Yes sir.

Q. Is the Cumberland Lumber Company engaged generally in the buying of timber in the section in which this timber in question is located?

A. Yes sir.

Q. Pretty large company?

A. I think it is.

Q. How long have you been with the Cumberland Lumber Company in the capacity of timber buyer?

A. Five years.

Q. Is that your general business?

A. Yes sir.

Q. You said something about prior negotiations for the purchase of the timber?

A. That was two years prior to this transaction that we bought it.

Q. Was there any deed at that time?

A. An option.

Q. Why was that deal not carried through?

A. I understand that he said that his brother would not sign it.

Q. Do you mean that John W. Adams had a deed of trust on the same.

A. Yes sir.

Q. Who had possession of the paper which R. M. Adams signed in September, 1906.

A. I had it.

Q. How long did you keep that paper?

A. I sent it to Mr. Rogers, the Superintendent of the Cumberland Lumber Company, as soon as Adams signed it.

Q. RE-DIRECT EXAMINATION.

Q. I don't remember whether I asked you or not whether you made any efforts to see Adams after the 16th day of December when he acknowledged the option before you?

A. Not except the times when we went to look for him and he was not at home and we left a message with his wife for him to come to see us or let us know where to meet him. We never heard anything further from him.

And further this deponent soith not. Signature waived by consent.

A. S. Johnson, 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. A. S. Johnson, thirty-six, Clerk of Isle of Wight County, Isle of Wight County, Virginia, and I know the parties to this suit.

Q. Will you please tell me if Mr. Rogers, of the Cumberland Lumber Company, placed any money in your hands to be delivered to Mr. R. M. Adams upon the delivery to you of a deed conveying certain standing timber, and if so, tell us if you saw Mr. Adams and what transpired at that time.

A. Mr. Rogers sent me by mail, or by hand, I don't recall which, his contract of sale of the timber in question and a draft or certified check to pay the balance of the purchase price for the timber. Sometime after that Mr. Adams called at my office, together with his wife, and said that he wanted to execute the deed for the timber. There being a deed of trust upon the land I took one of the blank forms usually used by the Cumberland Lumber Company and copied it in so far as it was necessary, making some omissions in regard to payments in cash or on time, and also inserted in that draft of deed a release clause for the purpose of releasing the lien held by John T. Adams on the timber. After drawing the deed I read it

Addison Va Nov. 23rd 1908

Mr. A. S. Johnson,

Isle of Wight Ct Va

Dear Sir:

Referring to your favor of recent date to my Bro R M Adams of Green Level Va in regards to his timber, he wishes me to inform you that he has decided not to sell the timber.

Very Respy.

J. H. Adams.

Exhibit "5"

See page 1

Y

to Adams in the presence of his wife, and while I am not exactly positive, I feel sure that both Mr. and Mrs. Adams signed the deed and their signatures were certified by either myself or Miss McClelland, who was then in my office and a Notary Public. As a matter of accommodation I offered to send the deed to Mr. John W. Adams for Mr. Richard M. Adams. He said it was not necessary that he was going to take it to him himself. I heard nothing further for some little time and I wrote Mr. R. M. Adams a note and asked him when he would be ready for the money as I wanted to get rid of it. After that time I received a letter from Mr. John W. Adams saying, "I think, that Mr. R. M. Adams has decided not to make sale of the timber."

Q. I now hand you a letter marked exhibit "C", which is herewith filed and made a part of these depositions. Will you please examine the same and tell me if this is the letter you received.

A. This is the letter I received from Mr. John W. Adams. I sent it together with original contract of sale to Mr. Roger, Supt. of Cumberland Lumber Company.

Q. I will read this letter so that it may be made a part of this deposition.

Harrison, Va.
November 15th, 1908

Mr. A. B. Johnson,
Isle of Wight, Va.

Dear Sir:

Referring to your favor of recent date to my brother R.M. Adams of Green Level, Va., in regard to his timber, he wishes me inform you that he has decided not to sell the timber.

Very Respy,
J.W. Adams"

Q. What did you do with that letter?

A. I sent letter and draft of contract to Mr. Rogers.

Q. Did R. M. Adams ask you anything about the conditions in the deed when you read it to him?

A. I recall nothing of the sort. I don't ^{think} half a dozen words were passed. Mrs. Adams was feeling very badly and seem anxious to get away. I read the deed to Mr. Adams before he signed it and that is all that I remember transpired in the office. I feel sure that no conditions were mentioned.

Q. Was the form of deed which you copied from any different from the paper filed in this suit marked exhibit "E"?

A. I used this form to copy from.

Q. And exhibit "A" which is filed with this suit is a copy of the paper which is recorded in your office?

A. It is a certified copy made from the records.

Q. And exhibit "C" filed with complainant's bill is a copy of the paper which is recorded in the Clerk's Office?

A. This is a deed conveying the land upon which this timber is located from R. M. Adams and wife to John W. Adams, which has been recorded in the Clerk's Office of the County of Isle of Wight, this being a certified copy thereof.

Q. Mr. Johnson, when R. M. Adams and his wife were in your office was anything said about the deed being conditioned upon the assent of John W. Adams?

A. Nothing at all that I recall.

Q. I believe that you said ~~that you said~~ you would mail it to John W. Adams and he said he would take it?

A. That is true.

And further this deponent saith not. Signature waived by consent.

G. W. Winfield, being duly sworn, deposed and says, as follows:

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

A. G. W. Winfield, fifty-one, Sedley, Virginia, timber buyer for Cumberland Lumber Company and also Surry Lumber Company.

Q. Mr. Winfield, what connection have you had with this transaction between the Cumberland Lumber Company and R. M. Adams. Start at the beginning and tell in your own words everything that happened.

A. The first I had to do with it was in December. I can't remember dates, but whatever date the certificate says is the date that I was there. I went there to see Mr. Adams in regard to delivering deed and paying the money. Mr. Adams said he wanted to convey the timber to the Company but that his brother would not sign the deed. I asked him if he would deliver the deed if I paid the money. He said he did not know he would have to see his brother. I told him I was not in the position to say but I thought the company would lend him the money to pay the balance of the deed of trust, I was satisfied that they would either do that or take the deed as it was without his brother's signature.

Q. What reply did he make?

A. He replied that he wanted to sell it and if his brother would not sign it he would try to make some arrangements about it.

Q. What time did this conversation transpire?

A. The only day I have ever seen Mr. Adams.

Q. What efforts have you made to see him?

A. I have been to his house three or four times since then.

Q. Did you leave any message?

A. I left a message at his house with his wife. That was the only time I saw her. The other times she was gone too.

I told his wife to tell Mr. Adams that I had been there to see him about the timber and for him to write me where and when ~~he~~^I could see him. That any where he said would suit me.

Q. Did you ever hear from him.

A. No sir. I also told her that I was ready to pay the money. I had it with me then and would pay it upon the delivery of the deed.

Q. Did you mean the deed without the signature of John W. Adams?

A. She said his brother would not sign the deed and I told her we would take the deed without his signature and pay the money. I never saw or heard anything else after that time.

Q. When you talked to Richard Adams on the 16th of December did he
~~you~~ say anything about having ~~xxxxx~~ signed the deed upon the condition that his brother would assent thereto?

A. No sir.

Q. If I understand you the language you used just now relates all that was said about his brother?

A. That is all that I can recall that he said about his brother.

Q. CROSS-EXAMINATION.

Q. You state that you are timber buyer for the Cumberland Lumber Company as well as the Sarry Lumber Company?

A. Yes sir.

Q. Are the two companies under the same head?

A. Practically.

Q. Do they do a large business?

A. Yes sir.

Q. Do they not buy and manufacture timber?

A. The Cumberland Lumber Company does not manufacture timber into lumber.

Q. Into logs?

A. I cannot say whether they sell logs or timber on the stump. They are large timber buyers.

Q. Mr. Edward Rogers is superintendent of both companies is he not?

A. Yes Sir.

Q. Office for both companies at Dendron?

A. Yes sir. The Superintendent's office is in Dendron for both companies.

Q. How many times after your first conversation with Mr. Adams did you go to see him?

A. I think two or three times.

Q. Do you remember the dates?

A. I do not.

Q. Were they very soon after the first time you saw him?

A. Not so very soon after. I think they were probably the first part of the next year.

And farther this deponent saith not. Signature waived by consent.

STATE OF VIRGINIA,
To-wit:
County of Hansemond.

I, L. Pretlow Holland, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing depositions were taken before me at the place and time mentioned in the annexed notice.

IN WITNESS whereof, I have hereunto set my hand this 26th day of August, 1910.

L P Holland

Notary Public.

Notary's and stenographer's fee \$5.00

Baltimore, Md., February 7, 1910

I, Francis E. Waters, President of the Cumberland Lumber Company of West Virginia, hereby certify that at the regular meeting of the Directors of the Cumberland Lumber Company held on the 12th day of April, 1906, on motion the offices of Assistant Secretary and Treasurer and Superintendent were created; to the latter office Mr. Edward Rogers was appointed.

Francis E. Waters

Attest:

Edward Rogers
Secretary

It is agreed that J. S. Harsworthy and C. T. Winfield were authorized to contract and set for the Cumberland Lumber Company in this matter as shown by certificate of Francis E. Waters, President, and Edward E. Rogers, Supt. of the Cumberland Lumber Company, which are made a part of these depositions.

Cumberland Lumber Company Complainant/
vs.....Depositions.
R. M. Adams et als.....Defendants.

The depositions of J. S. Horaworthy, G. W. Winfield and
A. S. Johnson, taken before me, E. Bretlow Holland, a Notary
Public in and for the County of Henric and State of Virginia,
pursuant to agreement of Counsel, in Suffolk, Virginia, at the
office of James H. Burges, at 11 o'clock A. M. on the 25th day
of August, 1910, to be read as evidence on behalf of the Cum-
berland Lumber Company, in a certain suit depending in the Circuit
Court of Isle of Wight County, Virginia, wherein the said R. M.
Adams and others are defendants, and the Cumberland Lumber Company
is complainant.

PRESENT: James H. Burges, Attorney for Complainant
R. H. Mann, Attorney for Defendants.

CHAMPLAIN LUMBER COMPANY.....DECEMBER 1912.

vs.

H. M. ADAMS et al.....DEFENDANTS.

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DEPOSITIONS

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DEPOSITIONS

Cumberland Lumber Co.

vs.-- DEPOSITIONS.

Richard M. Adams et als.

28 Nov 1910

Mann & Mann,

LAW OFFICES.

PETERSBURG, VIRGINIA.

