

1917-007 Chancery Causes: Carlyle P. Holland vs Malinda Butler & J
Isle of Wight County

250

other surnames: Joyner,
Harrison, Redd, Darden

No.

Know all Men by These Presents: That we C. P. Holland

principal

and

Wm. S. Holland,

suret y

are held and firmly bound unto the ~~Commonwealth of Virginia~~ defendants hereinafter named, in the just and full sum of ----- five hundred dollars

to the payment whereof well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

And as to this bond we hereby severally waive the benefit of our Homestead Exemption, and also any right, claim or privilege to discharge any liability arising hereunder to the said Commonwealth, or by virtue of the said office or trust for which this bond is given, with coupons detached from the bonds of this State.

IN TESTIMONY WHEREOF, the said C. P. Holland

principal

and the said Wm. S. Holland

suret y

have hereunto set their hands and affixed their seals this, the 18th .

day of

October,

A. D. 19 16.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the above bound C. P. Holland, complainant in a certain suit in chanc ry, pending in the Circuit Court of the County of Isle of Wight shall pay to defendants, Malinda Butler, Mary Elizabeth Holland, Jason Holland, Jethro Holland, and C. C. Redd, all such costs as may be awarded against him, and all such damages as may be incurred in case an injunetion awarded said complainant, in said suit, on the 18th. day of October, 1916, shall be dissolved,

~~shall faithfully discharge the duties of his office or trust as such~~

, then the above obligation to be void, or else to remain in full force and virtue.

A. D. 19

..... C. P. Holland, ...[SEAL]
..... Wm. S. Holland, ...[SEAL]
.....[SEAL]
..... Witnesses[SEAL]

Virginia: In the Clerk's Office of the Circuit Court of the County of Isle of Wight the 18th. day of October, 19 16 , this bond was duly executed and acknowledged by the obligors to the same and ordered to be recorded.

Teste, *[Signature]* Clerk.

Copy
Test. [Signature]
an

17
Holland

n of Cy 76 250

Butler et al

Copy of deposition
Rous

Filed 10/18/1916

Tethro H. Butler's Will:

I, Jethro H. Butler, being of sound mind, do make this my last will and testament, to-wit: I give unto my wife, Malinda Butler, all of my real estate, the home farm on which I now reside, to have and to hold as hers during her natural life; at her death I bequeath all of this real estate to my daughters Laura Virginia, Mary Elizabeth and Abby Lillian or their childred, share and share alike. And for purpose of division the land may be sold. To my granddaughter, Eva Harrison, I give the sum of one hundred dollars which shall be paid to my daughters/out of the real estate when they shall have come in possession of the land. Should Eva die before my daughters come into possession of the land they shall pay the ~~sum~~ \$100 to her then living brothers and sisters, share and share alike. I give to my wife one horse (she to select) buggy, cart and wheels, and necessary gear to go with cart and buggy, two feather beds and steads, a cow and calf, 1500 lbs. fodder, 15 barrels of corn. 500 lbs bacon, and ten dollars worth of live hogs. I also give to my granddaughter Eva, above mentioned, one feather bed and necessary bed clothing to be kept for her by my wife until she becomes of age or marries.

I now direct that all my remaining chattel estate be sold and the proceeds, with all money I have in bank or elsewhere, shall be equally divided between my wife Malinda

and my daughters, Laura, Mary and Lillian, after the payment of all ^{my} honest debts, and that the sale and division shall occur as soon after my death as practicable.

It is my desire that E. R. H. Daughtery shall serve as administrator of my estate.

Given under my hand and seal this 11th day of April 1901.

his
Jethro H. X Butler, (SEAL)
mark

Witness, Gavin Rawles,
J. F. Eley,

In the County Court of Isle of Wight County June 3rd, 1901 a paper writing purporting to be the last will and testament of Jethro H. Butler, deceased, was presented in court and proved by the oaths of Gavin Rawles and J. F. Eley, the subscribing witnesses thereto, and ordered to be recorded as the true last will and testament of Jethro H. Butler, deceased.

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

A copy
Test. Johnson, CC

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Carlyle P. Holland

vs. { *ex* No 250

Malinda Butler and others.

Copy of Jethro Butler's
Will.

Dated 10/18/1916

HUGH L. HOLLAND
ATTORNEY AT LAW
SUFFOLK, VIRGINIA

In the Circuit Court of Isle of Wight County, Virginia:

To A.S.Johnson, Clerk of said Court:

Carlyle P. Holland

Complainant.

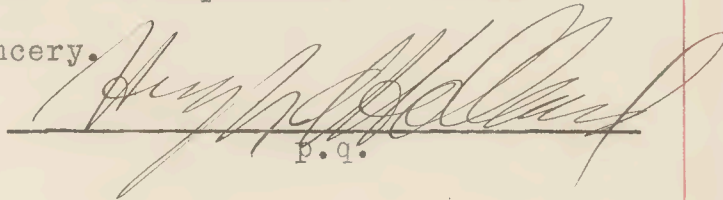
vs.

Memorandum.

Malinda Butler, Mary Elizabeth Holland,
Jason Holland, Jethro Holland, and C.C.Redd.

Defendants.

Please summon defendants for complainant to First
November (1916) Rules, in chancery.


P.g.

1

Carlyle P. Holland

vs. *q* *250*

Malinda Butler and others.

Memorandum.

