

1918-001

Chancery Causes: W.

Dale of Wight County

W.

J. Joyner

vs A.

W.

J. Joyner

vs A.

J. Pearce, Jesse Whitley & Hattie Whitley
J. Pearce vs

Folder 1

253

other surnames: TURNER
Gwaltney, Johnson, Hall,
Edwards, Saunders

W. J. Joyner

v. 7 Cy 253

A. J. Pierce et Als.

1st November rules 1916Recd filed - Process returned
executed - Decees nisi2nd November rules 1916Defendant not appear-
ing. Cause set down
for hearingJ. R. SAUNDERS
Attorney at Law
PINNER BUILDING
Suffolk, Va.

the said Jesse Whitley and Natur Whitley, his wife,
may be required to make a deed of conveyance to your said
complainant, and accept from your said complainant the re-
mainder of the purchase money for the said farm; that the
said A. J. Pierce may be required to accept from your said
complainant the money to reimburse him for what he has paid
to the said Jesse Whitley, together with all of his cost and
expenses in purchasing the land as the agent of your said
complainant, and to turn over to your said complainant what-
ever contract and agreement he has had with the said Jesse
Whitley about purchasing the within described land, and that
your said complainant may have all such further and other and
general relief in the premises as the nature of his case may
require or to equity and good conscience may seem meet.

W. J. Jones
W. J. Jones

over to him the contract with the said Jesse Whitley, although your said complainant has repeatedly requested him ~~to~~ to do.

Third: Your complainant further says that he has all the money to pay the said A. J. Pierce every penny that he has paid on the said land, together with all cost and expenses incurred in purchasing the land, also the money to pay to the said Jesse Whitley the remainder of the purchase money of the said land, and that his agreement with the said A. J. Pierce was a bona fide transaction and in good faith; that the said A. J. Pierce bought the said land as the agent of the said W. J. Joyner, and that whatever contract the said Pierce has made with the said Jesse Whitley is the contract of your said complainant.

Fourth: Your complainant further says that the said A. J. Pierce came to him and agreed to buy the said land from the said Jesse Whitley as the agent of your said complainant; that at that time, the said A. J. Pierce intended to and did commit a fraud upon your said complainant, and that your said complainant relied upon the promise of the said A. J. Pierce that he would buy the said land from the said Jesse Whitley as your complainant's agent; that these representations were fraudulent and false and intended to deceive and defraud your said complainant; that your said complainant relied upon them to his injury.

Inasmuch as your complainant is remediless in the premises save by the aid of a court of equity, your complainant prays that the said A. J. Pierce, ~~Dana Pierce~~, Jesse Whitley and Hattie Whitley may be made parties defendants to this suit, and required, but no under their oaths, to answer this bill, the oaths being expressly waived, that proper process may issue, that all proper orders and decrees may be entered ^{and inquiries directed} that

that with the said TWO THOUSAND (\$2000.00) DOLLARS and what other money your said complainant could raise, he was in a position to pay the entire purchase price of the said farm, and set to work, together with some of his friends, to get from the said Jesse Whitley the best price possible; that sometime about the second Monday in March, 1916, the said A. J. Pierce came to your complainant and told him that he, the said A. J. Pierce, could buy the said farm from the said Jesse Whitley cheaper than your complainant could, and requested that your said complainant should have no further negotiations with the said Jesse Whitley, and that he, the said A. J. Pierce would buy the said farm from the said Jesse Whitley as your complainant's agent, taking the deed in the name of your said complainant, and further agreeing to help your said complainant by loaning him the said TWO THOUSAND (\$2000.00) DOLLARS with which to pay for the land; that on or about the second Monday in March, 1916, the said A. J. Pierce did purchase the said land under contract from the said Jesse Whitley in the name of the said A. J. Pierce, and telling the said Jesse Whitley at the time that your complainant wanted to cut the timber from the said land, but that he should not do so.

Second: That your complainant says that it was his agreement with the said A. J. Pierce, at the time the said Pierce agreed to loan him the said TWO THOUSAND (\$2000.00) DOLLARS, that your complainant should have the right to cut the timber from the said land in order to pay the said A. J. Pierce his money, and that now, the said A. J. Pierce is about to take a conveyance of the said land in his own name, and claims it as his own contract and property and refuses to make a deed to the same to your said complainant or turn

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

W. J. Joyner.....Complainant

vs. IN CHANCERY.

A. J. Pierce, ~~W. J. Joyner~~, Jesse Whitley and Hattie Whitley
his wife.....Respondents

TO THE HONORABLE JUDGE OF THE SAID COURT:

Your complainant, W. J. Joyner, respectfully
showeth unto your honor's court the following case:

First: That he was negotiating with the said
Jesse Whitley for the purchase of a certain farm in Isle
of Wight County, Virginia, which is described as follows:
*all that certain tract or parcel of land lying, being and situated in
the of Wight County, Virginia, and containing there hundred and
fifty acres, more or less, and bounded and described as follows:
on the north by A. J. Pierce ^{and S. J. Joyner}, on the south by Anna Jones, on
the east by A. J. Pierce and on the west by Black Water River,*

and that the said Jesse Whitley was willing to sell the
said farm to your complainant at the price of TWENTY FIVE
HUNDRED (\$2500.00) DOLLARS, but that your said complainant
was trying to get from the said Jesse Whitley the best price
he could. Your complainant did not have all of the money
with which to purchase the said farm, and went to the said
A. J. Pierce to get the said A. J. Pierce to loan him some
money; that the said A. J. Pierce agreed to loan your said
complainant the sum of TWO THOUSAND (\$2000.00) DOLLARS;

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

W. J. JOYNER,

v. 253

A. J. PEARCE, JESSE WHITLEY,
AND HATTIE C. WHITLEY, his
wife.

SUPPLEMENTAL BILL.

Filed June 21 8. 1917

JOHN N. SEBRELL, JR.
ATTORNEY AND COUNSELLOR AT LAW
SEABOARD BANK BUILDING
NORFOLK, VIRGINIA

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

W. J. JOYNER,

v.

)
(SUPPLEMENTAL BILL.
)

A. J. PEARCE, JESSE WHITLEY AND

HATTIE C. WHITLEY, his wife.

TO HONORABLE B. D. WHITE, Judge of the said Court:

By way of amended and supplemental bill, your complainant,
W. J. Joyner respectfully shows unto your Honor, as follows:

1. That heretofore, to-wit, on the _____ day of _____,
1917, your complainant filed his original bill in the said court,
as follows:

"Your complainant, W. J. Joyner, respectfully showeth
unto your honor's court the following case:

First: That he was negotiating with the said Jesse
Whitley for the purchase of a certain farm in Isle of Wight
County, Virginia, which is described as follows:

All that certain tract or parcel of land lying, being
and situated in Isle of Wight County, Virginia, and contain-
ing Three Hundred and Fifty acres, more or less, and bounded
and described as follows: On the North by the lands of A. J.
Pierce, (formerly belonging to O. L. Batten) and S. J.
Crocker, on the South by Anna Turner, on the East by the
lands of A. J. Pierce, (formerly belonging to O. L. Batten)
and on the West by the Black Water River, and being the same
land conveyed by A. J. Pierce by deed from Jesse Whitley and
Hattie C. Whitley, his wife.

And that the said Jesse Whitley was willing to sell the
said farm to your complainant at the price of TWENTY-FIVE
HUNDRED (\$2500.00) DOLLARS, but that your said complainant
was trying to get from the said Jesse Whitley the best price
he could.

Your complainant did not have all of the money with which to
purchase the said farm, and went to the said A. J. Pierce
to get the said A. J. Pierce to loan him some money; that
the said A. J. Pierce agreed to loan your said complainant
the sum of TWO THOUSAND (\$2,000.00) DOLLARS: that with the
said TWO THOUSAND (\$2,000.00) DOLLARS and what other money
your said complainant could raise, he was in a position to
pay the entire purchase price of the said farm, and set to

work, together with some of his friends, to get from the said Jesse Whitley the best price possible;

That sometime about the second Monday in March, 1916, the said A. J. Pierce came to your complainant and told him that he, the said A. J. Pierce, could buy the said farm from the said Jesse Whitley cheaper than your complainant could, and requested that your said complainant should have no further negotiations with the said Jesse Whitley, and that he, the said A. J. Pierce would buy the said farm from the said Jesse Whitley as your complainant's agent, taking the deed in the name of your said complainant, and further agreeing to help your said complainant by loaning him the said TWO THOUSAND (\$2,000.00) DOLLARS with which to pay for the land; that on or about the second Monday in March, 1916, the said A. J. Pierce did purchase the said land under contract from the said Jesse Whitley in the name of the said A. J. Pierce, and telling the said Jesse Whitley at the time that your complainant wanted to cut the timber from the said land, but that he should not do so.