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

Cumberland Lumber Company, Plaintiff.

vs.-----

Richard M. Adams et als., Defendants.

The depositions of Richard M. Adams, Rosa M. Adams and John W. Adams, taken before me, Robert G. Bass, a Notary Public in and for the City of Petersburg, in the State of Virginia, at the law offices of Mann & Mann, in the Leigh Building, on Sycamore Street, in the City of Petersburg, Va., on November 28th, 1910, between the hours of 9 a.m. and 6 p.m. of that day, pursuant to the notice hereto annexed, to be read in evidence on behalf of the defendants in a certain suit in chancery pending in the Circuit Court of Isle of Wight County, styled Cumberland Lumber Company vs. Richard M. Adams et als.

Present: James U. Burges, Counsel for the plaintiff,
and Richard H. Mann, Counsel for the defendants.

Richard M. Adams, a witness of lawful age, being first duly sworn, deposes and says as follows:

1. Question by counsel for the defendants. Please state your name, age, residence and occupation.

1. Answer. Richard M. Adams, forty years old, Isle of Wight County, Va., farmer.

2. Question. Are you the Richard M. Adams, one of the defendants in this suit?

2. Answer. Yes.

3. Question. The bill filed by the plaintiff in this cause, charges that on the 9th day of September, 1908, you signed a certain contract in writing, selling to the plaintiff for the sum of \$650.00, of which \$1.00 was then paid you, certain timber on that certain tract of land in the County of Isle of Wight, Va., containing one hundred and thirty-six (136) acres, more or less, and adjoining the lands of Ad-

#2.

kins, Gwaltney, Barlowe and others. Please state whether or not you signed the paper agreeing to sell this timber.

3. Answer. Yes, sir. I signed it.

4. Question. Who was the representative of the Cumberland Lumber Company with whom you had your dealings at the time you signed the paper?

4. Answer. There was no one at all but me and Mr. Norsworthy.

5. Question. Where was the paper signed?

5. Answer. In Mr. Norsworthy's yard in the County of Isle of Wight.

6. Question. Was any statement made to you at the time you signed the paper by Mr. Norsworthy?

6. Answer. Mr. Norsworthy asked me if your brother had a mortgage on the place. Said it would not be any good if your brother did not sign these papers. I suppose he meant the paper of sale, was what he meant, would be no good, if brother did not sign the paper.

7. Question. Was the paper you referred to signed by you on the faith of that assurance by Mr. Norsworthy that it would not be any good unless your brother signed it?

7. Answer. Yes.

8. Question. Would you have signed the paper unless you had been assured that it would not be any good unless your brother also signed it?

8. Answer. I would not have signed it if I had known it had been like it was. I would not have had anything to have done with it at all.

9. Q. The paper which you state you signed on the 9th day of September, 1908, states that you were to deliver to the Cumberland Lumber Company, within thirty days, one of their regular forms of deeds conveying them this property with good title. At the time you signed the paper, when you were with Mr. Norsworthy, did you know what the regular forms of deeds of the Cumberland Lumber Company were?

9. Answer. No sir. I did not. The little piece of paper I signed was a little strip of paper with four or five lines of printing

#3.

on it.

10. Question. Tell about the number of inches in length it was.

10. Answer. I suppose it was about six inches long and four inches wide. Mought have been a little larger. Would not say exactly, positively.

11. Question. Had you ever seen one of their regular forms of deed?

11. Answer. No sir, I had not.

12. Question. Would you have been able to read one of them if it had been a long deed without assistance?

12. Answer. No sir, I cannot read but very little no way.

13. Question. If you had been advised at the time the deed ~~xxxxxxxxxxxxxxxx~~ in question was to contain the free right of way " for roads, tram-roads and railroads over, through and across said land, and the right to erect thereon mills, factories, buildings and other fixtures deemed necessary or useful in conducting a lumber business, and the manufacture of timber trees into lumber, and carrying the same to market, and to remove at pleasure any such buildings, factories or fixtures so placed upon said land, or any part thereof by the said Cumberland Lumber Company, its successors or assigns, and also a right of way over and across said lands of the ordinary width, on which to construct and operate a temporary or permanent railroad, to be operated by the said Cumberland Lumber Company, its successors, or assigns, and in order to provide against damage by fire, that the said Cumberland Lumber Company, its successors or assigns, shall have the right to burn over the trash, tree laps, grass and other light substances for a distance of fifty (50) yards on each side of any railway track or right of way therein granted, provided, however, such clearing be done carefully and in such manner as to prevent any damage occurring from the spread of the fire on such lands, and so as not to cause any unnecessary damage to such land or any buildings or trees standing thereon, and that the Cumberland Lumber Company, might, without limit as to size, cut such logs or trees as may be required by them for the purpose of constructing, maintaining and operating tram-roads and railroads

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across said land, or for opening and clearing roads, and for other purposes connected with the cutting, manufacturing and removing the timber agreed to be sold, or any other timber then owned by them or which they might thereafter acquire, would you have agreed to have executed such deed?

13. Answer. I would not. No sir. If I had understood it, I would not have done it.

14. Question. At the time you executed this writing with Mr. Norsworthy, did anybody have a mortgage or deed of trust on your land on which the timber was situated?

14. Answer. Yes, sir.

15. Question. Who held the deed of trust?

15. Answer. My brother, J. W. Adams.

16. Question. Was he the brother to whom you referred when you stated that you were told the agreement would amount to nothing unless he signed the deed?

16. Answer. Yes, sir.

17. Question. ~~XXXXXXXXXX~~ The bill further states that in pursuance of the writing which you signed, you and Mrs. Adams(your wife) executed, in the Clerk's Office of Isle of Wight County, a deed conveying the said timber on one of the regular forms of deeds. Please state whether or not you and Mrs. Adams signed a deed for the sale of this timber.

17. Answer. Yes, sir. We both signed it, in the Clerk's Office of Isle of Wight County.

18. Question. Who was present when you signed the deed?

18. Answer. Not but two when we signed the deed. Do not know whether Miss McClellan was in the office at the time. If she was not there, only Mr. A. S. Johnson, the Clerk of the Court, and my wife. Do not remember whether she was there or not.

19. Question. At the time the deed was signed by you and Mrs. Adams, was it read to you?

19. Answer. Yes, sir. Mr. Johnson read it to me.

20. Question. Was it read deliberately or hurriedly?

20. Answer. Read it to me like he was in a hurry. What I thought was a hurry.

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21. Question. Was anybody anxious to get away at the time?

21. Answer. We wanted to go home. He had some business to attend to before he could wait on us and my wife and myself wanted to go home.

22. Question. Was Mrs. Adams feeling well or otherwise that morning?

22. Answer. She was not very well that morning.

23. Question. You stated that you could not read the terms of a deed yourself. Was this deed read to you in such a way that you could understand it?

23. Answer. No sir, I did not understand it until I brought it away from there and brought it here. Mr. Johnson when he gave me the deed, told me your brother has a mortgage on the place. Yes, sir, said I will mail this to your brother, and he will have to sign it. If your brother does not sign this, it will not be any good. Mr. Johnson told me right there. Said I will mail it to him. I said no, I will take it up there myself. The next day I brought it up to him.

24. Question. Please state exactly what occurred between you and your brother, John W. Adams, at the time you brought the deed to him and showed it to him.

24. Answer. I came up to Addison Station and he was in his office and his wife came over there and she said "let us go over to my father's". I had the deed in my pocket, handed it to my brother, said "take this paper and look over it while we are gone", and I and his wife went up to her father's. When got back, brother had and said want to talk with you. He and I went over back of his field and sat on a log and read the deed over and asked me if I knew what I had done. I said I did not know if I had done anything wrong. Said you have given these people possession of that farm for life, if I signed that paper. Told me it was all right. I did not know. Thought it was all right, I told him. He says I am not going to sign it.

25. Question. Did he ask you anything about your signing any other paper?

25. Answer. Yes, sir.

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26. Question. What did you tell him?

26. Answer. I told him I had signed a little piece of paper in Mr. Norsworthy's yard.

27. Question. What else did you tell him about that piece of paper, if anything?

27. Answer. He asked me what sort of paper I signed and I told him a little piece of paper about like that(indicating the stenographer's tablet), and Mr. Norsworthy gave me a dollar.

28. Question. Did you state anything to him what Mr. Norsworthy said about the paper?

28. Answer. Yes, sir. I told him that Mr. Norsworthy said if he did not sign the paper, it would not be any sale, or any good amounting to about the same, as well as I recollect.

29. Question. How much was the amount of the debt under the deed of trust secured to your brother at that time.

29. Answer. \$1,000.00. (One thousand Dollars).

30. Question. Did your brother ever sign the deed?

30. Answer. No, sir.

31. Question. Was what you have stated above with respect to your telling your brother about what Mr. Norsworthy said as to the effect of the paper unless he, your brother signed the deed, all that was said by you to him on the subject?

31. Answer. We talked some over it, but all that amounted to anything as I recollect.

32. Question. After your brother refused to sign the deed, what did you do with regard to the matter?

32. Answer. Well, sometime after then, I do not know how long it was, I went home and wrote to him and told him he was half ~~the~~ owner of the place and I needed some money and had to have it and asked him to buy the whole place. He wrote me to come up to see him; and I decided to sell him the place for \$2,000.00, and then he asked me what they had ever done about the timber, and I told him I had not heard anything more about it. Just like that.

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33. Question. The bill states that you failed and refused to deliver the deed conveying the timber and that you notified Mr. A.S. Johnson, Clerk as aforesaid, to whom the deed was to be delivered, that you had decided not to sell the said timber. Is that true?

33. Answer. I do not recollect whether I said anything to Mr. Johnson or not. I do not think I said anything to Mr. Johnson about it.

34. Question. Did you get any letter from Mr. Johnson about it?

34. Answer. Yes, sir, I got a letter.

35. Question. When did you get the letter?

35. Answer. I do not recollect to save my life.

36. Question. What did you do with that letter?

36. Answer. I kept it and gave it to my brother.

37. Question. Do you know whether or not your brother replied to it?

37. Answer. He says he did.

38. Question. Did you give him the letter before or after he had arranged to buy the place from you?

38. Answer. I gave him the letter before then.

39. Question. About what time did you first approach your brother with regard to selling him the place?

39. Answer. It was sometime in January, I think. Think it was in January.

40. Question. Do you mean the January after this transaction with Mr. Norworthy?

40. Answer. Yes, sir. I think it was, as well as I remember.

41. Question. Up to that time, had there been any undertaking on his part to buy the place from you?

41. No, sir.

42. Question. You state he was part owner of the place?

42. Answer. Of course the place was in my name, but he held a mortgage on it.

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43. Question. Was his interest in the place only what he held the mortgage for?