Filed Oct 18/1916

HUGH L. HOLLAND
ATTORNEY AT LAW
SUFFOLK, VIRGINIA

VIRGINIA

In The Circuit Court of the County of Isle of Wight:

Carlyle P. Holland ----- Complainant

vs.

Malinda Butler, Mary Elizabeth Holland

and Jason Holland ----- Defendants

This cause came on this day to be heard on the Bill of Complaint, ~~it appearing that~~ the defendants have^{ing} been legally served with processes, and upon the demurrer and answer of the defendants, and was argued by counsel.

On consideration whereof, the court doth order, adjudge and decree that one of the commissioners take, state and report to court the following inquiries:
the parties in this cause be referred to of this Court who shall
summe said demurrer and doth

(1) An account of ^{all} the real estate of which Jethro Butler died seized and possessed, with an accurate description thereof, together with ^{the} annual and fee simple values ^{thereof} of the ~~same~~, and any liens of record binding said property, or the interest of any of the parties entitled thereto.

(2) The heirs and distributees at law of the said Jethro Butler, deceased, together with their respective

agrs.
acquired
interests and shares in the said decedent's estate *and how*

(3) Whether partition can be conveniently made of the said property, and if not, whether any party will accept the entire property and pay therefor to the others such sums of money as their interest shall entitle them to receive, and if partition cannot be conveniently made, and no party will accept the entire subject matter, whether the interest of the parties will be promoted by a sale of the entire subject matter, and a division of the proceeds of ^{sale} ~~same~~, or whether it would be to the interest of the parties that there should be an allotment of a part and a sale of the residue.

(4) Whether there are any delinquent taxes against the said real estate ~~described in the bill of complaint.~~

(5) To inquire and report to court whether all parties interested are properly before the court.

(6) Any other matter deemed pertinent by said Commissioner, or requested by any of the parties.

Carlyle P. Holland

vs.

Malinda Butler et als.

1917
Feb 5.
Enter this
B. W. W.

COB 7 p 403

HUGH L. HOLLAND
ATTORNEY AT LAW
SUFFOLK, VIRGINIA

In the Circuit Court of Isle of Wight County, Virginia:

Carlyle P. Holland ----- Complainant

vs. (D E C R E E)

Malinda Butler, Mary Elizabeth Holland,
Jason Holland, Jethro Holland and C. C.

Redd ----- Defendants

This cause came on this day to be heard on the
Bill of Complaint, *his day, filed by clerk of Court* and on the answer of the defendants, and
was argued by counsel.

On consideration whereof, it appearing to the
court that an injunction order was entered in this cause
on the _____ day of _____, 1916, restraining and
prohibiting the defendants and their agents and employees
from cutting or removing any trees or timber standing, lying
or being on the following property, to-wit:

All that certain tract of land near Boaz, in the
County of Isle of Wight, in the State of Virginia, containing
Two Hundred (200) acres, more or less, and bounded on the
North by Miss Lou Darden, on the East by the land of Woodville
Darden, on the South by the lands of Jason Holland and on the
West by the lands of Hardy Darden, being known as the Jethro
Butler Home Place, and being possessed by the said Jethro
Butler at the time of his death; and it further appearing
to the court that it was provided in such injunction order
that the same should stand dissolved unless sooner enlarged
or extended, and it further appearing to the court that the
said 90 days has not yet expired, the court doth adjudge,
order and decree that the said injunction order be, and the

same is hereby extended, ^{until the next term of this Court} and made permanent, the said
~~And the complainant~~ ^{shall} ~~shall~~ ^{be} forced within
~~defendants being hereby restrained and prohibited as set~~
~~the next ten days to take and complete the~~
~~out in said injunction order permanently.~~
~~taking of testimony in this cause, and the same~~
~~And this cause is continued.~~ ^{thirty} days from
~~shall be completed within~~ ^{thirty} days from
~~All of which is certified to the Clerk of this court~~
~~this date, and upon the completion of the said~~
~~to be entered in the Chancery Order Book.~~
Complainant's testimony, the Defendants
shall within thirty days from this date
be forced to take testimony and shall com-
plete the same within forty days from
this date, and this cause is continued
to the next term of this Court.

Carlyle P. Holland
vs.
Malinda Butler et als.

(DECREE)

1416
Dec. 4.
Enter this.
B.D.W.

C.D. B. #7, p 390

HUGH L. HOLLAND
ATTORNEY AT LAW
SUFFOLK, VIRGINIA

In the Circuit Court of Isle of Wight County, Virginia:

Carlyle P. Holland

October 18. 1916.

vs.

Malinda Butler, Mary Elizabeth Holland
Jason Holland, Jethro Holland, and
C.C.Redd.

Upon the Complainant, Carlyle P. Holland's entering into and acknowledging a bond with surety deemed sufficient by the Clerk of this Court, in the penalty of \$500, conditioned to pay all such costs as may be awarded against the complainant, and all such damages as may be incurred in case this ~~injunction~~ injunction shall be dissolved, an injunction is granted to the complainant in compliance with the bill filed herein to restrain and prohibit Malinda Butler, Mary Elizabeth Holland, Jason Holland, Jethro Holland, and C.C.Redd and their agents and employees, and they are hereby restrained and prohibited from cutting or removing any trees or timber standing, lying or being on the following real estate, to-wit:

All that certain tract of land near Boaz, in the County of Isle of Wight, in the State of Virginia, containing Two Hundred Acres, more or less, and bounded on the North by Miss. Lou Darden, on the East by the lands of Woodville Darden, on the South by the lands of Jason Holland, on the West by the lands of Hardy Darden, being known as the Jethro Butler Home Place and being possessed by the said Jethro Butler at the time of his death.