Second: That your complainant says that it was his agreement with the said A. J. Pierce at the time the said Pierce agreed to loan him the said TWO THOUSAND (\$2,000.00) DOLLARS that your complainant should have the right to cut the timber from the said land in order to pay the said A. J. Pierce his money, and that now, the said A. J. Pierce is about to take a conveyance of the said land in his own name, and claims it as his own contract and property and refuses to make a deed to the same to your said complainant or turn over to him the contract with the said Jesse Whitley, although your said complainant has repeatedly requested him so to do.

Third: Your complainant further says that he has all the money to pay the said A. J. Pierce every penny that he has paid on the said land, together with all cost and expenses incurred in purchasing the land, also the money to pay to the said Jesse Whitley the remainder of the purchase money of the said land, and that his agreement with the said A. J. Pierce was a bona fide transaction and in good faith; that the said A. J. Pierce bought the said land as the agent of the said W. J. Joyner, and that whatever contract the said Pierce has made with the said Jesse Whitley is the contract of your said complainant.

Fourth: Your complainant further says that the said A. J. Pierce came to him and agreed to buy the said land from the said Jesse Whitley as the agent of your said complainant; that at that time, the said A. J. Pierce intended to and did commit a fraud upon your said complainant, and that your said complainant relied upon the promise of the said A. J. Pierce that he would buy the said land from the said Jesse Whitley as your complainant's agent; that these representations were fraudulent and false and intended to deceive and defraud your said complainant; that your said complainant relied upon them to his injury.

Fifth: Your complainant further says that since the institution of this suit, to-wit, on or about the 30th day of December, 1916, the said Jesse Whitley and wife did convey the said tract of land, above described, to the said A. J. Pierce by deed duly recorded in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia; that the said Jesse Whitley has had notice of the said suit, and a lis pendens was docketed in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia, prior to the said conveyance.

Your said complainant says that he had made repeated demands upon the said A. J. Pierce to make him a conveyance of the said land or to turn over to him the contract made by the said Pierce with the said Whitley, but that the said A. J. Pierce has wholly failed and refused to make a deed to your said complainant and take his money, and does now fail and refuse so to do, but states that if your said complainant gets the said lands he must do so by law. Your complainant says he is now ready to pay all the money and take a deed for the land.

Your complainant further says that he fears that the said A. J. Pierce will make a conveyance of the said lands for the purpose of defeating the claim of your said complainant and if your said complainant waits until the termination of this suit the said lands will be in the hands of third parties and asks that any conveyance of the said lands be enjoined until the termination of this suit.

Your complainant is further informed that since the institution of this suit Emma Pierce, wife of A. J. Pierce, has died, but that she owned no interest in the said lands save and except a contingent right of dower.

Inasmuch as your complainant is remediless in the premises save by the aid of a court of equity, your complainant prays that the said A. J. Pierce, Emma Pierce, Jesse Whitley and Hattie C. Whitley may be made parties defendants to this suit, and required, but not under their oaths, to answer this bill, the oaths being expressly waived; that proper process may issue; that all proper orders and decrees may be entered; inquiries directed and accounts taken; that the said Jesse Whitley and Hattie C. Whitley, his wife, and A. J. Pierce, either or all of them, may be required to make a deed of conveyance to your said complainant, and accept from your said complainant the purchase money for the said farm; that the said A. J. Pierce may be required to accept from your said complainant the money to reimburse him for what he has paid to the said Jesse Whitley, together with all of his cost and expenses in purchasing the land as the agent of your said complainant, and to turn over to your said complainant whatever contract and agreement he has had with the said Jesse Whitley about the within described land; that the said A. J. Pierce may be enjoined and restrained from making any conveyance of the said lands until the termination of this suit; that the said deed made by the said Jesse Whitley and Hattie C. Whitley to the said A. J. Pierce may be declared to have been made for the benefit of your said complainant and that the said court may decree that the said A. J. Pierce made a deed of conveyance for said lands to your said complainant, and receive the purchase price of the said lands plus the expenses; that the court may declare that a trust relation existed between the said A. J. Pierce and the said complainant and grant your said complainant the said land, together with such damages as will compensate him for, or resulted to him, from the failure of the said A. J. Pierce to comply with his agreement, and turn over to or convey said lands to said complainant; and that your said complainant may have all such further, and other, and general relief in the premises as the nature of his case may require or to equity and good conscience may seem meet."

2. That so far as your complainant is advised no answers making denial of the allegations of the said bill have been filed by either of the parties to the said bill, who thereby confess the allegations contained therein; that depositions on behalf of the complainant have nearly been completed, and that so far as the complainant is concerned the case made in said bill is practically ready for hearing and may be heard in a very brief space of time.

3. That the complainant herein reiterates the allegations of the former bill and adopts the same as a part of this bill.

4. That since the filing of the said bill the said A. J. Pearce undertook to and did institute in the Circuit Court of Isle of Wight County, on the law side thereof, an action of unlawful entry and detainer against your complainant who was in possession of the said property and had been in possession thereof for about years. That although the matters involved in the said common law action of unlawful detainer were also involved in the said bill, before the said chancery cause could be prepared for hearing, the said A. J. Pearce obtained a trial of the action of unlawful detainer and procured a judgment against complainant for the possession of the said land. Your complainant was unable to defend the said common law action by reason of the equitable character of his title, and the judgment in the action of unlawful detainer aforesaid was given without opportunity or right to your complainant to make any defense thereto. Your complainant is advised that a writ of possession has been issued on said judgment and that unless restrained by this Honorable court will be forthwith executed and your complainant will be deprived of the possession of his property to which he has an equitable right and title, as shown by the allegations hereof.

5. That your complainant in the exercise of his right of ownership and possession of the said land has gone to great expense inconvenience and trouble in improving the said property, and in

planting thereon a crop which is now growing, all of which will be lost to your complainant if he is required now to surrender the possession of the said land, thereby causing him great damage, while no injury of any kind could be occasioned the defendant, A. J. Pearce, or other defendants in this suit if the execution of the writ of possession should be restrained.

6. Your complainant is advised that he has a full right to the property, and that the said A. J. Pearce is in fact simply a trustee, and that a court of equity will protect the interest of complainant and carry out and give effect to the original intention of the parties; that the said A. J. Pearce represented to your complainant that he would buy the said property for complainant; that on account of such representation and promise, the said complainant at the special request of the said A. J. Pearce refrained from making further effort to purchase the said land and that the purchase by said Pearce according to the principles of equity and good conscience, under the circumstances of the case, was for and on behalf of your complainant, and that now to permit the said A. J. Pearce to take advantage of the trust relation thus existing and fraudulently appropriate the property to his own use and to dispossess the said complainant would be a gross fraud and great wrong.

IN TENDER CONSIDERATION WHEREOF, and inasmuch as your complainant is without remedy save in a court of equity, he prays that he may be permitted to file this amended and supplemental bill, and that the said A. J. Pearce, Jesse Whitley and Hattie C. Whitley be required to answer the same, though answer under oath is hereby expressly waived; that an injunction may be awarded restraining and enjoining the said parties, their agents, attorneys, representatives, and all other persons from issuing or executing any writ of possession as to the said property, or from any interference whatever with the possession of the said complainant until his rights

may be adjudicated in a court of equity, and that all such other, further, general and special relief may be granted your complainant as the nature of his case may require or to equity shall seem meet.

And your complainant will ever pray.

W. J. Joyner

STATE OF VIRGINIA,

County of Norfolk, to-wit:

I, J. M. Menden, a Notary Public in and for the County of Norfolk, in the State aforesaid, hereby certify that W. J. Joyner, whose name is signed to the foregoing bill, this day personally appeared before me in my County and State aforesaid, and made oath that the statements contained therein so far as made of his own knowledge are true, and so far as made upon information derived from others he believes to be true.

Given under my hand this 22nd day of June, 1917.

J. M. Menden
Notary Public.

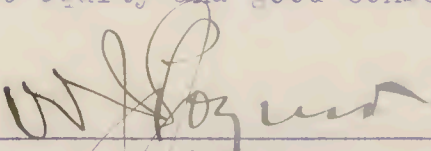
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ATTENDED BILL
of
COMPLAINANT.