43. Answer. And I owed him some interest on the mortgage for that year, the year before.

44. Question. What interest did you pay him?

44. Answer. Paid him 7%.

45. Question. At the time your brother bought the place, please state whether or not anything was said or understood between you and himself with regard to defeating this sale of the timber by the sale of it.

45. Answer. No, sir. No more than he asked me, as I said just now, what been done about it, and I said did not know anything been done about it.

46. Question. At the time you sold him the place, please state what you thought had become of the timber transaction.

46. Answer. From what the men told me, I thought all done with. Had to have some money and got him to pay for it so I could have the money. Both told me no good until he signed it and he never signed it, and I thought all done away with.

47. Question. What was the amount of money he was to pay you in question?

47. Answer. \$2,000.00.

48. Question. How was this money to be paid?

48. Answer. Going to take out what I owed him, take out \$1500.00, and give me the privilege of the place for four years for other \$500.00.

49. Question. Was anything drawn up between him and you at the time as to the privilege of the place for four years?

49. Answer. Yes, sir.

50. Question. The bill further states that on the 16th day of December, 1908, a formal ~~understanding~~ demand was made with you for the deed by G. W. Wingfield and J. S. Norsworthy, who were the agents of the Cumberland Lumber Company. Did they make any demand of you for the deed about that time?

50. Answer. Sometime in December, I do not recollect what

day, I was over at Mr. Nick Gwaltney's, helping him pick peas and Mr. Wingfield and Mr. Norsworthy came out in the field and Mr. Wingfield asked me what is the matter with you that you do not have a settlement. I told him when I sold the timber, I did not know I was giving the right to the plantation to do what he choose with it. Beaan to see a lawyer over it and he says it will give possession of it to do anything with it you want, I told Mr. Wingfield that morning. Then I said my brother held a mortgage on the place, and would not sign the deed. He said, if we were to pay the mortgage off, how would it be then? I told him I could not do it without seeing my brother.

51. Question. Did you ever see your brother about it?

51. Answer. No, sir. I have never said anything to him about it.

52. Question. The bill says that this suit was not commenced earlier for the reason that the company did not regard as final your refusal to make a conveyance. Did you ever lead them to believe that you would make a conveyance?

52. Answer. No sir, I never told them so.

53. Question. It further states that after your deed to your brother was made, the company continued to endeavor to arrange a meeting between your brother, yourself and a representative of the company? What have you to say as to that?

53. Answer. I do not understand what you mean then.

54. Question. Did anybody ever ask you for the company to try to get a meeting between you and one of the company's men and your brother?

54. Answer. No sir. No one ever asked me.

55. Question. Did you ever receive any message from anybody to that effect?

55. Answer. I was gone from home one day and my wife told me someone had been there to see me about that lumber business and said something about wanting to see me somewhere; and none of them did not come and I did not hear anything more from them and have not seen them from that day.

56. Question. Was that before or after you had your conversa-

#10.

tion with Mr. Wingfield and Mr. Norsworthy?

56. Answer. That was after.

57. Question. Was it before or after you had deeded the place to your brother?

57. Answer. That was before then.

58. Question. Did any of the company's representatives ever offer to you to accept the said deed notwithstanding that the deed of trust had not been released?

58. Answer. There was never nothing said about the deed except what Mr. Wingfield and Mr. Norsworthy said to me about the deed up in that field that day. All ever been said to me about it by any of the company.

59. Question. You stated that at the time Mr. A. S. Johnson had you and Mrs. Adams sign the deed, he told you it would be of no effect unless your brother should sign the same.

59. Answer. Yes, sir.

60. Question. Please state if you had not understood this, whether you would have signed it or not.

60. Answer. No sir. I would not have signed the deed, if I had understood it. Would not have signed it unless, if I had not understood that it would not be valid unless my brother signed it.

61. Question. At the time you made the sale to your brother, what was a fair value for the land you sold him?

61. Answer. Just like it was?

62. Question. Yes.

63. Answer. \$2,000.00 I reckon was a very fair price for it.

64. Question. Since you sold the land to your brother, have you ever received any request for an interview or any communication whatsoever from any of the agents of the company with respect to the timber?

64. Answer. I has not. No sir. Not a word.

65. Question. When you signed the writing with Mr. Norsworthy with regard to the sale of the timber, when did you expect the time to date from in which they were to cut?

65. Answer. From that day.

\$10.

66. Question. Do you know what time the deed drawn up by Mr. Johnson mentioned as the beginning of the term?

66. Answer. No sir. I do not recollect what time it was.

67. Question. Would you know the deed if I were to show it to you?

67. Answer. Yes sir.

68. Question. Please look at this and state whether or not that is the deed. (Here Counsel shows deed).

68. Answer. This is the deed.

~~69. Question. This is the deed.~~

Memorandum.

The defendants here offer in evidence the deed referred to, marked " R. M. A., Exhibit No.1".

69. Question. This deed which I have just handed you states that the time is to date from the 20th day of October, 1908. Please state whether or not you understood that at the time you signed the deed?

69. Answer. I would not say for certain; but I think Mr. Norsworthy said it begun from the day Mr. Nordworthy gave me that paper.

70. Question. Did you understand at the time you signed the deed that it was to date from the date of the deed?

70. Answer. No sir. I did not understand that. I knew that he dated the deed the day he wrote it.

71. Question. Did you understand that there was to be a five years extension after the term of ten years, or that there was to be as much time as they wanted after the ten years, not to exceed five years in all?

71. Answer. I understood it not to cut in five years, to extend five more years and pay me 6% interest on that money for five years more. That was the way I understood it.

72. Question. At the time that Mr. Wingfield and Mr. Norsworthy came to see you, on or about the 16th day of December, 1908, did they show you the paper you had signed for Mr. Nordworthy?

#11.

72. Answer. Yes, sir.

73. Question. What did they ask you about it?

73. Answer. Asked me if I signed that piece of paper. I told them I did.

74. Question. Please state whether or not you understood you were acknowledging the paper so that they could have it recorded.

74. Answer. No sir. I did not know that was what they were doing. Did not have any idea. Thought they asked me if that was the paper I signed and told them I did.

75. Question. Please state whether or not you had in your mind the writing with reference to the sale of the timber or any intention of getting rid of the said sale at the time you conveyed your land to your brother?

75. Answer. No sir. I did not know anything in the world about it more than what we both thought the lumber business was all done away with.

Cross-examination by Counsel for Plaintiff.

1. Question. Mr. Adams, will you please state, as near as you can, what provisions you thought the deed did contain with regard to the right of way and extension of time, &c.

1. Answer. I thought they would want a railroad track across to get the lumber off if had to carry it any distance. Told Mr. Wingfield and Mr. Gwaltney in the field that day that I did not expect to sell the lumber and not give any right of way to get over the place. Did not know he had possession of it for all the time.

2. Question. What effect did you think that deed would have on your place if you signed it?

2. Answer. We thought he could put a railroad there anywhere on the place and run through my yard and keep it there all time, if he wanted it and could build mill and build up all over the place, if necessary, if I understood it, if I have understood it yet.

#12.

3. Question. What other provision was there in the deed that you objected to.

3. Answer. One thing, never put any height from the ground. Said was to but 10 inches, nothing said about the size.

4. Question. What other objection did you have to the deed?

4. Answer. Well, I do not know as I have any particular objection to it, outside of the railroad stationed there all the time as should want it and building up on the place as I just said and of burning over 50 yards each side of the track.

5. Question. Did you ever have a deed prepared in accordance with your understanding of the contract and offer it to them?

5. Answer. No sir. I have not.

6. Question. You say that no member of the company nor no agent of the company told you that they would be willing to take the deed without your brother's signing it?

6. No, sir. Never have.

7. Question. Did not your wife tell you they left that message with her?

7. Answer. No, sir.

8. Question. Did anybody ever tell you they would take it that way?

8. Answer. No sir. No one ever told me.

9. Question. Tell me, as near as you can, what Mr. Wingfield said to you about taking the deed in December when ~~xxx~~ he and Mr. Noraworthy came to see you.

9. Answer. Said why don't I have a settlement. Told him as I said before, when agreed to sell the lumber did not know would give possession of the plantation for all the time. And he told me the deed was just like all other deeds he had ever given. I told him I did not understand it. Told him my brother had a mortgage on the place and asked me how much it was. I told him \$1,000.00. Mr. Wingfield and Mr. Norsworthy were there together. He said if we were to get the money and pay it off would you be willing to that. I said I could not do it without seeing my brother.

10. Question. That was in December?

#13.

10. Answer. It was in December. Do not know what day.

11. Question. Did you see your brother during the Xmas Holidays?

11. Answer. Do not know for certain. Would not say whether I did or not.

12. Question. Did you ever tell him Mr. Wingfield was ready or had offered to take the timber, even if he did not sign the deed?

12. Answer. No sir. Did not. No one ever told me so.

13. Question. Did you ever tell him Mr. Wingfield had asked you now it would be if Mr. Wingfield would take it up and you had told Mr. Wingfield you would have to see him, your brother?

13. Answer. No sir. If I did, do not remember.

14. Question. What time in the following January was it you offered to sell the land to your brother?

14. Answer. About the last of January, I think. Not the first week in January.

15. Question. When did you close the deal with your brother?

15. Answer. I could not tell you when it was to save my life. I reckon it was sometime in February.

16. Question. How much money in cash did your brother pay you?

16. Answer. He gave me between \$200.00 and \$300.00 in cash. Mought have been \$300.00. Do not know exactly. Mought have been little over \$300.00.

17. Question. How did he pay you the balance of the purchase price?

17. Answer. Outside the mortgage? Paid enough to make \$1500.00 in cash and gave me the privilege of the place for four years for other \$500.00.

18. Question. Did he come to you to buy the land or did you go to him?

18. Answer. I went to him.

19. Question. Mr. Wingfield has testified that after he saw you in December that he went to your house and that you were absent but that he told your wife to tell you that he had been there to see

#14.

you about the timber, and wanted you to write him where and when he could see you. Did your wife give you that message?

19. Answer. Yes. I came home and she told me that one of those lumber men had been there. I asked her who it was. Asked her if Mr. Norsworthy and she said no. Said she had forgotten his name, but he was a fat man. Said he wanted you to meet him somewhere and tell him where he can see you at. That is where you told me, Windsor or Surry C. H. Never wrote to him or said anything more to him about it.