But this injunction shall stand dissolved after ninety days unless sooner enlarged or extended.

All of which is certified to the Clerk of this Court to be entered in the Chancery Order Book.

*James S. McShore, Judge
Second Judicial Circuit of Virginia*

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Carlyle P? Holland

vs. *f Cy 250*

Malinda Butler and others.

Injunction Order.

Enty Octo. 18. 1916.

John L. W. Moore

C. O. D. # 7. page 365

HUGH L. HOLLAND
ATTORNEY AT LAW
SUFFOLK, VIRGINIA

Injunction:

C. P. Holland being duly sworn, deposes and says:

Q. Please state your name, age, residence and occupation? A. C. P. Holland, I am twenty nine years of age, live in Suffolk, Virginia, and my occupation is selling and buying farm land.

Q. State what you know of the damage done to the Jethro Butler property, in which you own an interest- a third? A. I think the lumber that was actually cut off of it would not sell for over a hundred or two hundred dollars- but I think the damage done to the sale of the lumber was far beyond two hundred dollars.

Q. State your reasons? A. Because the best of the trees have been picked around there and cut out of the tract-and that my experience in selling timber that where there are small

places cut out like that, that it will sell for very much less in the gross.

Q. Were the trees that were cut salable timber trees? A. They were number one quality

Q. At the time the damage was done you were the owner of one third were you not, subject to the life right of Malinda Butler?

A. Yes sir.

Q. Were you consulted before hand- and if not when and how did you first find out about it? A. I was not consulted at the time it was cut. Later, I presume, after all of it had been cut, but not all hauled, some person from that neighborhood informed me that it had been cut- then I went over there and saw it with my own eyes.

Q. Who did this cutting, or had it done? A. From the best I could find out from Mr. Jason Holland and some other parties told me that Mr. Jet Holland had the lumber cut.

Q. Does Mr. Jet Holland cultivate the land? A. Last year he did or had it cultivated. He lived there.

Q. Estimate, in dollars and cents, what the damage is, in your opinion, by this cutting? A. Four hundred dollars.

Q. Was the cutting of this timber necessary for the widow for firewood or for the natural upkeep of the place? A. It was not.

Q. If she had wanted this timber for rail fences please state whether she could not have gotten rails from much less valuable trees?

A. She could have.

Q. How often have you seen the property since this timber was cut?

A. I presume, on an average of once a month.

Q. Have you seen where this timber, or even the proceeds of its sale, have in any way gone for the upkeep or improvement of this property? A. None whatever.

Q. Did Mr. Jet Holland tell you anything about it? A. No, he never has mentioned it to me.

CROSS EXAMINATION BY MR WATKINS.

Q. Mr. Holland, how far is this timber from a railroad? A. The railroad goes right through it.

Q. How far is this timber from the nearest station on the road?

A. About a half mile.

Q. In what year was the timber cut from the land? A. It was cut in 1916.

Q. What was stumpage worth in 1916? A. You have asked me a question I cannot answer. It varied anywhere from fifty cents to fifteen dollars a thousand.

Q. What was pine stumpage worth at the time of cutting this timber?

A. I just told you it varied so much that I cannot tell. I would not think it worth less than ten dollars- that grade of timber.

Q. How many thousand feet was cut from the land at the time you complain of? A. I do not know because I did not measure it.

Q. You have stated that the actual value of the timber cut from the land was from one hundred to two hundred dollars-upon what do you predicate this estimate? A. Two things- from the amount the man who hauled it said he hauled, and the grade of the timber.

Q. What kind of fence is around this farm at this time? A. The

part that I recognize is a very old wire fence.

Q. Do you know by whom that fence was erected? A. I have no idea.

And further this deponent saith not.

C. C. Redd being duly sworn, deposes and says:

Q. Please state your name, age, residence and occupation? My name is C. C. Redd, I am forty six years of age, live in Isle of Wight County, Virginia, and I work at public work.

Q. Were you employed to cut and haul any timber off of the Jethro Butler place, if so when, by whom, and under what circumstances? A.

A. Yes sir- last year- by Mr. Jet Holland- he wanted me to haul, cut and haul, enough for a house bill; and I cut and hauled about five thousand feet.

Q. What did Mr. Holland tell you about where to get this timber and what kind of timber to get? A. He told me to pick the woods over and get the best I could find.

Q. And you carried out his instructions the best you knew? A. The best I knew how.

Q. In getting the best did you not have to cut various paths and destroy considerable young timber and undergrowth over a large part of the wood land? A. So far as the paths-why I had to cut some paths, but there wwere paths all throughthe woods-I do not mean all over the woods. I did not have to destroy so much young timber and undergrowth.

Q. You had to cut some young timber and undergrowth to get to it- did you not? A. Well, sure-yes sir.

Q. Did you, or not, have to cut more undergrowth or young timber, or both, in picking out the best, that you would have had to cut to cut it solid as you came to it? A. Yes sir-, as much again.

Q. Did not, right many of these large timber trees fall on and break down young trees near them? A. It broke some of them down.

Q. You say you cut five thousand feet-what you say that timber was worth per thousand that you cut? A. I cut about that- For picking best as I did, it looks it ought to be worth nine or ten dollars, per thousand.

Q. Do you know where you can buy any of that grade- that is to pick out the best- at that price now? A. No sir, I do not.