W. J. Joyner
vs. IN CHANCERY
A. J. Pierce & Als.

J. R. SAUNDERS
Attorney at Law
PINNER BUILDING
Suffolk, Va.

orders and decrees may be entered; inquiries directed and accounts taken; that the said Jesse Whitley and Pattie C. Whitley, his wife, and A. J. Pierce, either or all of them, may be required to make a deed of conveyance to your said complainant, and accept from your said complainant the purchase money for the said farm; that the said A. J. Pierce may be required to accept from your said complainant the money to reimburse him for what he has paid to the said Jesse Whitley, together with all of his cost and expenses in purchasing the land as the agent of your said complainant, and to turn over to your said complainant whatever contract and agreement he had had with the said Jesse Whitley about the within described land; that the said A. J. Pierce may be enjoined and restrained from making any conveyance of the said lands until the termination of this suit; that the said deed made by the said Jesse Whitley and Pattie C. Whitley to the said A. J. Pierce may be declared to have been made for the benefit of your said complainant and that the said court may decree that the said A. J. Pierce make a deed of conveyance for said lands to your said complainant, and receive the purchase price of the said lands plus the expenses; that the court may declare that a trust relation existed between the said A. J. Pierce and the said complainant and grant your said complainant the said land, together with such damages as will compensate him for, or resulted to him, from the failure of the said A. J. Pierce to comply with his agreement, and turn over to or convey said lands to said complainant; and that your said complainant may have all such further, and other, and general relief in the premises as the nature of his case may require or to equity and good conscience may seem meet.




of the Circuit Court of Isle of Wight County, Virginia; that the said Jesse Whitley has had notice of the said suit, and a lis pendens was docketed in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia, prior to the said conveyance.

Your said complainant says that he had made repeated demands upon the said A. J. Pierce to make him a conveyance of the said land or to turn over to him the contract made by the said Pierce with the said Whitley, but that the said A. J. Pierce has wholly failed and refused to make a deed to your said complainant and take his money, and does now fail and refuse so to do, but states that if your said complainant gets the said lands he must do so by law. Your complainant says he is now ready to pay all the money and take a deed for the land.

Your complainant further says that he fears that the said A. J. Pierce will make a conveyance of the said lands for the purpose of defeating the claim of your said complainant and if your said complainant waits until the termination of this suit the said lands will be in the hands of third parties and asks that any conveyance of the said lands be enjoined until the termination of this suit.

Your complainant is further informed that since the institution of this suit Emma Pierce, wife of A. J. Pierce, has died, but that she owned no interest in the said lands save and except a contingent right of dower.

Inasmuch as your complainant is remediless in the premises save by the aid of a court of equity, your complainant prays that the said A. J. Pierce, Emma Pierce, Jesse Whitley and Hattie C. Whitley may be made parties defendants to this suit, and required, but not under their oaths, to answer this bill, the oaths being expressly waived; that proper process may issue; that all proper

J. Pierce is about to take a conveyance of the said land in his own name, and claims it as his own contract and property and refuses to make a deed to the same to your said complainant or turn over to him the contract with the said Jesse Whitley, although your said complainant has repeatedly requested him so to do.

Third: Your complainant further says that he has all the money to pay the said A. J. Pierce every penny that he has paid on the said land, together with all cost and expenses incurred in purchasing the land, also the money to pay to the said Jesse Whitley the remainder of the purchase money of the said land, and that his agreement with the said A. J. Pierce was a bona fide transaction and in good faith; that the said A. J. Pierce bought the said land as the agent of the said W. J. Joyner, and that whatever contract the said Pierce has made with the said Jesse Whitley is the contract of your said complainant.

Fourth: Your complainant further says that the said A. J. Pierce came to him and agreed to buy the said land from the said Jesse Whitley as the agent of your said complainant; that at that time, the said A. J. Pierce intended to and did commit a fraud upon your said complainant, and that your said complainant relied upon the promise of the said A. J. Pierce that he would buy the said land from the said Jesse Whitley as your complainant's agent; that these representations were fraudulent and false and intended to deceive and defraud your said complainant; that you said complainant relied upon them to his injury.

Fifth: Your complainant further says that since the institution of this suit, to-wit, on or about the 30th day of December, 1916, the said Jesse Whitley and wife did convey the said tract of land, above described, to the said A. J. Pierce by deed duly recorded in the Clerk's office

with which to purchase the said farm, and went to the said A. J. Pierce to get the said A. J. Pierce to loan him some money; that the said A. J. Pierce agreed to loan your said complainant the sum of TWO THOUSAND (\$2,000.00) DOLLARS; that with the said TWO THOUSAND (\$2,000.00) DOLLARS and what other money your said complainant could raise, he was in a position to pay the entire purchase price of the said farm, and set to work, together with some of his friends, to get from the said Jesse Whitley the best price possible;

That sometime about the second Monday in March, 1916, the said A. J. Pierce came to your complainant and told him that he, the said A. J. Pierce, could buy the said farm from the said Jesse Whitley cheaper than your complainant could, and requested that your said complainant should have no further negotiations with the said Jesse Whitley, and that he, the said A. J. Pierce would buy the said farm from the said Jesse Whitley as your complainant's agent, taking the deed in the name of your said complainant, and further agreeing to help your said complainant by loaning him the said TWO THOUSAND (\$2,000.00) DOLLARS with which to pay for the land; that on or about the second Monday in March, 1916, the said A. J. Pierce did purchase the said land under contract from the said Jesse Whitley in the name of the said A. J. Pierce, and telling the said Jesse Whitley at the time that your complainant wanted to cut the timber from the said land, but that he should not do so.

Second: That your complainant says that it was his agreement with the said A. J. Pierce at the time the said Pierce agreed to loan him the said TWO THOUSAND (\$2,000.00) DOLLARS that your complainant should have the right to cut the timber from the said land in order to pay the said A. J. Pierce his money, and that now, the said A.

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

AMENDED BILL OF COMPLAINANT.

W. J. Joyner.....Complainant

vs. IN CHANCERY

A. J. Pierce, Emma Pierce, Jesse Whitley and Hattie C.

Whitley, his wife.....Respondents.

TO THE HONORABLE JUDGE OF THE SAID COURT:

Your complainant, W. J. Joyner, respectfully
sheweth unto your honor's court the following case:

First: That he was negotiating with the said
Jesse Whitley for the purchase of a certain farm in Isle
of Wight County, Virginia, which is described as follows:

All that certain tract or parcel of land lying,
being and situated in Isle of Wight County, Virginia, and
containing Three Hundred and Fifty acres, more or less,
and bounded and described as follows: On the North by
the lands of A. J. Pierce, (formerly belonging to C. L.
Batten) and S. J. Crocker, on the South by Anna Turner,
on the East by the lands of A. J. Pierce. (formerly be-
longing to C. L. Batten) and on the West by the Black
Water River, and being the same land conveyed to A. J.
Pierce by deed from Jesse Whitley and Hattie C. Whitley,
his wife.

And that the said Jesse Whitley was willing to
sell the said farm to your complainant at the price of
TWENTY-FIVE HUNDRED (\$2500.00) DOLLARS, but that your said
complainant was trying to get from the said Jesse Whitley
the best price he could.

Your complainant did not have all of the money

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

W. J. JOYNER,

v.

A. J. PEARCE, JESSE WHITLEY,
AND HATTIE C. WHITLEY, his
wife.

AMENDED AND SUPPLEMENTAL

BILL NO. 2.

STATE OF VIRGINIA,

City of Norfolk, to-wit:

I, Ella M. Whitehurst, a Notary Public in and for the City of Norfolk, in the State aforesaid, hereby certify that Chas. W. Davis, Attorney, whose name is signed to the foregoing bill, this day personally appeared before me in my City and State aforesaid, and made oath that the statements contained therein so far as made of his own knowledge are true, and so far as made upon information derived from others he believes to be true.

Given under my hand this 16th day of November, 1917.

Ella M. Whitehurst

Notary Public.

convenience.

4. That as soon as your complainant could arrange with counsel for defendants for the taking of the said depositions, he proceeded to do so and has taken the said depositions, and the defendants have taken a part of the depositions on their part but have not as yet announced to complainant the conclusion thereof, and that the said cause, as soon as defendants have completed their depositions, may speedily be submitted to the court for final determination and adjudication.

5. That notwithstanding the fact that the defendants have delayed the preparation of this case for hearing until after the expiration of the said injunction order, they have caused to be issued, since the expiration of the said injunction, from the Clerk's Office of this Court, a writ of possession directing the Sheriff of the County to deliver the possession of the property in the bill and proceedings mentioned to defendants, and that unless this court shall further enjoin the said defendants from interfering with the rights of the plaintiff, he will be deprived of his home and farming operations and his property before his rights can be determined in this suit, to his irreparable damage.

IN TENDER CONSIDERATION WHEREOF, and inasmuch as your complainant is without remedy save in a court of equity where all such matters are peculiarly cognizable, he prays that an injunction may be awarded enjoining and restraining the defendants from issuing or executing a writ of possession, or further interfering with his possession of his said property as mentioned in the said bills, and that all such other, further, general and special relief may be granted your complainant as the nature of his case may require or to equity shall seem meet.