20. Question. Did you know it was Mr. Wingfield?

20. Answer. I thought it was him.

21. Question. What time of the year was that?

21. Answer. I do not remember that.

22. Question. When Mr. Johnson read the deed to you, did you tell him that there was any part of it that you did not understand?

22. Answer. No, sir. I never told him.

23. Question. I want you to think carefully about this. Mr. Johnson has testified in this case that when you signed the deed, in his office, and acknowledged it before him that you did not say anything about it being conditioned or in any way ~~xxx~~ dependent upon your brother's signature. Nor, did he tell you that the deed would not be valid, unless your brother signed it. On the other hand, he testified that he told you that it would be necessary for your brother to sign it and that he would mail it to him if you wished him to do so; but that you told him that you expected to go to see your brother very soon and that you would get him to sign it then. Is Mr. Johnson's testimony correct?

23. Answer. Part of it is and part is not.

24. Question. Tell me what part of it is not correct?

24. Answer. Mr. Johnson told me that my brother would have to sign the deed and he said he would mail it to him. I told him that I would rather take it up there to him for him to sign. Told me if your brother does not sign that deed, it is not any good.

25. Question. Did you not tell Mr. Wingfield or Mr. Norsworthy, when you saw them in December, that if your brother did not sign the deed, you thought you could get the money from someone else?

#15.

25. Answer. I have not told him so. If I did, do not remember anything about it.

26. Question. Think about it a minute. The first time it was suggested to you, - see if you cannot recall about saying something about your brother's having formerly charged you 8% and now charging you 7%, and if he did not sign the deed, that you would get the money from someone else?

26. Answer. He has never charged me 8%.

27. Question. Do you not recall having said something like that in Mr. Wingfield's presence?

27. Answer. I certainly do not.

28. Question. Did you ever have any negotiations with Mr. Nordworthy with regard to the sale of your timber before the time we are now talking about?

28. Answer. Yes, sir. Not Mr. Nordworthy, but the gentleman with him, Mr. Parker, one of the company.

29. Question. Did they leave an option with you at that time?

29. Answer. Yes, they left an option with me.

30. Question. Why did you not sell the timber at that time?

30. Answer. Talked to my brother. Came up to see him and showed him the paper. Told me did not know what I have done and have not said anything about it. Talked with him about it and had an offer on it and he asked me how much it was; and I told him and he told me if not bound to do it, not to sell the timber. Did not show him the paper. Had it in my pocket.

31. Question. That was how long before the time we are talking about in this suit?

31. Answer. Some two or three years. Do not remember exactly.

32. Question. How long did you have that option in your possession?

32. Answer. Had it from the day he left my house until Saturday night.

#16.

32. Question. What sort of paper was it?

33. Answer. As I remember, two or three sheets, and folded together and put in long envelope and gave it to me.

34. Question. Was it a printed form?

34. Answer. Yes.

35. Question. You read it over, did you not?

35. Answer. No sir. I can't read none to amount to anything.

36. Question. Did he read it to you?

36. Answer. No sir.

37. Question. He never read it to you?

37. Answer. If he did, I do not recollect it now. Would not say positively.

38. Question. You never went to anybody representing the Cumberland Lumber Company and told him that the deed Mr. Johnson had prepared for you was different from what you expected it would be, did you?

38. Answer. I has not said anything to anybody, except what I said to Mr. Norsworthy and Mr. Wingfield.

39. Question. Before you talked to Mr. Norsworthy and Mr. Wingfield, did your brother promise you to write Mr. Johnson a letter, did he not?

39. Answer. Not as I knows of. He mought.

40. Question. Tell me, if your brothwr advised you when you took the deed to him, not to sign it, or whether he said I will not sign it.

40. Answer. I had done signed it before I carried it to Him.

41. Question. If I recall rightly, you gave him the deed and left. Afterwards, upon your return, he begun to tell you what you had done. Did he not?

41. Answer. Yes, sir.

42. Question. And went over the different parts of it with you.

42. Answer. Yes, sir.

#17.

43. Question. Did he not say at that time he would write to Mr. Johnson for you?

43. Answer. I do not recollect to save my life.

44. Question. You made some effort to tell Mr. Johnson, did you not?

44. Answer. That is right. He told me he would write Mr. Johnson and tell him.

And further this deponent sayeth not.

Rosa M. Adams, a witness of lawful age, being first duly sworn, deposes and says as follows:

1. Question by Counsel for the defendants. Please state your name, age, residence and occupation.

1. Answer. Rosa M. Adams, 39 years, Isle of Wight County, house-wife.

2. Question. Are you the wife of Richard M. Adams, one of the parties to this suit?

2. Answer. Yes, sir.

3. Question. Did you go over with Mr. Adams, on or about October 20th, 1908, to the office of Mr. A. S. Johnson, Clerk at Isle of Wight C. H., for the purpose of signing the deed for the sale of Mr. Adams' timber on his farm in Isle of Wight County?

3. Answer. Yes, sir.

4. Question. Will you please state what was said by Mr. Johnson at the time the deed was signed by you and Mr. R. M. Adams as to its being required to be signed by Mr. J. W. Adams?

#18.

4. Answer. I understood it this way. That if I signed it, it was all right if Mr. J. W. Adams signed it. If not, it would not be all right. Mr. Johnson said Mr. Adams (meaning Mr. J. W. Adams) would have to sign it.

5. Question. Did Mr. Johnson read the paper over to you and Mr. Adams?

5. Answer. Yes, sir. Read it very hurriedly.

5. Question. Did you understand its provisions?

6. Answer. No sir, not but a very little of it.

7. Question. What was your condition at the time?

7. Answer. Had a sick headache. Was not hardly able to sit up.

8. Question. Did Mr. Johnson know your condition at that time?

8. Answer. Yes. Mr. Johnson gave me a head-ache powder.

9. Question. Since that time, have any of the representatives of the Cumberland Lumber Company been over to your residence to see Mr. Adams with regard to the sale of the timber?

9. Answer. Yes, sir. Since then, that gentleman (indicating Mr. Wingfield) came and Mr. Adams was gone and I told him where he could find him. Then I told him I thought it would be on his way to go by to see him, but he talked as if he would not go and left his address on an envelope, or small piece of paper of what to give him.

10. Question. What did he say to you?

10. Answer. Passed several words. But I do not remember what he said.

11. Question. Did he say anything to you that he was ready to pay the money?

11. Answer. No, sir. Not that I remember.

12. Question. Did he state that he had it with him then?

12. Answer. No, sir. I do not remember, if he did.

13. Question. Did he tell you that the Cumberland Lumber Company would take the deed without Mr. J. W. Adams' signature and pay the money?

13. Answer. I do not remember.

#19.

14. Question. Do you think you would have remembered it, if it had occurred?

14. Answer. Yes, sir. I do not remember it, though. I think I ought to have remembered it.

15. Question. Did any of the representatives come to your home since that time, as far as you know?

15. Answer. No, sir.

16. Question. At the time you joined in the deed from your husband to Mr. J. W. Adams, did you have any idea that you were doing it with any intention to defeat this timber sale?

16. Answer. No sir. That I did not.

17. Question. What did you think was the condition of the lumber sale at that time?

17. Answer. I did not hear but little of any of it. I do not know anything about it.

Cross examination of witness by Counsel for Plaintiff.

1. Question. After Mr. Wingfield left and your husband came home, you told him about Mr. Wingfield's being there, did you not?

1. Answer. I told him the gentleman and gave him the paper with the address on it.

One more Question by Counsel for defendants.

1. Can your husband read print well?

1. Answer. No sir. Very little.

And further this deponent sayeth not.

John W. Adams, a witness of lawful age, being first duly sworn, deposes and says as follows:

1. Question by Counsel for defendants. Please state your name, age, residence and occupation.

1. Answer. John W. Adams, 33 years, telegraph operator, residence, Addison, Va. (Dinwiddie County).

2. Question. Are you one of the defendants in this suit and the brother of Richard M. Adams?

2. Answer. I am one of the defendants in this suit and the brother of Richard M. Adams.

3. Question. Please state if during the year 1908, you held a deed of trust on the land of Richard M. Adams, the timber on which is the subject matter of this suit; and, if so, give the amount.

3. Answer. Yes, sir, of \$1,000.00, and interest for 1907, compounded and the interest for 1908.

4. Question. Please state what you know relative to the alleged sale of the timber on the land.

4. Answer. The first knowledge that I had of the transaction was when my brother came up to see me in October, I think, and after the deal was over, he came over to my office and handed me a paper and told me to read it while he was gone. He left in company with my wife. On their return, and after my office hours, we walked down in the woods and I asked him if he knew what he had done when he signed the deed for the sale of the timber. I endeavored to explain the meaning of the deed, as I understood it. And he then said if he had known that those provisions were in the deed, he never would have signed the deed. He did not understand it that way. I asked him if he had signed any other paper; and he told me he had signed a small piece of paper and measured on his hand and said about three or four inches wide and about so long (indicating about six or seven inches), and he said when he signed it, Mr. Norsworthy told him that this paper would be void unless I signed the deed for the sale of the timber. He also told me that Mr. A. S. Johnson who prepared the deed said that the deed would be "no good", the way he expressed it, without my signature. And there-

fore I thought the matter was at an end.

5. Question. After that, did he give or send you a letter from Mr. Johnson?

5. Answer. I was at home on a visit several weeks after that, and asked my brother if he had heard anything more about it. Said nothing except that he had gotten a letter from Mr. Johnson asking what had become of the deal. He told me about what was in the letter; and I said: "Well, I'll answer it when I go^{back}/home," in a hurry, being ready to go away at that time. When I came back home, I wrote Mr. Johnson, referring to the letter of the 4th to my brother, that he asked me to write him we had decided not to sell the timber, or something to that effect.

6. Question. Did you see the letter Mr. Johnson wrote him?

6. Answer. No, sir.

7. Question. Did you know anything or hear anything about the timber deal after that?

7. Answer. Nothing at all.

8. Question. Did you buy the property from him afterwards?

8. Answer. I bought the property sometime after that. My brother approached me to sell the place; and he told me also that he was in hard luck and needed some money and would have to have it and asked me if I would not take the place, ~~xxx~~ so we agreed on the price for the place.

9. Question. How was the price payable?

9. Answer. \$1500.00 cash and lease for four years for the remaining \$500.00.

10. Question. I now hand you a paper purporting to be the lease from you to your brother, dated the 10th day of February, 1909, is that the lease to which you refer?