Q. Five thousand at ten dollars a thousand would be fifty dollars a thousand actual timber worth-please state what amount, in addition to that, you consider the freehold damaged-not only by the removal of this timber, but by the necessary damage to the land and young timber in getting it out? A. To cut it as I cut and not take the doty treesm which I did not cut as I know of, it would knock the sale off from two to three hundred dollars.

Q. Ho far do you live from the Jethro Butler place and how often do you see it? A. About three miles, I reckon- four or five times a year, some times less and sometimes more.

Q. Have you, before this timber was cut, or since it has been cut, seen the amount of money the cutting of this timber has damaged this property, out back on this property, either in fences, buildings or othorwise? A. Well I have 'nt seen any new buildings now any new fencing.

Q. Are there as many buildings there now as when Mrs. Malinda Butler first took charge of this place? A. I dont know sir, about that.

Q. Have you any interest in this case, whatever, and wre you related to any of the parties? A. No sir.

CROSS EXAMINED BY MR WATKINS.

Q. Mr. Redd, you have testified that you cut and hauled about five thousand feet of lumber from this land-will you state, please, whether or not it was all number one grade? A. No sir, I never have cut any t^free in my life when all of the trees would be number one.

Q. Is it not true that in 1916 that only number one timber was bringing as much as nine or ten dollars a thousand stumpage? A. Well I dont know sir-where you co ld have bought that grade for less.

Q. Have you made a general investigation over the country to ascertain the price of that grade of standing timber? A. I have been hauling logs and lumber for some fifteen or twenty years in this part of the county, and it is hard to find that grade of lumber.

Q. Where have you confined your operations? A. In the county from about Colosse-from there to Windsor.

Q. Mr. Redd, in removing this timber did you run a railroad track over the land? A. No sir, I hauled with wagons.

Q. In making a way for wagons do you usually cut down small undergrowth, or do you cut large trees? A. It depends on what is in the way.

Q. Isn't it true that you make your way around the largest trees? and cut down what is usually termed undergrowth? A. As a rule that is right, but in some cases you have to cut larger to get to your logs.

Q. Did you, in pperating on this tract, cut large trees? A. What you mean, for the timber (No, for the ways) I dont think I cut any very large ones.

Q. As a rule, in cutting over this tract of timber, you made your way through the underbrush, did you not? A. Yes as much as I possibly could (as much as you possibly could) sure.

Q. Did the character of stuff which you cut down in making your way have any special value? A. Well if it did, of course I dont know the special value-it had a value, but the special value, as to that I dont know it.

Q. About how many acres of woodland did you cut over in removing this timber? A. Wgy I think some five or six acres.

Q. In felling the timber you only broke down such little trees as would have ordiharily been broken down had the timber been cut

for ordinary farm purposes? A. Some one or two, as I don't think- what I would call rail timber, was broke down. (upon an explanation of the question, witness testifies that the same would have been broken down had the timber been cut for rails)

Q. Now, Mr. Redd, the price or value which you put upon the timber that you cut and moved is from nine to ten dollars a thousand; that, in your opinion, was the fair market value for that timber at that time? A. The heart timber as I cut, I do think so.

Q. Any grade other than the heart you would consider of less value? A. Well, I always consider sap at less value than heart.

Q. About what percent of this was sap? A. Well, I could not tell you. I only cut enough for the heart framing, sills and such as that- of course I do not know what percentage of that was heart.

Q. The extreme value of all the timber which you cut and removed from the land, you tell the court is fifty dollars; that the underbrush which you cut down in making paths, if it had any special value, you do not know how much it is; now how is the property damaged from two to three hundred dollars by reason of cutting fifty dollars worth of timber from it? A. Well, as I look at it, by cutting the best out, why it is for the looks, it would look that there is five times as much cut as there actually is.

Q. If the fifty dollars worth of timber, which had been cut from the land, had have remained thereon, it would have operated as a deception and caused some person to have paid two hundred and fifty or three hundred dollars more for the lumber than he otherwise would have paid? A. I think it quite likely.

RE-DIRECT--Mr. Holland.

Q. In answering Mr. Watkins' question about damages to the salability to this lumber as a whole, please state, in your own words, fully, how it is brought about that seeing stumps about in the woods where the best trees have been cut, injures the property to the extent which you have stated, and please state whether or not it

does so injure the property? A. Why I think with the stumps about over it the woods being thinned out, why it would injure the sale of it. In buying and selling timber it does so injure the property.

RE-CROSS-Mr. Watkins:

Q. Are stumps, found upon land, only evidence of the fact that stumps have been there? A. sure it is.

Q. Then the absence of the tree only lessens the value of the land according to the number of trees that have been cut? A. I think not, in every case.

And further this deponent saith not.

Mr. J. Frank Joyner being duly sworn, deposes and says:

Q. Please state your name, age, residence and occupation? A.

J. F. Joyner, am forty two years of age, live in Suffolk, Virginia and am a lumber inspector.

Q. Please state, fully, what damage was done, if any, to the Jethro Butler property, by Mr. Jethro Holland in having timber cut there from, stating the amount and value of the timber cut and removed, and the damage done to the property by such cutting and removal? A.