And your complainant will ever pray.

John H. Seibel (Pr.)
Chas. W. Davis } *p.g.*

W. J. Joyner
By Counsel.

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

W. J. JOYNER,

v.

A. J. PEARCE, JESSE WHITLEY AND
HATTIE C. WHITLEY, his wife.

TO HONORABLE B. D. WHITE, Judge of the said Court:

By way of further amended and supplemental bill, your complainant, W. J. Joyner, respectfully shows unto your Honor, as follows:

1. That heretofore he has filed in this suit his original and amended and supplemental bills, which are herein referred to and made a part of this bill and prayed to be read and considered by this Honorable Court as a part of this bill as fully as if the same were incorporated herein.
2. That this court has heretofore entered an injunction restraining and enjoining the defendants, their agents and attorneys, and all other persons from proceeding to obtain or execute any writ of possession in favor of the defendants against the said complainant, or in any manner interfering with the possession of the complainant of the land in the former bills and proceedings in this cause mentioned until the first Monday in October, 1917, unless the said injunction should be sooner enlarged or dissolved.
3. That your complainant was ready and prepared to proceed to a final decree in this suit, but agreed to a postponement of the taking of the depositions therein after the expiration of the said first Monday in October, 1917, in order to accommodate counsel for the said defendants who was absent and who could have attended the taking of the said depositions prior to that time at very great in-

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IN THE CIRCUIT COURT OF
ISLE OF WIGHT COUNTY, VIR-
GINIA.

W. J. JOYNER,

v.

A. J. PIERCE, ET ALS.

ANSWER OF A. J. PIERCE.

Filed Jan'y 4, 1917

VIRGINIA,

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY:

W. J. JOYNER,

v.

A. J. PIERCE, ET ALS.

THE ANSWER OF A. J. PIERCE, ONE OF THE DEFENDANTS TO A BILL OF COMPLAINT FILED AGAINST HIM AND OTHERS IN THE CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT, VIRGINIA, BY W. J. JOYNER, COMPLAINANT.

This respondent reserving to himself the benefit of all just exceptions to the said bill, for answer thereto, or to so much thereof as he is advised that it is material that he should answer, answers and says that he denies that he ever agreed to lend the complainant the sum of TWO THOUSAND DOLLARS (\$2,000.00), that the complainant could have raised any sum of money whatever, that he ever requested the complainant to have no further negotiations with Jesse Whitley about the said farm, that he would buy the said farm as the complainant's agent, taking the deed in the name of the complainant, that the complainant should have the right to cut the timber from the said land for any purpose whatever, that he committed any fraud upon the complainant or that the complainant relied upon any statements of this defendant to his injury. This respondent had no such agreement with complainant and made no such representation to him, as alleged, and has committed no fraud upon him, but this defendant in good faith and for his own property bought the said land from his co-defendant Jesse Whitley.

And now having fully answered the complainant's bill,
this respondent prays to be hence dismissed with his reasonable costs
by him in this behalf expended, and he will ever pray, etc.

James H. Bartlett p.d.

A. J. Pierce
Respondent,
By Counsel

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IN THE CIRCUIT COURT OF
ISLE OF WIGHT COUNTY, VIR-
GINIA.

W. J. JOYNER,

v.

A. J. PIERCE, ET AL.

ANSWER OF JESSE WHITLEY.

Filed Jan 4, 1917

And now having fully answered the complainant's bill,
this respondent prays to be hence dismissed with his reasonable costs
by him in this behalf expended, and he will ever pray, etc.

Jose Whitty
Respondent.

James H. Cortitt p.d.

VIRGINIA,

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY:

W. J. JOYNER

v.

A. J. PIERCE, ET ALS.

THE SEPARATE ANSWER OF JESSE WHITLEY,
ONE OF THE DEFENDANTS TO A BILL OF COMPLAINT
FILED AGAINST HIM AND OTHERS IN THE CIRCUIT
COURT OF THE COUNTY OF ISLE OF WIGHT, VIRGINIA,
BY W. J. JOYNER, COMPLAINANT.

This respondent reserving to himself the benefit of all just exceptions to the said bill, for answer thereto, or to so much thereof as he is advised that it is material that he should answer, answers and says that he knows nothing as to the truth or falsity of the statements in the bill as to what took place between the complainant, W. J. Joyner and the respondent A. J. Pierce and nothing as to the truth or falsity of any fraud being perpetrated upon the complainant by A. J. Pierce in the purchase of the said land in the bill described, and this respondent neither admits nor denies but calls for proof thereof and of all the statements in the bill not specifically admitted to be true in this answer. This respondent admits that by an agreement in writing he agreed to sell and convey to A. J. Pierce the tract of land in the bill described. This respondent further answering says that the said A. J. Pierce has fully complied with his part of the said agreement for the purchase of the said land and has demanded of this respondent the deed for the said property and full compliance on the part of this respondent with his agreement, and that this respondent and his wife Hattie Whitley have executed and delivered to A. J. Pierce, pursuant to this respondent's agreement with him a deed conveying to the said A. J. Pierce the property described in the said bill.

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

W. J. JOYNER,

v.

A. J. PIERCE, ET ALS.

ANSWER TO AMENDED BILL.

Isle of Wight County, Virginia, on the law side thereof an action of unlawful detainer and that he procured a judgment against the complainant for the possession of the land in controversy and denies that this complainant now has the right to question by injunction or otherwise this respondent's right to the possession accorded him by virtue of said judgment.

This respondent denies that he is a trustee for the complainant, that he made any such representation or promise to the complainant as alleged and that the complainant has any right whatever to the property in question and denies that he is or ever was under any obligation whatever in the matter to the said complainant.

This respondent denies all allegations in the said amended bill not specifically admitted in his answers and calls for strict proof of same.

And now having fully answered the complainant's amended bill this respondent prays to be hence dismissed with his reasonable costs by him in this behalf expended. And he will ever pray, etc.

James H. Corlitt, f.d.

A. J. Pierce

Respondent,
By Counsel

VIRGINIA,

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY:

W. J. JOYNER,

v.

A. J. PIERCE, ET ALS.

THE SEPARATE ANSWER OF A. J. PIERCE,
ONE OF THE RESPONDENTS, TO AN AMENDED BILL
OF THE COMPLAINANT FILED AGAINST HIM AND
OTHERS IN THE CIRCUIT COURT OF ISLE OF
WIGHT COUNTY, VIRGINIA, BY W. J. JOYNER, COM-
PLAINANT.

This respondent reserving to himself the benefit of all just exceptions to the said amended bill for answer thereto, or to so much thereof as he is advised that it is material that he should answer, answers and says that he denies that complainant filed his original bill in the words and figures set forth in the amended bill but says that that portion of the alleged original bill beginning with paragraph "Fifth" and continuing through the prayer differs materially from the original bill actually filed.

This respondent denies that no answer has been filed to the original bill; he has heretofore filed his answer to the original bill, which answer he now adopts as a part of this answer.

This respondent admits that since the institution of the chancery suit and some time about the 30th day of December, 1916, the co-respondent, Jesse Whitley, conveyed the said tract of land to this respondent and that the deed therefor is duly recorded in the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia, and further admits that since acquiring the said deed he instituted in the Circuit Court of

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M. J. Fayman

in { By No 253

A. J. Pierce

Duchess

in the Clerk's Office

CIRCUIT COURT,

OF THE

COUNTY OF ISLE OF WIGHT

this *7* day of *November* 1916

to the Hon. J. H. Edwards

I executed the within summons this the 3rd, day of
November 1916, by serving a true copy of the same on
A. J. Pierce in person at his residence in the County of
Isle of Wight.

R. AUGUSTUS EDWARDS, Sheriff.

By *N. L. English* D. S.

COMMONWEALTH OF VIRGINIA,

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

We command you that you summon A. J. Pierce to appear at the Clerk's Office of the Circuit Court of our County of Isle of Wight, at the rules to be holden for said court, on the first Monday in November, 1916, to answer a bill in chancery filed by W. J. Joyner against him, and others. And have then and there this writ.

Witness, A. S. Johnson, Clerk of said court, at the courthouse, this 24th. day of October, 1916.

Teste,

A. S. Johnson Clerk.

J. R. Saunders, p.g.

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W. J. Joyner

v f Chancery 253

U. J. Percutols

Subpoena on the Part

I executed the within ~~Summons~~ this the 2 day of
July 1917 by ~~Serving~~ a true
copy of the same on A. J. Percutols in person
in the County of Isle of Wight.