10. Answer. Yes, sir.

11. Question. Who drew that lease?

11. Answer. Mr. David A. Lyon, a Lawyer, and my wife's uncle.

Memorandum.

The defendants here offer in evidence the lease referred to,

Marked "J. W. A., Exhibit A".

#22.

12. Question. Was that lease executed at the same time that you obtained the deed from your brother?

12. Answer. Yes, sir.

13. Question. Did you pay your brother the balance over the debt which existed to make up the \$1500.00 cash that was to be paid?

13. Answer. Yes, sir.

14. Question. At the time you bought the property, did you buy it with the intention of attempting to defeat the sale of this timber?

14. Answer. No, sir, I had no idea of doing anything of the kind. I did it simply to help my brother in his money matters.

15. Question. What did you think had become of the timber sale?

15. Answer. I thought it was all off; as they had stated to my brother it would be no sale without my signature to the deed.

Memorandum.

It is agreed that the copy of the deed from Richard M. Adams and wife to John W. Adams ~~is~~ filed as "Exhibit C" with the plaintiff's bill and dated February 10th, 1909, is the same deed, or a copy thereof, by which the defendant, J. W. Adams, derived his title to the said property.

16. Question. At the time your brother showed you this timber deed to which you refer as having been signed in October, 1908, did you decline to sign that deed?

16. Answer. Yes, sir.

17. Question. Since you have acquired title to the property, has any person approached, written, or notified you in any way that any conference was desired as to matters relative to the sale of this timber to the Cumberland Lumber Company.

17. Answer. No., sir.

18. Question. What was the first notice that you had since you acquired the title to the property that the Cumberland Lumber Company claimed any interest in the timber?

18. Answer. When the summons was served on me in this suit.

19. Question. When you bought the property, did you have the title examined?

20. Question. Who examined it for you?

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Cross-examination of witness by Counsel for Plain-
tiff.

1. Question. How did you pay Mr. Richard M. Adams the difference between the amount due you on the deed of trust and the balance of the purchase price?

2. Question. Have you that cancelled check?

2. Answer/ I guess it is at home in my papers. I did not
send check for the^{whole}/amount, either. He had a note due in the Smithfield
Bank. I paid the note and sent him check for the balance due.

3. Question. How did you pay the note? With check?

3. Answer. Yes, sir.

4. Question. If you can find these checks,, will you please mail them to your Counsel, Mr. Richard H. Mann, so that they can be filed with these depositions?

4. Answer. If I can locate them.

5. Question. How much was due on the deed of trust at the time of the sale?

5. Answer. The interest for the past two years and compounded the first year.

6. Question. What was the total amount?

6. Answer. I have it on some of my records, but cannot tell you just this minute what the total amount was.

7. Question. What do you mean by interest compounded?

7. Answer. He did not pay the interest for the first year and after that interest for the first year was due, the interest charged on that interest.

8. Question. What is your recollection of the amount?

8. Answer. I do not remember exactly what it was. Can

#24.

give you the correct amount from my records.

9. Question. Will you please do so?

9. Answer. Yes.

Memorandum.

Cancelled checks will be filed if they can be found and the total amount of the lien indebtedness shall be given.

Redirect-examination.

10. Question. As I understand it, the \$2,000.00 purchase price for the land you purchased from your brother was made up of the amount secured by the deed of trust, with interest, and such an additional amount of cash to him, or for his indebtedness to other persons which you paid, as was sufficient to make up the \$1500.00, and that the additional \$500.00 was represented by the lease for the years 1909 to 1912, inclusive, which you have filed in evidence?

10. Answer. Yes,, sir.

And further this deponent sayeth not.

It was agreed by Counsel that signatures of the witnesses be waived.

Cumberland Lumber Company, a Corporation;

You are hereby notified that we shall, at the law offices of Mann & Mann, in the Leigh Building, on Sycamore St., in the City of Petersburg, Virginia, on the 28th day of November, 1910, between the hours of 9 A.m. and 6 p.m., on that day, proceed to take the depositions of Richard M. Adams and others, to be read as evidence in our behalf in a certain suit in chancery pending in the Circuit Court of Isle of Wight County, Virginia, in which you are plaintiff, and we and others are defendants; and, if for any cause the taking of the said depositions be not commenced, or if commenced, be not concluded on that day, the taking of the same will be adjourned from day to day or from time to time between the same hours and at the same place until the same shall be completed.

Very respectfully,

November 27th, 1910

Richard M. Adams.

Rosa W. Adams

John W. Adams

R.D. Walker - Exile

by Richard M. Adams. their counsel

The Cumberland Lumber Company hereby accepts legal notice of the above notice this 27th day of November, 1910.

Cumberland Lumber Co

James L. Dwyer its atty

Memorandum.

At the request of Counsel for the plaintiff, during the cross-examination of the witness, John W. Adams, and by consent of parties, the following exhibits are attached to the depositions of the witness, John W. Adams, and are to be considered as a part thereof:

1. Cancelled check of J. W. Adams, payable to the Bank of Smithfield, No. 339, dated January 28th, 1909, for \$68.50.
2. Cancelled check of J. W. Adams, payable to R. M. Adams, No. 344, dated Feby. 12, 1909, for \$100.00.
3. Cancelled check of J. W. Adams, payable to the order of R. W. Adams, No. 345, dated Feby. 20, 1909, for \$150.00.
4. Cancelled check of J. W. Adams, payable to the order of R. W. Adams, No. 352, dated March 29th, 1909, for \$36.60.
5. Copy of letter of J. W. Adams to his brother(ostensibly Richard M. Adams), dated Feby. 20, 1909.
6. Copy of letter of J. W. Adams to Bank of Smithfield, dated Addison, Va., Jany. 28, 1909.
7. Letter of John I. Cofer, Asst. Cashier, to J. W. Adams, dated Smithfield, Va., Jany. 29, 1909/.
8. Letter of J. W. Adams to R. H. Mann, dated Addison, Va., Nov. 28, 1910, as to \$1500.00 of the purchase price of the tract of land sold to J. W. Adams by Richard M. Adams and wife.

Robert G. Barr

Notary Public.

PAID TO THE ORDER OF
SANTO B. MARTINEZ
PETERSBURG, VA.
BANK OF SMITHFIELD, VA.

PETERSBURG
FEB
1
1919
PETERSBURG, VA.

for \$68.50

GOOD

WHEN PROPERLY ENDORSED.

Robert Adams

Tell

PETERSBURG, VA. *Jan. 28th* 190*9* No. *339*

THE NATIONAL BANK OF PETERSBURG

Pay to the order of

The Bank of Smithfield

\$ *68 ⁵⁰/₁₀₀*

Sixty Eight

50/100

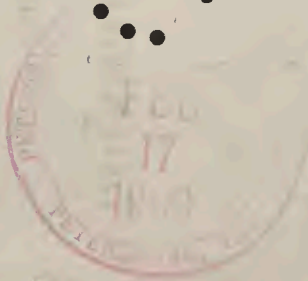
Smithfield Va

100 Dollars

J. H. Adams

P. M. Adams
W. D. Gwaltney

PAID TO ORDER OF
TELEPHONE COMPANY
BANK OF SALEM, Vt.
J. A. Galt, Cashier



COOD for
WHEN PROPLY ENRISSED.

100 00

PETERSBURG, VA. Feb. 12 1909 No. 344

THE NATIONAL BANK OF PETERSBURG

Pay to the
order of

E. M. Adams

\$ 100 ⁰⁰/₁₀₀

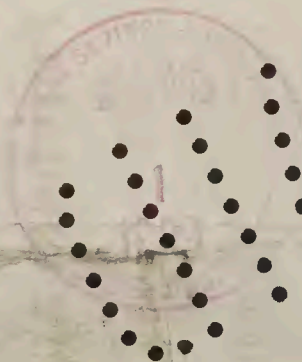
One hundred

100 Dollars

R

J. W. Adams

R. M. Adams



Teller:

PETERSBURG, VA. *Feb. 20th* 190*9* No. *345*

THE NATIONAL BANK OF PETERSBURG

Pay to the order of

R M Adams

\$ *150* ^{*00*}/_{*100*}

One hundred and fifty

^{*100*}/_{*100*} Dollars

J. W. Adams

GOOD for \$ *150*

WHEN PROPERTY EMPLOYED.

R. Adams



PETERSBURG, VA. Mar 29th 1909 No. 352

THE NATIONAL BANK OF PETERSBURG

Pay to the
order of R. M. Adams \$ 36.60

Thirty six 60/100 Dollars

J. W. Adams

Subject:

Copy

Form G. 12.

NORFOLK AND WESTERN RAILWAY CO

Addison, Va. Feb. 20th, 1909.

Dear Brother;-

I herewith enclose check for \$150.00 one hundred and fifty dollars, also the note for \$68.50 which I paid for you, this, including the check I sent you last week makes \$318.50 that I have paid you, and leaves me owing you now \$36.60 as the enclosed bill shows. As I wrote you last week I think I can raise the balance of it next week, but if you do not need it particular right now it would help me some if you could wait until the 27th, of March for this \$36.60, let me know if this will suit your ~~xxx~~ convenience, also if you received the check I sent you last week. With best love to all. Come up to see us when you can.

Sincerely, Your Bro.

J. W. Adams

Copy

Addison, Va. Jan. 28th, 1909.

The Bank of Smithfield,

Smithfield, Va.

Dear Sirs:-

By an agreement between my Brother R.M. Adams and myself
I beg to hand you herewith certified check for \$68.50 to cover
his note payable to P.D. Gwaltney Jr. & Co. due Feb. 1st, 1909 as per
the enclosed notice. Please receipt and ^{send me by return mail} ~~return me~~ the old note,
^{the old note}
and oblige.

Yours very truly.

J. W. Adams

Jas. P. Andrews, President.

A. S. Barrett, Cashier.

The Bank of Smithfield,
of

Smithfield, Va., Jan. 29th., 1909

J.W.Adams Esq.,

Addison, Va.

Dear Sir:-

Enclose find cancelled note of R.M.Adams and P.R.Gwaltney Jr.&Co.
for \$68.50 as per your request of the 28th., inst.

Very Truly Yours,

John I. Cofer
.....
ASST. CASHIER.

Subject:

Form G. 12.

NORFOLK AND WESTERN RAILWAY CO

Addison, Va. Nov. 28th, 1910.

Mr. R. H. Mann,
Petersburg, Va.