(question objected to for the reason that there is no evidence to show that Mr. Jethro Holland has had any timber cut from the land)

A. I dont know anything about the cutting-I have not seen the land since the timber was cut off.

Q. How long have you been in the timber business? A. I have been in the timber business about sixteen years.

Q. Are you familiar with the timber values and land values in the vicinity of the Jethro Butler farm? A. Yes.

Q. Show how you are familiar with it and why? A. I have walked over this tract of timber several times.

Q. Have you bought and sold timber in Isle of Wight County, recently? A. Yes sir.

Q. Do you, or do you not constantly estimate the value of tracts of standing timber which are bought and sold on your judgment? A. Yes sir.

Q. You have heard the testimony of Mr. C. C. Redd as to what timber and how much he cut, and how he did it-if that testimony be true, state what was the value of the timber he cut and removed, and also the damage to the timber and land as a whole by reason as to such cutting and removal? A. Well I should say the value of the timber in 1916 (October) was easy worth ten dollars per thousand; as to the damage to the rest of the land and timber- it ought to damage it at least a hundred and fifty dollars, in addition to the value of the timber.

Q. How do you account for that one hundred and fifty dollars damage? A. Well in cutting it leaves the woods ragged, sometimes causes falling of trees into live timber-causes the bugs to get in it.

Q. Will timber sell for as much when it has been picked over in that way as will if not- and state why it will not if it will not?

A. You cannot log scattered timber as cheap as you can where it is thick.

Q. State whether or not, or what kind of an impression, it makes to a prospective purchaser to see timber that has been picked over in the way this has? A. It makes a poor impression.

Q. Can you state what percentage of the valuation of the timber as a whole that you would deduct in estimating a tract of timber cut over as stated by Mr. C. C. Redd, this this has? A. That would depend on the conditions of the woods.

CROSS--Mr. Watkins.

Q. Mr. Joyner, I understand that you are a timber surveyor or es-

timator? A. Yes sir.

Q. Did you ever estimate the timber on the Jethro Butler place?

A. Yes sir

Q. About how much will that yield per acre? A. I do not know the number of acreage-I estimated it as a whole.

Q. How can you estimate as a whole without knowing the acreage?

A. It is only guess work.

Q. Then your answers to Mr. Holland's questions are purely guess work-are they not? A. No sir.

Q. If a person should cut five thousand feet of standing timber upon six acres of land-especially from the Jethro Butler land-about how much standing timber would be left on those six acres?

A. I couldn't tell you.

Q. Do you mean to tell the court that the cutting down of timber trees in woodland will get the balance of the trees in the woods standing buggy? A. Sometimes they do and sometimes they don't.

Q. You predicate your opinion as to the damage to this property upon the presumption that the standing timber left upon the land has or may become buggy by reason of the cutting out of the five thousand feet which Mr. Redd testifies that he has cut from this tract? A. If the bugs do not get in it or have not got in it the damage will be probably a hundred dollars. If they do get in it it will be a hundred and fifty dollars damage.

Q. Mr. Joyner, I understand that you have not been upon this land since the timber was cut by Mr. Redd? A. No sir.

Q. What is a fair value of small and sapling pines where they have grown as thick as it is possible to grow, upon land in Isle of Wight County? A. Just according to what you can get for them in wood.

Q. Is it not true that the little pines, such as the farmers make pea sticks of, and the little oak bushes that grow along in the woods have no market value? A. Yes, they have a value.

Q. What is the market value of that character of stuff? A. Well, the depends whether you want it to stand there to grow or to cut it down: stuff like that brings about six dollars a cord.

Q. Will you tell the court, please, where the little oak underbrush and the small pine saplings may be sold for six dollars a cord? A. Yes sir, oak saplings and pea sticks are selling for six dollars a cord in Suffolk right now.

Q. About how many cords of pine saplings and oak underbrush can be cut per acre from the Jethro Butler tract? A. I could not tell you.

Q. Bearing in mind the testimony of Mr. Redd, about how many cords did he destroy of that character of stuff in removing the five thousand feet of timber? A. I cant tell.

And further this deponent saith not.

WITNESSES FOR THE DEFENDANTS:

Jethro Holland being duly sworn, deposes and says:

Q. Please state your name, age, residence and occupation?

A. Jethro Holland, live in Isle of Wight County, Virginia, I am thirty two years of age, and am a farmer.

Q. Mr. Holland, you are the Jethro Holland referred to here as having cut timber from the land of Jethro Butler-will you state, please, by what authority you cut this timber, and for what purpose it was cut, and what you gave in exchange for it?

A. Yes I cut the timber, or had it cut- I cut it under Mrs. Malinda Butler's instructions- I bought some wire fence and put up there- she just exchanged some lumber for wire fence.

Q. How much wire fencing did you put up? A. Six rolls.

Q. What was the value of it? A. I bought some of it cheaper than I did others- I guess it cost me somewhere around seventy or seventy five dollars- eighty at the outside-guessing at it.

Q. Did you put this fence up at the direction of Mrs. Malinda Butler, the life tenant? A. Yes sir.

Q. The actual cost of the fence was from seventy five to eighty dollars-about how much time and labor was required to put it up? A. I suppose it took me about ten or twelve days to put it up, with some one to help me all the time-I had a man hired and it took that man and myself ten or twelve days to put it up.

Q. Mr. Holland, what kind of stuff did Mr. Tedd cut in going through the woods, to make paths to haul this timber out? A. I dont see that he cut anything. The path he got the lumber from side of was already cut-all he had to do was to drive out there and get the lumber.