R. Augustus Edwards
Sheriff of Isle of Wight Co.

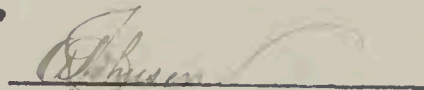
COMMONWEALTH OF VIRGINIA,

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

We command you that you summon A. J. Pierce 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 third Monday in July, 1917, to answer a supplemental and amended bill, filed in chancery, against him by W. J. Joyner. And have then and there this writ.

Witness, A. S. Johnson, Clerk of said Court, at the Courthouse, this 28th. day of June, 1917.

Teste,

 Clerk.

An Agreement, Made this 6th day of March, 1916, by and between Jesse Whitley of the City of Suffolk, State of Virginia, the vendor, and A. J. Pierce, of the County of Isle of Wight, State aforesaid, the purchaser,

W I T N E S S E T H

The said vendor hereby agrees to sell and convey to the said purchaser, the following piece or parcel of land, situate, lying, and being in Hardy Magisterial District of the County of Isle of Wight, State of Virginia, bounded and described as follows: On the East by the lands of A. J. Pierce; on the South by the lands of Samuel Turner; on the West by Black Water River, and on the North by the lands of John L. Crocker, for the sum or consideration of \$2100.00, to be paid by the said purchaser in way and manner as follows: viz; \$100.00 to be paid by the said purchaser in cash; the remainder to be paid by two notes signed by the purchaser and his wife, the said notes being for the amount of \$500.00 and \$1500.00 respectively, that is; one note for the sum of \$500.00, payable on the 1st day of August, 1916 and one note for the sum of \$1500.00, payable on the first day of January, 1917. Upon the payment of the said notes, when they shall become due and payable, the said vendor agrees to execute and deliver to the said purchaser a good and sufficient deed of conveyance for the said property above described, free from all encumbrances and to deliver the possession thereof on the first day of January, 1917.

And the said purchaser hereby agrees to purchase the above described property from the vendor for the price or sum mentioned and to pay and settle for the same in the way and manner, and at the time above set forth. The conditions of this agreement to extend to the heirs, executors, administrators and assigns of both contracting parties.

Witness our hands and seals, this 6th day of March, 1916.

Jesse A. Whitley (Seal)

A. J. Pierce (Seal)

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S. T. Turner, being duly sworn, deposes and says:

Q. Please state your name, age, residence, occupation and if you know W. J. Joyner and A. J. Pierce.

A. Name S. T. Turner, residence Isle of Wight County, occupation farmer. Yes, I know Mr. Joyner and Mr. Pierce.

Q. Mr. W. J. Joyner has brought a suit against Mr. Pierce for the recovery of the farm on which Mr. Joyner now resides in Isle of Wight County. Have you ever had any talk with Mr. Pierce and Mr. Joyner about this farm?

A. Yes, I talked with him about it.

Q. Please state the conversation as best you can.

A. Well, I was over there at Mr. Pierce's place one morning and we brought up the conversation about the place, and I heard him say

J. H. Corbitt: Counsel for Mr. Pierce objects to this testimony as to what he heard Mr. Pierce say on the ground that it is immaterial to any issue involved in this suit and on further ground that no foundation is laid on the admission of this witness.

he said that he would put \$2,000.00 in the place any time he could buy it. All he cared for the place was the trash on the piece of land between his line and the bogey track, and that was about the end of the conversation that morning. Later on, sometime in July, I come along there one evening and he wanted to talk to me about the trouble between him and Jap and he said he would let him have the place right now at what he gave for it if he will acknowledge that he treated me wrong and to tell Jap to come over there and get the place, and I went to Mr. Joyner and told him and he said he can't come over there but will meet him any where else except at his place, and then I went over to Mr. Pierce and he said he would meet him at my house and they met there at my house, and when they got there, Mr. Pierce said to Mr. Joyner, "Jap, you treated me wrong without cause and I will forgive you for it." Mr. Joyner says to him, "If you will right your wrong, I will right mine." Mr. Pierce says to him, "We had better not say any more about it. You go your way and I will go mine." And they passed out.

Q. Was anything said either by Mr. Joyner or Mr. Pierce about any promise that Mr. Pierce had made?

A. Not that I know of. Later on at Euni, that was in September, they were down there and got together that day and he came to me and asked me could I tell Jap to come over to his house, he wanted to talk to him again. I told him no, that I was not going to have anything to do with it. I brought them together once and was not going to have anything else to do with it. That is about all I know about it.

Q. That have you heard Mr. Pierce say, if anything, with respect to giving up the property, paying the costs or attorney's fees and so forth?

J. H. Corbitt; Counsel for Mr. Pierce objects to all the foregoing testimony as being irrelevant and immaterial to the issues involved and for the further reason herein about stated, and makes the same objection to the question now asked and all future similar questions.

- A. He did tell me that day, that was in July, that he would pay half the costs of the court if Jap would come along and settle.

CROSS EXAMINATION BY MR. CORBITT.

- Q. Mr. Turner, how long have you known Mr. Pierce?
- A. I have known Mr. Pierce twenty-five or thirty years.
- Q. At times he drinks to excess, does he not?
- A. Well, I have seen him drink.
- Q. Was he under the influence of liquor when you were talking to him?
- A. He had been drinking some.
- Q. On these various occasions you have mentioned?
- A. Yes, sir.
- Q. He had been drinking on those occasions?
- A. Yes, sir.
- Q. He was pretty full of liquor?
- A. Well, he could go along all right, but he had been drinking some, I know.
- Q. He showed that he was under the influence of liquor?
- A. Yes, sir, he showed that he had been drinking some.
- Q. Is there anything further that you know about this matter?
- A. No, sir.
- Q. Can you recall anything at all that you know that you have not said?
- A. No, sir. I have heard other folks talk but nothing that I know of.

And further this deponent saith not.

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

- Q. Please state your name, age, residence, occupation and if you are W. J. Joyner, the complainant in this suit.
- A. Name W. J. Joyner, age 34, residence Isle of Wight County, occupation farmer. Yes, I am the complainant in this suit.
- Q. You have brought a suit against A. J. Pierce and others to recover the farm on which you reside as alleged in the bill. Please state the circumstances and reasons why you are claiming this property.
- A. About the middle of January, 1916, Mr. Pierce came to my house and when he got ready to go away I walked with him over to the back field, that was called the Polly Field, and when we got there we stopped. I said to him, "Mr. Pierce, I have decided to buy this property. I want to know how much money will you loan me on it. I have been here eight years; I like the neighborhood and all the people and get along well and Mr. Whitley is trying to go up on me in rent and I can't pay any more and have decided to buy and make this as my home. I have seen Dr. Gale and asked him about the sale of the stave timber to help pay on the property. He says he will pay four cents a bunch for all timber on it to help pay for it and make a deal." Mr. Pierce says, "Go ahead and buy the property and I will loan you \$2,000.00 and if you buy, I want to get trash off this piece of land between the boggy track and my line." I said, "Mr. Whitley is charging me \$2500.00 for the property, but I think it can be bought for less. If you will oblige to loan me \$2,000.00, I will get Mr. Richard Turner to take it up with Mr. Whitley to see what is the lowest figures we can buy it for." Mr. Pierce said, "Go ahead, you can get the \$2,000.00 any time you want it."

I then went to see Mr. Gwaltney and asked him would he back me up in getting over what I needed in getting the \$2,000.00 and he said, "Go ahead and buy the property. I will see that you get the money." I then went to Mr. Turner and asked him to take it up with Mr. Whitley for spot cash, and he did so.

About the first of February I was at Zuni. Mr. Turner handed me the letter that he got from Mr. Whitley saying that he would sell him the property for \$2500.00. I told Mr. Turner to write Mr. Whitley again and tell him that I thought his price was a little too high and offer him around \$2000.00 and see if he would come down on it.

About the middle of February I was at Mr. Pierce's helping him to kill hogs. After we got through we went in the house, we were sitting and talking. He said to me, "You talk to Emma while I run up to the mail box." He went to the mail box and when he came back he had two or three letters in his hands. He laid them on his wife's lap. The first one he opened was a letter from Mr. Jesse Whitley. I can't tell all that was in the letter but Mr. Whitley wrote to Mr. Pierce stating that he had said something about the property two or three years ago, and asked him if he still wanted the property. One man had been to see him twice and had in hand two letters from another - had decided to sell - would like to hear from him before he answered the two

letters, write me and I will come to Zuni and talk the matter over with you. I said to Mr. Pierce, "Are you going to answer him?" He said, "Jap, I don't want the property at any price. All I want is to get a little trash off that piece of land between the bogey track and my line, but I will write him to come to Zuni. If I can buy cheaper than you can, I will buy it for you." I said, "All right, Mr. Pierce." That is all I said that day about the property.