Dear Sir:-

I herewith enclose the cancelled checks that Mr Burgess asked me to send you, as these checks show I paid my Brother

R. M. Adams-----\$355.10

He owed me as follows: Bond-----\$1000.00

2 years interest on the bond at 7%----- 140.00

Interest on \$70.00 (The first years interest)	\$ 4.90
Total	<u>\$1500.00</u>

You will note that the first check was issued before the deed conveying the property to me was executed. This is the check I paid my Brothers note with as stated in my evidence to-day. After we had made the deal and before the papers were prepared I advanced this amount in order to protect his note which was then due. The balance was paid on short enstallments as I did not have the whole amount at the time I bought the place.

Yours truly.

J. H. Adams

Rma.

Asket hat -

*R.M.A.
Rosa W. Adams
John W. Adams*

THIS DEED, made and entered into this 20th. day of October, 1908, by and between R. M. Adams and Rosa W. Adams, of the County of Isle of Wight and State of Virginia, of the first part; the Cumberland Lumber Company, a corporation chartered and doing business under the laws of the State of West Virginia, of the second part; and R. D. Crocker, trustee, and John W. Adams, of the third part.

WITNESSETH: That the said parties of the first part, for and in consideration of the covenants and agreements of the party of the second part herein contained, and on its part to be kept and performed, and of the sum of six hundred and fifty dollars (\$650.00) cash in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey in fee simple and with general warranty, unto the said party of the second part, its successors or assigns, all the timber and trees upon the following described tract of land lying, situate and being in the County of Isle of Wight and State of Virginia, to-wit; That certain tract, piece or parcel of land, situate, lying and being in Hardy Magisterial District of said County, bounded by the lands of the estate of the late F. H. Atkins, J. H. Barlow and A. R. Gwaltney, and contains some one hundred and thirty six acres, be the same more or less, and is the same land sold and conveyed to the said R. M. Adams by George H. Adams et als by their deed bearing date the 12th. day of February, 1901, and duly of record in the Clerk's Office of said county in Deed Book No. 66, page 342, reference to which may be had for more particular description.

Also the right of ingress and egress to the said party of the second part, its successors or assigns, their agents and servants, with their teams, tools and appliances, over and upon said land; with free right of way for roads, tram roads and rail roads, over through and across said lands, and the right to erect thereon mills, factories and buildings, and other fixtures deemed necessary or useful in conducting a lumber business, and the manufacture of timber trees into lumber, and carrying the same to market, and to

remove at pleasure any such building, factory or fixture so placed upon said land or any part thereof by the said party of the second part, its successors or assigns.

Also a right of way over and across said land, of the ordinary width, on which to construct and operate a temporary or permanent railroad to be operated by the said party of the second part, its successors or assigns; and in order to provide against damage by fire, the said party of the second part, its successors and assigns, shall have the right to burn off the trash, tree-laps, grass and other light substances, for a distance of fifty yards on each side of any railway track or right of way herein granted; provided, however, such burning must be done carefully and in such manner as to prevent any damage occurring from the spread of the fire on such land, and so as not to cause any unnecessary damage to said land, or to any building or trees standing thereon.

It is expressly understood and agreed between the parties that the said party of the second part, its successors or assigns, shall not cut or remove from said land any tree that does not measure as much as ten (10) inches across the stump, outside measurement, at the time of cutting; but the said party of the second part, its successors and assigns, may cut, without limit as to size, such logs or trees as may be required by them for the purpose of constructing, maintaining and operating tram roads and rail roads across said land, as herein provided for, or for opening and clearing roads, and for other purposes connected with the cutting, manufacturing and removing the timber hereby conveyed, or any other timber now owned by them, or which they may hereafter acquire.

It is further understood and agreed, that the said party of the second part, its successors and assigns, shall have the full term of ten years from the date hereof in which to cut and remove the timber from said land; and if at the expiration of the said term of ten years, aforesaid, the said party of the second part, its successors or assigns, may so desire, they shall be entitled to a further period of not exceeding five years from the end of said first mentioned term within which to cut and remove said

timber; and shall pay to the said parties of the first part, their legal representatives or assigns, at the rate of \$39,00 per annum for each year during which they shall exercise said privilege, over and beyond the said term of ten years first above limited, the same being six per centum upon the purchase price herein named.

The said parties of the first part covenant that they are seized in fee simple of the property herein conveyed except as herein noted; that they have the right to convey the same to the said grantee, except as herein noted; that they have done no act to encumber the same except as herein noted; that the said party of the second part shall have quiet and peaceable possession of the said property, free from all encumbrances; and that they, the said party of the first part, will execute such other and further assurances of the said land as may be requisite.

It is further mutually understood and agreed that if any damage shall result to the parties of the first part, or their heirs or assigns, by reason of the carelessness or negligence of the party of the second part, its successors or assigns, in conducting said business, the whole matter shall be submitted to the arbitration of disinterested parties, one selected by each of the parties hereto, and upon failure of the parties so selected to agree, they shall call in a third party, and their decision shall be final and binding upon the parties hereto.

And whereas, the said parties of the first part, by their deed dated the 10th. day of January, 1907, conveyed the said land herein mentioned, together with all its improvements and appurtenances, unto R. D. Crocker, in trust to secure to John W. Adams the payment of the sum of one thousand dollars, which is now a lien upon the said tract of land and the timber thereon; and, whereas the said John W. Adams is willing to this conveyance, and willing that the same should be made free and clear of and from the lien of the said deed of trust, doth hereby sign and seal this deed, and doth, hereby, testified to by his signing and sealing the same, direct the said trustee to sign and seal the same, for the purpose of releas-

ing the timber herein conveyed from the lien created by the said deed of trust.

Witness the following signatures and seals:

R. M. Adams (SEAL)
Rosa W. Adams (SEAL)
John W. Adams (SEAL)
Trustee (SEAL)

State of Virginia,

County of Isle of Wight, to-wit:

I, A. S. Johnson, a Commissioner in chancery of the circuit Court of the County of Isle of Wight, in the State of Virginia, do hereby certify that R. M. Adams and Rosa W. Adams, whose names are signed to the writing hereto annexed, bearing date the 20th. day of October, 1908, have acknowledged the same before me in my said County.

Given under my hand this 20th. day of October, 1908.

A. S. Johnson
Commissioner in Chancery.

State of Virginia,

County of Dinwiddie, to-wit:

I, _____ a _____
for the County aforesaid in the State of Virginia, do hereby certify that John W. Adams, whose name is signed to the writing hereto annexed, bearing date the 20th. day of October, 1908, has acknowledged the same before me in my said county.

Given under my hand this _____ day of _____ 1908.

State of Virginia,

County of Isle of Wight, to-wit:

I, _____, a _____
for the County aforesaid in the State of Virginia, do hereby certify that R. D. Crocker, whose name as trustee is signed to the

writing hereto annexed, bearing date the 20th. day of October, 1908,
has acknowledged the same before me in my said County.

Given under my hand this ____ day of _____ 1908.

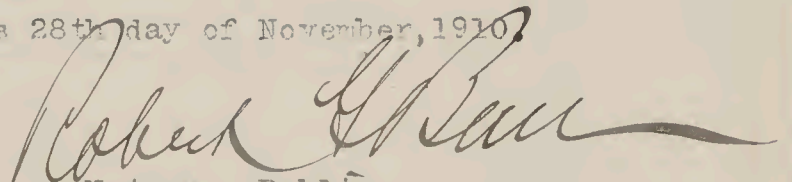
J.P.

State of Virginia,

City of Petersburg, to-wit:

I, Robert G. Bass, a notary public in and for the city of Petersburg, in the State of Virginia, do hereby certify that the foregoing depositions were taken down stenographically and reduced to writing; that the signatures of the respective witnesses were waived by an agreement of counsel; that said depositions were duly taken before me at the time, place, and for the purpose specified in the notice hereto attached, and that I am not counsel for either party or otherwise interested in the event of this suit.

Given under my hand this 28th day of November, 1910.


Notary Public.-

Notary's fee for taking depositions

\$ 6.25.

M. J. Adams
Richard M. Adams

THIS CONTRACT OF LEASE, made and entered into this 10th, day of Feb. 1909, by and between John W. Adams, party of the first part, and Richard M. Adams party of the second part,

WITNESSETH:-- That for and in consideration of the some of Five hundred (\$500.00) dollars, cash in hand paid, the receipt of which is hereby acknowledged, he, the said John W. Adams doth hereby demise and lease unto said Richard M. Adams for the term of four years, commencing on the 1st, day of Jan. 1909, and ending on the 31st, day of December 1912, the following property, towit:

That certain tract or parcel of land, lying and being in Hardy District, in Isle of wight County, Virginia, upon which said Richard M. Adams now resides, containing one hundred and thirty six (136) Acres more or less, together with all the buildings thereon, and appurtenances thereto belonging,

But it is expressly understood and agreed by and between the parties hereto, that the said Richard M. Adams, at his own proper cost and expense shall keep up the buildings on said premises in good condition and proper repair, and also keep the fences up on said premises and in good condition and repair during the continuance of this lease, and leave the same in good condition and repair at the expiration of this lease; that said Richard M. Adams shall not assign this lease without the consent of said John W. Adams first obtained; and it is further understood and agreed by and between the parties hereto, that should said Richard M. Adams fail to keep said buildings and fences in good condition and proper repair as aforesaid, then, this lease shall

be at an end, at the option of the said John W. Adams, and the rent aforesaid of Five hundred (\$500.00) dollars, shall then be apportioned for the time that shall have then elapsed or expired at the rate of One hundred and twenty five (\$125.00) dollars per annum, and said John W. Adams shall pay over the residue, if any, to said Richard M. Adams less any damages that said John W. Adams may have suffered and sustained by the failure of said Richard M. Adams to fithfully keep and perform all the conditions and stipulations herein before stated, and to be kept and performed on the part of the said Richard M. Adams.

Witness the following signatures and seals:-

John W. Adams (SEAL.)
Richard M. Adams (SEAL.)

8
LIS PENDENS.

Cumberland Lumber Co.,
a corporation.

VS.

R. M. Adams et als.

10
Nov. 10
P. 1
365 77

Jan

1.25

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

SUFFOLK HERALD CORPORATION PRINT, SUFFOLK, VA.

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

Cumberland Lumber Company, a corporation.....Plaintiff.

vs.

R. M. Adams, Rosa W. Adams, his wife, and

John W. Adams.....Defendants.

LIS PENDENS.