Q. About how much of that lumber was No. 1 and what is No. 2.

(question objected as witness has not qualified to answer this question)

A. Well, I suppose there was somewhere around a thousand feet of it No. 1, and the rest of it No. 2.

Q. Mr. Holland, have you ever had any experience in timber or lumber? A. No sir, I know rotten from sound.

Q. Was any of this timber rotten? A. Yes-some of it was doty.

CROSS- Mr. Holland.

Q. How long have you been cultivating this farm? A. Somewhere about twelve years.

Q. How much, if any, rent, do you pay for it? A. I just taken care of my grand-mother except the last two years I stayed there, when she stayed over to my father's -then I gave her so much, probably a couple hundred dollars a year.

Q. When did you start and when did you stop cutting this timber?

A. I do not know-some time in the Fall of 1916.

Q. Roll of wire No. 1, when did you put that up? A. I have been putting up wire fence ever since I have been there-I would take down the rails and put up wire as it needed it.

Q. Can you give the court any month or year in which you put up one of these rolls? A. I put it up along in the Spring of the year.

Q. How much did you put up in the Spring of 1916? A. 1916?--I

think I put op two rolls? .

Q. Who did you buy it from? A. I think I bought it from Mr. Saunders at Carrsville, not during 1916, I bought wire at different times for cross fences and took down the rails and put thet up.

Q. When did you buy this two rolls from Mr. Saunders that you put up. A. I think I bought it in 1915.

Q. When, from whom and for what price, did you buy the other four rolls? A. I bought that from Mr. Rhodes, at Windsor- I will not say I bought all of it from him-I think I got a roll from Mr. Ike Luke at Holland.

Q. Did you charge your grand-mother up with this wire when you bought it? A. Sure I did.

X
Q. Please produce your original book where you kept this account. A. I did not bring it with me-I can do it though.

Q. Why did you not call on your grand-mother for some of this money before? A. Because I hadn't needed it.

Q. At the time you had this timber cut you knew that Mr. C. P. Holland had bought Mrs. Laura V. Joyner's interest, did you not? A. No sir, I didn't know it.

Q. You had heard so, had you not? A. Yes sir, I heard he had.

Q. Then the truth is you sut this timber because Mr. Holland had bought out one of the heirs? A. No sir-no sir.

Q. There had been conversations between Mr. C. P. Holland and your father about selling his interest, had there not? A. ~~Yes~~ I could not tell you about that.

Q. You cut this timber to build a store at Walters, did you not- a dwelling I mean, A. No sir, I did not cut it to build any dwelling at Walters.

Q. What did you cut it for? A. I cut it to build a dwelling-not at Walters but at Collosse.

Q. If you had not been stopped by an injuction how much of that timber were you going to cut? A. Just enough to build the house.

Q.

just to cover the cost of the wire fence.

Q. How many thousand feet were you going to cut? A. I was to pay her four dollars a thousand stumpage for the lumber, and I was going to cut enough to pay for the wire fence.

Q. How many more thousand would it take to finish paying for the wire fence? A. I guess it would take something like-probably twenty thousand feet all together.

Q. Can you give the Court any other reason for waiting till after Mr. Holland had bought this property in 1916, to cut this lumber?

A. I was going to leave there then and I needed my money. I told you I did not know Mr. C. P. Holland had bought an interest in the property-I just heard so.

Q. Was there not a plenty of small timber for rails without cutting the best. A. Not that would split-you would have to pick the splitting trees.

Q. Have you used all the small trees cutting rails? A. I cut all the tress I cut for wood or rails in splitting timber whether it was large or small.

Q. Whose timber did you consider you were cutting when you cut this five thousand feet of timber? A. It looked like it ought to belong to my grand-mother. She was using it for farm purposes there.

Q. You considered that you were buying it from your grandmother at four dollars a thousand? A. Yes sir.

Q. And if you get the chance you are going to go there and cut the other fifteen thousand feet to finish your bill, are you not, if there is no legal proceeding to stop you? A. No sir-I say I want pay for the wire fence I have put up there. If she will pay me for the wire fence it is all right.

And further this deponent saith not.

Jethro Holland

Q. M. W. Darden being duly sworn, deposes and says:

Please state your name, age, residence and occupation? A. my name is M. W. Darden, I am thirty eight years of age, live in Isle of Wight County, and am a farmer.

Q. Do you know anything of the timber that has been cut, by Mr. Jet Holland, from the Jethro Butler tract of land? A. Yes sir, I know where the lumber was cut at.

Q. How much area of the land was cut over? A. I should judge not over two acres of it.

Q. What, in your opinion, was the value of the timber he cut?

A. Well, I expect about eight dollars a thousand- that is what I bought some last year for myself.

Q. Was the timber you bought of the same grade as that which Mr Holland had cut? A. Yes sir- I bought it from Mr. Dickie Holland some sills for a barn.

Q. Do you know anything about how much he had cut? A. Why nothing more than I have heard.

Q. Do you know of any wire fencing that Mr. Jethro Holland has put up about that place? A. Yes sir.

Q. How much has he put up? A. Somewheres about, I should suppose, about six rolls.

Q. When did he put it up? A. Why he put-it has been put up there you might say in the past three or four years.

Q. How much do you estimate it would cost to put that fence up?

A. Why, I have paid two dollars a roll to have it stretched, I furnish the post and put them down and he put up the fence and nailed it. He had to make three pulls on the roll he put up.

Q. How many pulls did Mr. Holland to make to the roll? A. There eight pulls made in what he put up all together.

Q. What do you estimate the cost putting up the post in addition to stretching the wire fence? A. I would not go and get as many post as is there and put them up for less than fifty dollars?