On Saturday morning, the last of February, Mr. Pierce drove up to my gate and called me. I went to the gate and spoke. He said, "Come on, let's go to Zuni." I said, "Mr. Pierce, I have got no business at Zuni this morning; I have got to go this evening." He said, "Mr. Whitley is going to be at Zuni this morning. I want to talk to you before I see Mr. Whitley." I said, "All right, I will go." I stepped back to the house a minute and went and got in the buggy and we went to Zuni. Going on to Zuni, he said to me, "Jap, I don't want the property at no price, but I can buy it cheaper than you or anybody else. Mr. Whitley knows I got the money and knows you hain't, and he will give me a better price than he will you. No, I want you to promise me this morning that you won't say anything to Mr. Whitley about the place - have anything to do with it, and I will buy it for you and you will get it cheaper. I said, "Mr. Pierce, I want it as cheap as I can get it." He said, "If you will make me this promise, I will buy it for you and you can get it cheaper." I said, "All right, I will let you make the deal, but I want to get it as cheap as I can." I said, "Mr. Whitley will want to come out to the farm I reckon and he wouldn't want me to have anything to do with it. You can take him out and I will get out with somebody or I'll walk." He said, "All right." Mr. Whitley came; he took him out to the farm. I don't know what was said between him and Mr. Whitley.

Tuesday after the first Monday in March Mr. Pierce called me to the road early in the morning. As soon as I got there and spoke he spoke. He said, "Jap, I bought the place yesterday." I said, "Sure enough?" He said, "Yes, I bought it." I said, "What price?" He said, "\$2100.00." I said, "That is good, cheaper than I expected." He stated, "You will have to pay Mr. Whitley rent for this year." I asked him why. He said he bought it this way - paid \$100.00 to firm the bargain, gave two bonds, one \$500.00 payable between now and August 1st, another \$1500.00 payable January 1st, when the deed is fixed. I said, "That is all right, I won't have to pay rent and interest too." And he said, "No, nothing but the rent. Mr. Whitley told me to tell you that he won't want to send any wire up here this year. He sold the place; won't going to furnish anything else. I've got a roll of wire that I am not going to use. You are bound to have some wire; I will loan you that this year." I said, "All right, I shall have to have some wire." He said, "Well, you can get that piece." I was walking along going over there to cut some logs. He said he was in a hurry and did not have time to talk to me any longer that morning. I said, "Mr. Pierce, you said I won't have no deed fixed this year?" He said, "No, it won't be fixed until January 1, 1917." I said to him, "Mr. Pierce you are right much older man than I am, and if you should die before the deed is fixed, I have got nothing to go on. Let's have a contract so that I can go to work safe." He said, "I ain't got time to fix it this morning and will fix that in a few

days." I said, "All right." He went on and I went back to the house.

The next Sunday morning I went to Mr. Pierce's and we were sitting and talking. Mr. Turner came in and Mr. Carr, and while we were talking we got to talking about land. Mr. Pierce made a remark. He says, "I have got all the land I want now as soon as I can pay for this over here and get a deed for it." I never said a word, but thought he was going to try to give me a crooked deal. Mr. Carr spoke about that time and says, "Uncle Jap, I want to talk to you a little bit this morning." I says, "All right, I want to go to church too." I got up and started away and says, "Mr. Pierce, I will walk back over here this evening. I want to talk with you some."

After dinner, I started back. I met Mr. Pierce in the road at Ashley Booker's gate. Mr. Pierce and I walked up the road in the sunshine, and set down side of the road. I said, "Mr. Pierce, let's name a day to meet and fix up that contract so that we will know what we are doing." He said to me, "Jap, if I let you have that property you shan't sell that stave timber off it." I said, "Mr. Pierce that was the bargain to start with." He says, "Yes, but I have decided that I don't want it cut off. I know that was the bargain - to buy the place, sell the stave timber to pay on the place and make the interest less." He says, "Well, I have decided I did not want to cut it off, but I will let you know in a day or two what I will do." I told him, "All right." He said he was in a hurry and had to go back to the house. He went back and I went home.

The next Sunday night I went to Mr. Pierce's to deliver a message, and while we were talking, he said it was going to bother him; that he wanted the horse and logs the next morning. I asked him would he stop in at home, I wanted to talk to him a few minutes. He said he would. About eleven o'clock on Monday morning he called me to the road again and said he had got bothered and did not have time to talk to me, but would come over there the next day and talk with me. Tuesday evening he came. He sat down on one side of the fence and I on the other and talked a few minutes. He got up and said he had to go home. I said, "Mr. Pierce, what I wanted to see you about was fixing them papers. I want to clean up this front and fence it, and I want to know what I am doing." He said, "Jap, I did not promise to loan you but \$2,000.00". I said, "Mr. Pierce, I am not expecting you to loan me but \$2,600.00. I am ready to pay the other when we fix the contract." He said, "Yes, but I don't want that timber cut off here." He said, "I want to get trash. If you cut the stave timber off it will be no trash here for me, and that is what I wanted - the trash." I said, "Mr. Pierce, if I was to sell, I should reserve a piece for the benefit of the farm. That piece is cut off. I could mighty easy reserve that and not interfere with your getting trash." He said, "I don't want it cut off, I want the trash." I said, "Mr. Pierce, so far as the trash is concerned, I will give you a contract that I won't sell the timber off that piece of land as long as you live, and give you a right to get trash off of that piece of land as long as you live." He said, "That is fair enough, I will let you know Saturday morning." Saturday morning he passed but did not stop. He did not let me know anything before Wednesday evening. I went to his house and he was nailing some wire up on the road. He saw me coming and stopped nailing and met me, and we walked back to the

house together. When we got to his shelter and set down he asked me if I did not plant potatoes Saturday. I told him I did. He said, "I thought that was what you were doing when I passed." I said, "I thought you were going to stop." He said, "I did say so, but I didn't do it." He said, "So far as the place is concerned I have decided that I am not going to do anything about it now, and I am going to keep it. You can get mad, or you can do what you please, but I am not going to do anything." He repeated it over two or three times. He said, "You can get mad now and do what you please, but I am not going to do anything." I said, "Mr. Pierce, we will see about that later," and I started home. He followed me up to his well and kept telling me, "Now get mad and do anything you please, but I am not going to do anything. I got the place and I am going to keep it." I said, "We will see about that later."

Q. Mr. Joyner, since that time and since the institution of this suit have you had any talk with Mr. Pierce about the place?

A. Yes, sir, we had a talk about it the next day. The next day about 11 o'clock I went to the mail box and see Mr. Pierce come walking up the road. I stayed there and waited until he got there. I spoke, but he did not stop to talk to me. I asked him three different times to stop and talk with me before he would stop. Finally he stopped and sat down beside the road. I walked on up to where he was, and asked him what had I done or said or why was it that he was going to take a home from me like he was. He said, "I haven't done it." I said, "I think you have." He said, "No I hasn't." I said, "Mr. Pierce, what was our bargain in the Holly Field." He said, "I promised to loan you \$2,000.00." I said, "What did you get me to promise you that morning you came there and called me to Zuni to meet Mr. Whitley?" He said, "I got you to promise me that you would have nothing more to do with it--leave it to me, I would buy it for you and you would get it cheaper." I said, "Way is it then that you don't want me to have it." He said, "I decided I want it myself and I have got it and I am going to keep it." And I said, "Mr. Pierce, I want the property, I promised you that I would have nothing more to do with it; let you make the deal and you have made it. Now, if you have decided you did not want to invest any money for me, I have got some more friends, and I can get the money. I will get the \$2100.00 and pay it all." He said to me, "You can have all the friends you want. you can get all the money you want but you will never get that place. It is mine and will be mine when I die." I asked him did he mean to tell me I could not get it no way. He said, "Yes, you will never get it. It is mine and will be mine when I die. You can do what you please." And we fell out right there.

Q. Since that time have you had any more talk with Mr. Pierce about the place?

A. Yes sir, we have had more talk.

J. H. Corbitt: Counsel for Mr. Pierce objects to all the foregoing testimony and questions and asks that it be stricken out or not considered by the court on the ground that it is irrelevant and immaterial to the issues in this suit, and on the

further ground that any contract for the sale of real estate must be in writing and the evidence shows no written contract, and is, therefore, inadmissible.

The last of July Mr. Turner came to my house on night and said, "Mr. Pierce got me to come over here to see if you won't come to his house and settle this trouble. Says he don't want the property - got no use for it, and you can take it if you will just come and talk with him." I said, "I won't go to Mr. Pierce's house, but I will meet him any where and at any time." The next morning Mr. Turner went back and told Mr. Pierce. Mr. Pierce send me word back to meet him at Mr. Turner's house after breakfast.