The general object of the foregoing suit now pending in the above named Court under the style above given is to compel the specific performance of a contract made by R. M. Adams to convey to the Cumberland Lumber Company all the standing timber down to ten inches on the stump on the farm then owned by him, which said contract is dated September 9th, 1908, and duly recorded in the Clerk's Office of Isle of Wight County, Virginia, in D. B. No. 77, page 251, reference to which is hereby made. The land on which said timber is situated is located in Hardy Magisterial District of Isle of Wight County, Virginia, consists of 136 acres, and adjoins the land of F. H. Atkins, A. R. and H. C. Gwaltney, and R. C. Parlow, and was conveyed on the 10th day of February, 1909, without restrictions, by said R. M. Adams and wife to John W. Adams by deed duly recorded in said Clerk's Office in D. B. No. 77, page 162, reference to which is hereby made. The said John W. Adams at the time of said con-

veyance having full knowledge, both actual and constructive of the failure and refusal on the part of said R. M. Adams to perform said contract of sale hereinabove referred to.

IN WITNESS WHEREOF, the said Cumberland Lumber Company has caused its corporate name to be hereto signed and its corporate seal hereto affixed by F. E. Waters, its President,, attested by Parker D. Dix, its Asst. Sect'y & Treasurer,, duly authorized officers of said Company, this 8th day of November, 1909.

CUMBERLAND LUMBER COMPANY

F. E. Waters
President

ATTEST:

Parker D. Dix
Asst. Sect'y & Treasurer.

STATE OF MARYLAND)
COUNTY OF BALTIMORE)

I, J. Marsh Matthews, a Notary Public of the State of Maryland, in and for the County of Baltimore, do certify that F. E. Waters, whose name is signed to the writing above, bearing date on the 8th day of November, 1909, has acknowledged the same before me in my County and State aforesaid. And I, the said J. Marsh Matthews, a Notary Public of the State of Maryland, in and for the County of Baltimore, do hereby certify that F. E. Waters, President of the Cumberland Lumber Company, has this day acknowledged before me in my County and State aforesaid, that the seal attached to the said writing is the Corporate Seal of the said corporation, and that the said writing is the act and deed of the said Corporation.

Given under my hand and Notarial Seal, this the 8th day of November, 1909.

J. Marsh Matthews
Notary Public

My Commission expires

May 15 1910

5

60727 page 13

Cumberland Lumber Co.,
a corporation,

vs.

Richard M. Adams, Ross
W. Adams and John W.
Adams.

1910.
Feb. 7.
Enter this:
J. D. W.

We consent to the entry of
this decree:

Richard M. Adams, Ross W.
Adams, & John W. Adams,
Feb 3/1910 by Richard M. Adams, their counsel

been on land from 2000
Company by
James H. & George
its attorney

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

CUMBERLAND LUMBER COMPANY, a corporation.....Complainant.

vs. In Chancery.

Richard H. Adams, Ross W. Adams and

John W. Adams.....Defendants.

By consent of all parties, *advised Leno, and* 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.

Cumberland Lumber Co.

vs.

Adams et als.

Enter
Oct. 3. 1910.
P.D.W.

Entered in Chancery Order
Book No. 7 page 41.

We consent.

Richard H. Mann
att'y for Adams
James H. Keen
att'y for Cumberland

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

Cumberland Lumber Company.....Complainants.

vs.....In Chancery.

Richard M. Adams, Rosa W. Adams and John W. Adams..Defendants.

By consent of all parties, complainant and defendants
by Counsel, entered of record, in term time, it is ordered
that the papers in this cause may be submitted to the Judge
of this Court in vacation for such decisions and decrees,
judgment or order therein in vacation as might be made in term.

76 Box 56

Cumberland Lumber Co.,

vs.) D E C R E E . - -

Richard M. Adams, et als.

for Journal
James H. Morgan -
Journal of Complaint
Richard H. Mann,
Counsel for defendants

1911
Oct. 2.
Entered this
B.D.W.

Mann & Mann,
LAW OFFICES.

PETERSBURG, VIRGINIA.

C.O.B.#7 Page 78

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

CUMBERLAND LUMBER COMPANY, a Corporation, ---COMPLAINANT,

vs.-----DECREE.

Richard M. Adams, Rosa W. Adams, John W. Adams, and R. D. Crocker,
Trustee,----- DEFENDANTS.

This cause which has regularly matured in the Clerk's Office of this Court, came on this day to be heard on the bill of the complainant and the exhibits therewith filed, the demurrer of the defendants to the said bill, the answers of the defendants, Richard M. Adams, Rosa W. Adams, John W. Adams, and R. D. Crocker, Trustee, *and exhibits therewith,* heretofore filed, with general replication to said answers, the depositions of J. S. Norsworthy, G. W. Wingfield, and A. S. Johnson, taken and filed on behalf of the complainant, the depositions of Richard M. Adams, Rosa W. Adams, ^{and} John W. Adams, taken and filed on behalf of the defendants, and the exhibits filed with the said depositions, and was argued by counsel.

ON CONSIDERATION WHEREOF, it appearing to the Court from statements of counsel for both the complainant and defendants that the matter in controversy in this suit had been adjusted to the satisfaction of all parties, the Court doth ADJUDGE, ORDER AND DECREE that this cause be dismissed from the docket, - each party paying his own costs; and that the contract of sale of the timber in the bill mentioned between the defendant, Richard M. Adams, and the complainant, Cumberland Lumber Company, a certified copy of which is filed with the complainant's bill, marked "Exhibit A", and prayed to be taken and read as a part thereof, be, and the same hereby is, declared not binding between the parties; and that both the complainant and the defendants, be, and they are, hereby released from

#2.

all further liability thereunder, or by virtue of any other proceeding in connection with this suit.

WILLIAM HENRY MANN

RICHARD H. MANN

MANN & MANN
ATTORNEYS AT LAW

WRIGHT'S BLOCK

PHONE 436

PETERSBURG, VA. September 26, 1911.

Mr. James U. Burges, Atty. at Law,
Suffolk, Va.

Dear Burges;

I am in receipt of your favor of yesterday, enclosing the decree in the suit of Cumberland Lumber Company vs. Adams, with your endorsement of consent thereon. I am glad you approve the decree, even to the punctuation, and have endorsed my consent thereon, and am forwarding it to you, so that you may have Judge White enter it on Monday. Will you kindly advise me as soon as it is entered.

I shall be glad also to have you ask Mr. A. S. Johnson, the handsome and fascinating clerk, to make up a statement of any costs that the defendants have incurred and forward the same to me so that I may remit to cover.

With best regards, I am,

Very truly, yours,

Richard H. Mann
RH

R/M

Enc.-

"This is nothing more than a naked covenant to pay money at a particular day, which has never been held to mean that time is of the essence of the contract, for the plain reason that it admits of adequate compensation, ascertained by law, in the shape of damages. 1 Smith, Lead. Cas. 115, 136; 2 Lead. Cas. Eq. 1129". Jackson vs. Logon, 3 Leigh, 187.

In Booten vs. Scheffer, 21 Gratt. 493, Judge Staples, said : "Now, it is true that a mere default in payment, as a general rule, is not a sufficient reason for refusing a specific performance, because the default admits of compensation, and in most cases interest is regarded as an equivalent for the non-payment of the purchase money." In that case the purchase price of the real estate sold to Scheffer was payable in Confederate currency, which was daily depreciating in value. Scheffer failed, under circumstances indicating a disposition to profit by such depreciation to pay the purchase money when due. This court held in that case that time was of the essence of the contract under the peculiar circumstances. That case is in no material feature at all like the case at bar, but it does illustrate most clearly the principle applicable here by its very dissimilarity. Here there was no depreciation of the currency in which the price was payable, and the delay in payment was fully compensated with interest. We think, therefore, that this assignment is not well taken."

Cumberland Lumber Company,
vs.
Adams et als.

In the case of Cummings vs. Beavers, 103 Va. 230; 48 S. E. 891; 106 A. S. R. 881; (Virginia) Judge Cardwell, in delivering the opinion of the Court said:

"A person who takes conveyance of the legal title to land, with knowledge that his grantor has agreed to sell it to another person, takes it subject to the equitable estate already vested in the purchaser"; Brodhead vs. Reinbold, 200 Pa. St. 618; 86 Am. St. Rep. 735; 50 Atl. 229.

In the last mentioned case the syllabus of the Court is as follows:

"A person who takes conveyance to the legal title to land with knowledge that his grantor has agreed to sell it to another person, takes it subject to the equitable estate already vested in the purchaser."

In the case of Barrett vs. McAllister, 33 W. Va. 738, 11 S. E. 220, it says: "A third person, who with notice of the equity of the holder of an option purchases the land from the proposer of the option, takes it subject to the rights of the holder, and holds it in trust for him, and the latter may in equity follow the land into the second purchaser's hands, and compel him to convey the land to him."

The fact that the outstanding inchoate right of dower cannot be extinguished constitutes no defence in a suit for specific performance by the vendee.

In the case of Steadman vs. Handy, 46 S. E. R. 380; 102 Va. 382, there was a demurrer to the bill which is disposed of in the language of Judge Harrison, as follows:

"There was a demurrer to the bill, in support of which two

grounds are suggested in argument; (1) That the wife of the appellee should have been made a party defendant; that, if

her husband should convey, she would be deprived of her right of dower in kind; and that her interest, though inchoate, and subject to be defeated, is vested. (2) That to grant specific performance of the contract, as prayed for, would leave the personal representative of the appellee liable to an action at law in the future should he wife survive and assert her dower rights.

The wife did not execute the contract, and was not a necessary party. The contract was executed by the appellee alone, and he had the right to sell his interest in the property without regard to whether or not his wife was willing to part with her contingent dower right. The bill expressly alleges that the appellant is willing to take such title as the appellee has bound himself to convey. The right of appellant to have specific performance of the contract is therefore not affected by an outstanding inchoate right of dower."

"While a purchaser, however, cannot be compelled to take a defective title, but has a right to insist upon a clear legal title, on the other hand, though the vendor cannot make the title he contracts to make, yet he may be compelled to convey such title as he has, and to compensate for the defect; nor does it lie for him to object for the want of a complete title in him. *Dunsmore vs. Lyle*, 87 Va. 393; 12 S. E. R. 610.

In the case of *White vs. Dobson et al.* 17 Gratt. 262, the syllabus is as follows:

"When a vendor of land has notified the purchaser that he will not fulfill the contract, the purchaser may file a bill for a specific ~~performance~~ execution of it without making a tender to the vendor of the securities provided for therein."

In 36 Cyc. 706, it says:

"Tender is excused where the vendee intentionally avoids giving the vendee an opportunity of making it, or where the vendee is at the place where the conveyance is to be made, ready and willing to perform his part, but the vendor is not ready to perform his part. On the death of the vendor, tender need not be made to the personal representative, since he cannot make a deed without order of court.