Q. Is it not customary for a tenant to get out the post and put up all wire fencing that is furnished by the land lord?

A. Why yes sir, or either maul rails and put the fence up.

Q. Then this, of course, would allow Mr. Holland nothing for putting up the fence? A. Yes sir.

And further this deponent saith not.

(signature waived)

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 certify that the foregoing depositions of C. P. Holland, G. F. Rasm, L. F. Joyner, Jethro Holland and H. F. Dargen, were taken before me, on this 10th day of June, 1917, to be read as evidence in a certain suit in chancery in the Circuit Court of the County of Isle of Wight now pending, in which C. P. Holland is complainant, and Malinda Holland and others are defendants.

Given under my hand this 10th day of June, 1917.

A. S. Johnson Comr.

Clerk's Office
of Isle of Wight County
Isle of Wight, Va.

COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF THE COUNTY OF ISLE OF WIGHT, GREETING:

We command you that you summon Malinda Butler, Mary Elizabeth Holland, Jason Holland, Jethro Holland, and C. C. Redd, to appear at the Clerk's Office of the Circuit Court of the County of Isle of Wight, at the rules to be holden therefor, on the 1st. Monday in November, 1916, to answer a bill in chancery exhibited against them by Carlyle P. Holland. And have then and there this writ.

Witness, A. S. Johnson, Clerk of said Court, at the Court-house, this 18th. day of October, 1916.

Teste, A. S. Johnson Clerk.

Hugh L. Holland. p.q.

An injunction order has been granted said complainant, in the above entitled cause, restraining and prohibiting Mary Elizabeth Holland, Jason Holland, Jethro Holland, C.C. Redd, and Malinda Butler, their agents and employees, from cutting or removing any trees or timber standing, lying or being on the following real estate, to-wit: All that certain tract of land near Boaz, in the County of Isle of Wight, in the State of Virginia, containing two hundred acres, more or less, and bounded on the North by Miss Lou Darden, on the East by the lands of Woodville Darden, on the South by the lands of Jason Holland, on the West by the lands of Hardy Darden, being known as the Jethro Butler Home Place, and being possessed by the said Jethro Butler at the time of his death.

The bond required by the injunction order has been duly executed.

Teste, A. S. Johnson Clerk.

6

Holland

n 1 Qy No 250

Butler it was

Subpoena

Returned special
Oct 28/1916.

Not finding the within named Jason Holland at his usual place of abode I executed the within summons and injunction order by serving a true copy of the same on Mary Elizabeth Holland for the said Jason Holland, she the said Mary Elizabeth Holland being the wife of the said Jason Holland and a member of the family over the age of sixteen years, and I explained to her the purport of same; Not finding the within named Jethro Holland at his usual place of abode I executed the within summons and injunction order by serving a true copy of the same on Mrs Maud Holland for the said Jethro Holland, she the said Mrs Maud Holland being the wife of the said Jethro Holland and a member of the family over the age of sixteen years, and I explained to her the purport of same; and I further executed the said summons and injunction order by serving a true copy of the same on Malinda Butler, Mary Elizabeth Holland and C. C. Redd, ^{in person} all of the above done in the County of Isle Of Wight this the 19th day of October 1916.

R. Augustus Edwards.
Sheriff of Isle Of Wight County.

Malinda Butler et als,

ads

Carlyle P. Holland,

The plea and answer of Malinda Butler, a defendant to the bill of complaint exhibited against her and others by C.P. Holland in the Circuit Court of Isle of Wight County, Virginia:

This defendant, by protestation, not confessing or acknowledging all or any part of the matters and things in the said bill of complaint to be true, in manner and form as the same is therein set forth, for plea, nevertheless, to the said bill, doth plead and aver, that the court ought to dismiss the said bill for the following reasons:

FIRST; That the plaintiff has only the equity of redemption of a contingent remainder in the subject matter of the suit:

SECOND, That the plaintiff is not seized of any interest in the said subject matter of the suit except the equity of redemption in a contingent remainder.

WHEREFORE this defendant prays judgement of this court, whether she shall be compelled to make further or other answer to the said bill, and prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

And for answer to the said bill, or so much thereof as she is advised that it is material to answer, the said defendant reserving to herself the benefit of all just exceptions to the said bill, answers and says:

(1) Allegations 1, 2, 3 are true, except that C.P. Holland has only one third of a contingent remainder, and only the equity of redemption in that:

2, That allegation 4 is true in part; that Jethro Holland is cutting some timber on the said land with the consent of your respondent, but in exchange for improvements made upon the land in the building of fences and other improvements made by the said Jason Holland on the said land.

3, The 5th allegation is not denied.

4, the 6th allegation is denied.

5, The 7th.allegation is denied.

Your respondent states that she is old,that her support comes from the rent of the said farm;that ~~she~~ ^{she} cannot afford to spend her meagre income to care for the fences and buildings, and that she is advised of counsel that she had a right to use the timber on said land for farm purposes,even to the extent of exchanging standing timber for wire fencing,or for anything essential to the proper care and preservation of the estate.

And now having fully answered your respondent prays to be hence dismissed with her reasonable cahrges and costs in this behalf so wrongfully sustained.

W. H. Markes p.d.

Malinda Butler
By Counsel

State of Virginia,

Isle of Wight County,to wit:This day personally appeared before me, _____ a _____ in and for the county aforesaid, Jas.A. Johnson,attorney in fact for Malinda Butler and made oath that the things and matters stated in the answer above written are true so far as stated of his own knowledge, ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ and so far as made from knowledge of information from others he believes to be true.