J. H. Corbitt: It is understood that counsel for Mr. Pierce makes the same objection he has heretofore made and it is understood that the same objection will apply to all future similar testimony and further objects to any testimony as to what is said by Mr. Turner as not being the best evidence.

After breakfast I went to Mr. Turner's, and Mr. Pierce came and I spoke. He asked me was I willing to talk to him and settle that trouble. I told him I was. He said, "The first thing you have got to do is to say that you have treated me wrong, cursed me without any cause and beg me pardon." I said, "Mr. Pierce, when you right your wrong I will beg your pardon for what I said to you." He said, "That brings on more trouble. You can go your way and I will go mine." And he drove off.

The last of September he sent for me again and I did not go. So on Saturday evening I was at Zuni and see Mr. Pierce there. I went to my father and told him that Mr. Pierce had sent for me again and wanted me to come to his house and I won't going. "You can tell Mr. Pierce that I am here. If he wants to talk to me I will talk with him." A few minutes later I started out the post office. My father and Mr. Pierce were standing talking in front of the post office porch. Mr. Pierce called me to him. He said, "Sit down here and let's talk." I said, "All right, sir." He said, "I am tired of this mess and want to get rid of it, but you have got to say that you have treated me wrong and beg me pardon." I said, "Mr. Pierce, right your wrong and I will beg your pardon." He jumped up and walked off. He said, "You can go your way and I will go mine." I went down to Mr. Turner's store and a few minutes later I started back to the post office. Mr. Pierce was standing in front of Mr. Hall's porch. He called me again and told me to come and sit down on that porch and talk to him. We both sat down. He said, "Now, what do you want to do to settle this thing?" I said, "Mr. Pierce, all I want you to do is to turn this property over to me and we will settle it." He said, "You can get the property just like I promised, but you got to go right." I said, "What do you mean by going right?" He said, "You got to humble yourself to me." I said, "I am never going to either. I am going to humble myself to no man." He said, "You go your way and I will go mine, and we will let the

courts settle it. I know money will wind it and I am going to win it if I have to carry it to the Supreme Court. I shall spend \$5,000 before you can have it. I know money will win it and I am going to win it.

Q. Mr. Joyner, when Mr. Pierce came to you and told you that he would buy the property for you and for you to say nothing further to Mr. Whitley, did you rely on Mr. Pierce's promise that he would buy it for you.

A. I certainly did.

J. H. Corbitt: Counsel for Mr. Pierce objects to this question on the ground that it is leading and asks that the answer be stricken out.

Q. After your agreement with Mr. Pierce, did you make any further effort through Mr. Turner or otherwise to buy the property from Mr. Whitley?

A. No sir, I did not.

J. H. Corbitt: Same objection.

Q. If Mr. Pierce will make you a deed for the property now are you in position to pay the entire \$2100.00?

A. Yes, sir.

J. H. Corbitt: Same objection.

Q. If Mr. Pierce had let you have the \$2,000.00 which he agreed to loan you at that time, were you in position to pay the remainder of the money?

A. Yes, sir, I was.

J. H. Corbitt: Same objection.

Q. Who was present at Zuni when you had this conversation with Mr. Pierce?

A. Mr. J. T. Joyner.

Q. Did Mr. Pierce admit at that time that he had made you any promise to let you have the land?

A. He said he would let me have the land just as he promised if I would humble myself to him. I told him I won't going to do it, and he said he knew money would win it and he was going to win it.

J. H. Corbitt: Same objection.

CROSS EXAMINATION BY MR. CORBITT.

Q. Mr. Joyner, the store of Mr. Turner, to which you refer, is not that of Mr. Richard Turner, is it?

A. Yes, sir.

Q. Is he the same gentleman that just testified?

A. No, sir.

- Q. The day to which you refer upon which you had this last conversation with Mr. Pierce at Suni, Mr. Pierce was then under the influence of liquor, was he not?
- A. He had been drinking some but not much.
- Q. You could see from his manner that he had had liquor?
- A. Sure, you could see that he had been drinking.
- Q. Is it not true that every time you discussed with Mr. Pierce away from his home about this property that he was under the influence of liquor?
- A. No, sir, it is not so. That time was the only time he ever showed any influence of liquor when we talked about this matter.

And further, this deponent saith not.

Constant Joyner, being duly sworn, deposes and says:

- Q. Please state your name, age, residence, occupation and if you know W. J. Joyner and A. J. Pierce.
- A. Name, Constant Joyner, age 26, residence Isle of Wight County, occupation work at Norfolk & Wester Power House.
- Q. Are you any relation to Mr. W. J. Joyner, the complainant in this suit?
- A. No sir, not that I know of.
- Q. Since the controversy between Mr. A. J. Pierce and Mr. W. J. Joyner have you had any conversation with Mr. Pierce relative to the purchase of the farm?
- A. Nothing more than I was over there at work a few days and I heard him mention it while I was working with him in different conversations.
- Q. What did you hear him mention about it?
- A. I heard him say that he had bought it for Mr. Joyner and he told me that he was going to keep it himself.
- Q. How many times did he tell you that?
- A. I heard him right often. I can't tell how many times.
- Q. Are you positive that he said that he bought the farm for Mr. Joyner but won't going to let him have it?
- A. He said he bought it for Jap, but he was going to keep it himself.
- Q. The different times that he told you that was he drunk then?
- A. No, sir, he was not drunk. The last time he told me we were burning trash. We had been to the Darden boy's trial I think. I am not sure it was the Darden boy's trial.
- Q. Was he drunk that day?

A. No, sir, not that I know of.

J. H. Corbitt: Counsel for Mr. Pierce objects to all the testimony of this witness on the ground that it is irrelevant, immaterial and not responsive to any issue in this suit, and for the further reason that the proper foundation has not been made for its introduction, and asks that it be stricken out, and further objects on the ground that contracts pertaining to the sale of real estate must be in writing.

And further, this deponent saith not.

J. T. Joyner, being duly sworn, deposes and says:

Q. Please state your name, age, residence, occupation and if you know A. J. Pierce and W. J. Joyner.

A. Name J. T. Joyner, age 62, residence Isle of Wight County, occupation farmer, Mr. Joyner is my boy and Mr. Pierce and I were boys together.

Q. Have you had any conversation with Mr. Pierce or heard any conversation between Mr. Pierce and Mr. W. J. Joyner relative to Mr. Pierce buying the farm on which Mr. W. J. Joyner now lives?

A. Yes, sir, I had a conversation with them and heard one between them on the same day.

Q. Please state that conversation.

A. I was down at Zuni one Saturday evening, but the date I can not give, but I think it was in September, but I am not even sure about that, and Jasper, my son, came to me and said, "Pa, Mr. Pierce has sent for me again but I am not going." I said, "No, you got no business there under the circumstances." He said, "If you like to, you can go and tell Mr. Pierce that I will meet him here or any where else except at his house. I am not going there." I always called Mr. Pierce Jack, and I went out there close to Mr. Crumpler's porch next to Mr. Horn's warehouse and I remarked to him. I said, "Jack, Jap says you sent for him to come to your house to settle this trouble." But I said, "Jack, he won't go there under the circumstances. He has got no business there, but he is here and will talk with you right here." He said, "I want this trouble settled. It is causing me more trouble than the loss of all of my wives." I said, "Jack, it can be very easily settled if you do what you promised Jasper to do, you can settle it right now." "Well," he said, "I will do it. I will do just what I promised. I don't want the farm - have got no use for the farm, but Jap has got to humble to me." I said, "Jack, whenever you do what you promised Jasper is willing and ready to beg your pardon for the abuse." He said, "Where is Jap?" I stepped back and called Jap and he came out on the porch and they spoke. I said, "Now this conversation is to be friendly." Jasper said, "Yes, sir. I will talk to you friendly." That to Pierce. Jasper sat down on the end of the porch next to Horn's warehouse, and he asked Jasper if he was willing to acknowledge that he abused him without cause, and he said, "Mr. Pierce, whenever you do what you promised and let me have that farm like our bargain was. When you right your wrong I am willing to acknowledge." Mr. Pierce said, "Well, if that is what you want, you go your way and I will go mine. We will find

out by law." And he got up and went on, and I thought it was all over with, and I don't think it was over thirty minutes before Jack said he wanted to talk to Jap; he wanted to make friends. Jasper came on down the street and made up and shook hands. I said, "Now this is to be a friendly conversation." They sat down there and had the conversation which Jap just told you about. I was standing right there because I did not know what was going to happen. I knew that Mr. Pierce had Jasper under a bond. I did not know what he was going to say to him, but he asked Jasper right there in my presence what would he do to compromise it, or something like that. Jasper said to him, "Mr. Pierce, when you do what you promised, I am willing to apologise for what I said." He said, "I will do just what I promised, and you can have the farm; I don't need it and I don't want it." And Jasper said to him, "Mr. Pierce, you come and sign a contract that I can have the farm according to your promise and I will apologise for what I said." He said, "I am going to sign nothing." And Jap said, "I am going to apologise for nothing either." He did tell him that he should never have it and he would take it to the highest court if it cost him \$5,000.00.