By the practice in the country, it is not customary for the vendee to draw up the deed. In the absence therefore of an express stipulation on the subject, it is unnecessary for the vendee to tender a deed to the vendor to be executed by the latter.

It is not, as a general rule, necessary for the vendee, plaintiff, to bring the purchase-money into court on filing the bill. His offer of payment in the bill is sufficient. The rule in a few states is otherwise, and money admitted to be due should be brought into court, except where plaintiff has right of possession before payment of the purchase-money."

In the case of Smith vs. Proffit, 82 Va. 832; 18 E.67; Judge Richardson in delivering the opinion of the court used the following language:

"As a rule the courts will not infer that the parties intended to make time of the essence of the contract for the sale of ~~the~~ the land, from the mere appointment of a day for the delivery of a deed, or the payment of the price. The intention must be unequivocally expressed, or it must appear from the fluctuating, uncertain, or perishable nature of the commodity. It is a general rule that language which admits of a milder interpretation shall not be so construed as to work a forfeiture.

In a case where the first installment was to be paid October 1, 1848, when the title was to be conveyed, the court

R. M. Adams,

To) Option, D. P. 77, page 251.

Cumberland Lumber Company,

"Exhibit A"

\$_____.

Received of the Cumberland Lumber Company this the 9__ day of September, 1908, the sum of \$1.00 being part payment of the sum of \$650.00 for which amount I have this day sold the said Cumberland Lumber Company all the timber on my fram to 10" at the stump, giving them ten years in which to cut the same with the privilege of five years extension on the payment of 6% interest on the purchase price.

The understanding and agreement being that I am to deliver to the said Cumberland Lumber Company within thirty days one of their regular forms of deeds conveying them this property with good title, and then they are to pay me the remainder of the purchase price in cash.

R. M. Adams,

Acknowledged before us, this 16th. day of December, 1908.

G. W. Winfield,

J. S. Norsworthy,

Virginia: Clerk's Office of the Circuit Court of the County of Isle of Wight, May 27th. 1909, at 11:15 o'clock A. M. this contract was proved by the oaths of G. W. Winfield, and J. S. Norsworthy, the subscribing witnesses thereto, and admitted to record.

Teste, A. S. Johnson, Clerk.

By, L. C. McClelland, D. C.

-----000-----000-----

A copy,

Teste, *A. S. Johnson* Clerk.

See for copy 357

Number.....

DEED

.....County

.....State

To

.....Made.....190

.....Recorded.....190

STATE OF..... }
COUNTY OF..... } To-wit:

I, ..., a for the
County aforesaid in the State of, do hereby certify that

whose names are signed to the writing above, bearing date the day of
have, each of them, acknowledged the same before me in my aforesaid.

Given under my hand this day of 19....

My commission expires.....

STATE OF..... }
COUNTY OF.... } To-wit:

I,....., a for the
County aforesaid in the State of do certify that

whose names are signed to the writing above, bearing date the..... day of
have, each of them, acknowledged the same before me in my aforesaid.

Given under my hand this day of 19....

My commission expires.....

It is expressly understood and agreed between the parties that the said party of the second part, its successors and assigns, shall not cut or remove from said land any tree that does not measure as much as 10 inches across the stump, outside measurement, at the time of cutting; but the said party of the second part its successors and assigns, may cut, without limit as to size, such logs or trees as may be required by them for the purpose of constructing, maintaining and operating tram roads and rail roads across said land, as herein provided for, or for opening and clearing roads, and for other purposes connected with the cutting, manufacturing and removing the timber hereby conveyed, or any other timber now owned by them, or which they may hereafter acquire.

It is further understood and agreed, that the said party of the second part, its successors or assigns, shall have the full term of.....years from the date hereof within which to cut and remove the timber from said land; and if at the expiration of said term of.....years, the said party of the second part, its successors or assigns, may so desire, they shall be entitled to a further period of not exceeding..... years from the end of said first mentioned term within which to cut and remove said timber; and shall pay to the part.... of the first part,.....legal representative or assigns, at the rate of \$..... per year for each year during which they shall exercise said privilege, over and beyond the said term of years first above limited.

It is further mutually understood and agreed that payment of the note or notes given for the deferred payments aforesaid, may be made before their due date, by paying the face of said note or notes, with the accrued interest to the date of such payment; that any imperfection in the title of the land whereon said timber is standing may be healed out of the purchase money for said timber at the proper costs and charges of the parties of the first part, any sum so paid to be credited on the deferred payments of the purchase money due hereunder, and that no timber (except such as it may be necessary to cut in clearing ways for roads, railroads, &c.) shall be cut under this deed until all of the deferred payments are met, and the purchase price fully paid.

The part.... of the first part covenant that seized in fee of the property hereby conveyed; that ...ha...the right to convey the same to the said party of the second part; that ha...done no act to encumber the same; that the said party of the second part shall have quiet possession of the said property, free from all encumbrances; and that will execute such further assurances of the same as may be requisite.

It is further agreed that if any damage shall result to the part.... of the first part, or assigns, by reason of the carelessness or negligence of the party of the second part, its successors or assigns, in conducting said business, the whole matter shall be submitted to the arbitration of disinterested parties, one selected by each of the parties hereto, and upon the failure of the parties so selected to agree, they shall call in a third party, and their decision shall be final and binding upon the parties.

Witness the following signature ...and seal....

.....[SEAL.]
.....[SEAL.]
.....[SEAL.]
.....[SEAL.]

This Deed, made and entered into this day of 190....

by and between.....

E. L. Lee

part... of the first part, and.....

a corporation under the laws of the State of.....
party of the second part,

WITNESSETH: That the said part... of the first part, for and in consideration of the covenants and agreements of the party of the second part herein contained, and on its part to be kept and performed, and of the sum of \$.....to..... cash in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged; and in further consideration of the sum of \$... ..to be hereafter paid by the party of the second part, its successors or assigns, and evidenced by.....notes of.....for the sum of \$.....each, bearing even date herewith, and payable, respectively, at.....from date, with legal interest from date, do...hereby grant, and convey with general warranty unto the said party of the second part, its successors and assigns, all the timber and trees upon the following tract of land, lying and being in the County of.... .. in the State of Virginia, bounded and described as follows:

Also the right of ingress and egress to the said party of the second part, its successors or assigns, their agents and servants, with their teams, tools and appliances, over and upon the said land; with free right of way for roads, tram roads and rail roads, over, through and across said lands, and the right to erect thereon mills, factories and buildings, and other fixtures deemed necessary or useful in conducting a lumber business, and the manufacture of timber trees into lumber, and carrying the same to market, and to remove at pleasure any such building, factory or fixture so placed upon said land or any part thereof by the said party of the second part, its successors or assigns.

Also a right of way over and across said land, of the ordinary width, on which to construct and operate a temporary or permanent railroad to be operated by the said party of the second part, its successors or assigns. And in order to provide against damage by fire, the said party of the second part, its successors and assigns, shall have the right to burn off the trash, tree-laps, grass, and other light substances, for a distance of fifty yards on each side of any railway track or right of way herein granted; provided, however, such burning must be done carefully and in such manner as to prevent any damage occurring from the spread of the fire on such land, and so as not to cause any unnecessary damage to said land, or to any building or trees standing thereon.

"Exhibit C"

Richard M. Adams, et ux,

To) Bargain and Sale D. B. No. 77, page 162.

John W. Adams,

THIS DEED, made this 10th. day of February, 1909, by and between Richard M. Adams, and Rosa W. Adams, his wife, of Isle of Wight County, Virginia, parties of the first part, and John W. Adams, of Dinwiddie County, State of Virginia, of the second part, WITNESSETH:----that for and in consideration of the sum of Two Thousand Dollars (\$2,000.00), cash in hand paid, the receipt of which is hereby acknowledged, they, the said Richard M. Adams, and Rosa W. Adams, his wife, do grant and convey, with General Warranty, unto the said John W. Adams, the following property, to-wit: All that certain tract or parcel of land, with all the appurtenances thereto belonging, lying, being and situate in Hardy District, Isle of Wight County, Virginia, said tract of land being composed or made up of two tracts of land, known as the "Home Place", and "Dixie", containing, together, one hundred and thirty-six acres, more or less, and adjoining the lands of F. H. Atkins, A. R. and W. O. Gwaltney, R. C. Barlow, and others, and is the same that was conveyed to Henry Jones by deed from George T. Clarke, administrator, with the will annexed of Moses Atkins, deceased, and others, bearing date October 23rd. 1876, duly recorded in the Clerk's Office of Isle of Wight, Virginia, in Deed Book 44, at page 186, and the same conveyed by said Henry Jones and wife to George W. Adams, by deed dated December 20, 1882, duly recorded in said Clerk's Office in Deed Book 46, at page 761, and the same conveyed by said George W. Adams and wife to George H. Adams by deed dated November 19th, 1897, in Deed Book 66, at page 341, and the same conveyed by the said George H. Adams and wife and others to said Richard M. Adams, by deed dated February 12, 1901, duly recorded in said Clerk's Office in Deed Book 66, at page 342, to all of which said deeds reference is now here made for a more accurate and complete description of the property hereby conveyed.

And the said parties of the first part hereby covenant

that they have the right to convey the said land to the grantee;
that they have done no act to encumber the said land; that said
grantee shall have quiet possession of the said land, free from
all encumbrances, and that they will execute such further assurances
of said land as may be requisite.

Witness the following signatures and seals:

Richard M. Adams, (SEAL)

Rosa W. Adams, (SEAL)

State of Virginia,

County of Isle of Wight, to-wit:

I, G. W. White, a Justice of Peace in and for the County of Isle of
Wight, in the State of Virginia, do certify that Richard M. Adams
and Rosa W. Adams, his wife, whose names are signed to the above
writing, bearing date on the 10th. day of February, 1909, have sev-
erally acknowledged the same before me in my County aforesaid.

Given under my hand this 11th. day of Feb. 1909.

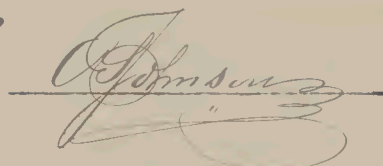
G. W. White, Justice of Peace.

Virginia: Clerk's Office of the Circuit Court of the County of Isle
of Wight, February 20th. 1909, at one thirty o'clock P. M. this deed
was received, and, with the certificate annexed, admitted to record.

Teste, A. C. Johnson, Clerk.

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A copy, Teste,

 Clerk.