Given under my hand this 4th.day of December 1916.

Le P. Halland
M^{rs} August
Wahlen in Butler et als

1917

Nov. 5

Filior Bdr.

VIRGINIA:

In the Circuit Court of Isle of Wight County:

Carlyle P. Holland,

Plaintiff.

Vs.

Malinda Butler, Mary Elizabeth
Holland, Jason Holland, Jethro
Holland, and C. C. Redd,

Defendants.

To the Honorable Circuit Court of Isle of Wight
County:

Your complainant, Carlyle P. Holland, respectfully
represents to the Court:

(1) That Jethro H. Butler died seized and possessed
of the following tract of land: All that certain tract of land
near Boaz, in the County of Isle of Wight, in the State of
Virginia, containing Two Hundred (200) acres, more or less, and
bounded on the North by Miss Lou Darden, on the East by the lands
of Woodville Darden, on the South by the lands of Jason Holland,
and on the West by the land of Hardy Darden; and,

(2) The said Jethro H. Butler died leaving a will,
which was probated in the Clerk's Office of the Circuit Court
of Isle of Wight County, Virginia, on June 3, 1901, a copy
of which said will is herewith filed and prayed to be taken
as a part of this bill; under said will, said testator devised
the above tract of land to his wife, Malinda Butler for her
natural life and at her death to Laura Virginia Joyner (who
was Butler), Mary Elizabeth Holland (who was Butler), and
Abby Lillian Harrison (who was Butler); the said Laura Virginia
Joyner, by the deed of herself and J. E. T. Joyner, her husband,

conveyed her one-third (1/3) interest in said tract of land, subject to said widow's ^{life estate} ~~deed~~, to said Carlyle P. Holland, a copy of which said deed is herewith filed and prayed to be taken as a part of this bill; that said Abby Lillian Harrison, since the death of said testator, has sold and conveyed her one-third (1/3) interest in said property, subject to said widow's ^{life estate} ~~deed~~, to Jason Holland; and said Mary Elizabeth Holland who is the wife of Jason Holland still owns her one-third (1/3) interest in said property devised as aforesaid; and,

(3) Malinda Butler owns a life estate in said property Carlyle P. Holland, Mary Elizabeth Holland, and Jason Holland, each own a one-third (1/3) undivided interest in said property, subject to said widow's life right; and,

(4) That Jethro Holland, who is the son of Mary Elizabeth Holland, and Jason Holland, has been cutting, is now cutting, and intends to continue cutting standing timber off of said property, using as one of his agents and employees,

together with others, one C. C. Redd, ^{that this is a continuing trespass} ~~and that Malinda Butler~~

whole to bring
its value

^{Jethro Holland and C. C. Redd are insolvent. The timber is original growth and one of the chief values of the property and would have to be sold as a}
(5) That said Jethro Holland lives near his parents

and near his grand-mother, Malinda Butler, as aforesaid, and lives on the above described property, and he is cutting said timber under the authority of, or with the consent of said Jason Holland, Mary Elizabeth Holland, and Malinda Butler; and,

(6) That the timber that is being cut by said Jethro Holland and others is not necessary for such repairs on said property as the law would allow a life tenant to make out of the timber on said property; in fact, your complainant is informed and believes that said timber is being cut as aforesaid for the purpose of building a house not on said property, and the logs are now being hauled away for the manufacture of said

timber; and,

(7) That said defendants, in cutting and removing said timber and trees have already greatly damaged your complainant in his estate in said property, the amount of which he has been unable to ascertain.

In tender consideration whereof, your complainant prays that the said Malinda Butler, Mary Elizabeth Holland, Jason Holland, Jethro Holland, and C. C. Redd may be made parties defendant to this bill and required to answer the same, but not on oath, answer under oath being hereby expressly waived; that proper process may issue; that said Malinda Butler, Mary Elizabeth Holland, Jason Holland, Jethro Holland, and C. C. Redd, and all other agents and employees be restrained and enjoined from cutting any more trees, or timber, from said property; that said defendants be required by the Court to account for the damage they have done and to pay unto your complainant any and all damages that he may have sustained or may yet sustain from the cutting and removing said timber or trees; that all proper orders may be entered and accounts directed and taken; that your complainant may have all such further, other, and general relief as the nature of his case may require, or to equity may seem meet.

And he will ever pray, etc.

Angela Holland Jr.

State of Virginia,

City of Suffolk, to-wit:

Carlyle P. Holland
Complainant

Carlyle P. Holland, complainant in the foregoing bill, being first duly sworn deposes and says that the facts stated in the foregoing bill are, so far as made of his own

knownedge are true, and so far as made upon the knowledge or
information of others, he verily believes them to be true.

Carlyle R. Holland

Subscribed and sworn to before me this 17th day of
October, 1916.

Hugh J. Holland

Notary Public.

My commission expires on the 9th day of October, 1919.

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Carlyle P. Holland

vs. Bill of Complaint. 750

Malinda Butler and others.

Filed Oct 18/1916

1st November Rules 1916

Pro filed. Process returned exoc-
tor. Deceit mis-

2nd November Rules 1916

Defendants not appearing.
Cause set down for hear-
ing

HUGH L. HOLLAND
ATTORNEY AT LAW
SUFFOLK, VIRGINIA