J. H. Corbitt: Counsel for Mr. Pierce objects to the testimony of this witness on the ground that it is irrelevant and immaterial to the issues involved, and on the further ground that any contract or agreement with respect to the sale of real estate must be in writing, and also on the ground that the witness testified as to what Mr. Pierce said and is not the best evidence and asks that the testimony be stricken out.

CROSS EXAMINATION BY Mr. CORBITT.

- Q. Mr. Joyner, the day on which the conversation to which you refer took place at Zuni; Mr. Pierce was under the influence of liquor was he not?
- A. To a certain extent, yes, sir. He could walk all right, but I know he was under the influence of liquor, but he was not what I call a drunken man.

And further this deponent saith not.

R. J. Turner, being duly sworn, deposes and says:

- Q. Please state your name, age, residence, occupation and if you know W. J. Joyner and A. J. Pierce.
- A. Name R. J. Turner, age 32, residence Isle of Wight County, occupation merchant. I know Mr. Joyner and Mr. Pierce.
- Q. You have heard what Mr. W. J. Joyner said about getting you to write some letters to Mr. Jesse Whitley for him?
- A. Yes, sir.
- Q. Please state all you know about that.
- A. Mr. Joyner came to me at my place of business at Zuni the best

I remember sometime in January, I think, and asked me to would I write a letter to Mr. Whitley for him asking him what he would sell the property which he lived on for cash. I wrote a letter to Mr. Whitley, and in a few days I got an answer. Mr. Whitley stated that he would take \$2500.00. I showed the letter to Mr. Joyner and he asked me to write him again and offer him around \$2,000.00 for it. I written Mr. Whitley and offered him \$2,000.00 for the place and never got an answer from that letter. In a few days Mr. Whitley came down to Mr. Pierce's.

- Q. After you wrote those two letter did Mr. Joyner come to you and get you to write anything more for him?
- A. No, sir. He told me that Mr. Pierce would make the deal and he would buy it for him cheaper.

J. H. Corbitt: Counsel for Mr. Pierce objects to the evidence of this witness on the ground that it is irrelevant and immaterial to the issues involved, and for the further reason that it is not the best evidence of what the letters to which he referred to contained, and on the further ground that it is not the best evidence of what Mr. Joyner said to him and asks that the evidence be stricken out.

And further, this deponent saith not.

2

The depositions of J. E. L. Gwaltney, taken at the office of Saunders & Hutton, on the 30th day of October, 1917, to be read as evidence for the plaintiff in the case of W. J. Joyner against A. J. Pierce and others.

PRESENT: J. N. Sebrell for the plaintiff.
J. H. Corbitt for the defendant.

MR. CORBITT: The attorney for A. J. Pierce objects to the taking of the deposition of this witness in the absence of his client, who expects to be in Suffolk at 10:45 A. M., it now being 10:30 A. M., who was delayed on account of the weather from arriving earlier, reserves the right to demand that the witness, J. E. L. Gwaltney, be presented for cross-examination at a subsequent date when A. J. Pierce is present.

MR. SEBRELL: Counsel for the plaintiff says he will present the witness for cross-examination after the arrival of the train.

MR. CORBITT: Counsel for Mr. Pierce states that this will be satisfactory provided Mr. Pierce arrives on train, otherwise not.

The witness, J. E. L. Gwaltney, being first duly sworn, deposes as follows:

Examination by Mr. Sebrell:

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

A. Name J. E. L. Gwaltney, age 56, residence Isle of Wight County, occupation farmer; I know all parties.

Q. Please state what arrangements you made with Mr. W. J. Joyner to assist him in purchasing the farm upon which he now lives.

A. Mr. Joyner came to me sometime about the last of January or the first of February and says Mr. Pierce says he is going to pay \$2,000.00 for me, and would I help him out with the balance of the money and I told him I would.

MR. CORBITT: Counsel for Mr. Pierce objects to all the testimony of this witness for the reason hereabove given, and objects to this answer insofar as it recites what Mr. Joyner told him Mr. Pierce had agreed to do.

Q. Please state whether you agreed to furnish Mr. Joyner with such sum of money as he should need in excess of \$2,000.00 to be furnished by Mr. Pierce.

MR. CORBITT: Counsel for Mr. Pierce objects to this question on the ground that it is leading.

A. Yes, sir; I agreed to let him have the balance of the money that Mr. Pierce didn't furnish.

Q. State whether or not you were prepared to carry out your agreement.

A. Yes, sir.

Q. Have you heard Mr. Pierce make any statement about buying this property for Mr. Joyner?

A. No, sir; I have not heard Mr. Pierce make any statement about it.

Q. Have you heard Mr. Pierce make any statement about Mr. Joyner's not having anything further to do with the purchasing but leaving it to Mr. Pierce?

A. I have not heard Mr. Pierce say anything in re-

gard to it.

CROSS-EXAMINATION.

MR. CORBITT: Without waiving the objection heretofore made, counsel for Mr. A. J. Pierce cross-examines the witness as follows:

- Q. Mr. Gwaltney, your relations with Mr. Pierce are not the most friendly, are they?
- A. We get along; we speak.
- Q. That is about all you do, isn't it?
- A. Yes, sir.
- Q. For some time there have been some differences between you and Mr. Pierce, has there not?
- A. Yes, sir.
- Q. You are not related to Mr. Joyner, are you?
- A. No, sir.

And further this deponent saith not.

MR. CORBITT: Counsel for Mr. Pierce reserves the right to further cross-examine this witness in the presence of Mr. A. J. Pierce.

Signature waived without waiving the other objections.

Mr. Gwaltney, after the arrival of Mr. Pierce, on further cross-examination deposes as follows:

By. Mr. Corhitt:

- Q. Mr. Gwaltney, haven't you stated that you had never put a dollar in the property and never expected to put any in it?
- A. No, sir.
- Q. Did not Mr. John Lee Hall talk to you about the matter after the dispute arose between Mr. Joyner

and Mr. Pierce as to who was entitled to the property?

A. Yes.

Q. Did not you tell Mr. John Lee Hall that you never put a dollar in it and never expected to?

A. I told him I never put a dollar in it but I did not tell him that I did not expect to put a dollar in it.

Q. Did you ever talk to Mr. George Henry Hall about it?

A. No, sir.

Q. You did not tell Mr. John Lee Hall at some time that you never expected to put a dollar in it?

A. No, sir, I did not tell him that.

And further this deponent saith not.

Jayne didn't say anything to Pierce.

Got to show where what time he -

Original

3

W. J. JOYNER,)
v.) DEPOSITIONS.
A. J. PIERCE, ET ALS.)

The depositions of A. J. Pierce, and C. H. Johnson taken by the consent of all parties at the office of James H. Corbitt, Suffolk, Virginia, on the 30th day of October, 1917, between the hours of 11:00 A. M., and 1:30 P. M., to be read as evidence on behalf of A. J. Pierce in a certain suit in equity depending in the Circuit Court of Isle of Wight County, in the State of Virginia, wherein A. J. Pierce is defendant and W. J. Joyner is plaintiff.

Present, James H. Corbitt, Attorney for the defendant;
John N. Gebrell, Jr., Attorney for the plaintiff.

Without waiving the objection heretofore entered by him to the introduction of oral evidence for the purpose of proving an oral contract between the parties and still insisting that such evidence is not admissible, counsel for A. J. Pierce proceeds to examine the following witnesses:

The defendant A. J. Pierce, being duly sworn, deposes as follows:

Q.- Mr. Pierce, you are the defendant A. J. Pierce in this suit brought by Mr. W. J. Joyner against you and Mr. Jesse Whitley are you not?

A.- I suppose so.

Q.- You say you suppose so, why do you say you suppose so?

A.- Well, I just merely spoke that way. I didn't know what else to say.

Q.- Do you know whether you are the defendant or not?

A.- Yes, I know it.

Q.- Well, if you know it say it.

A.- Yes sir.

Q.- Mr. W. J. Joyner in this suit he has brought against you alleges that you negotiated with Mr. Jesse Whitley for the purchase of the property in question as Mr. W. J. Joyner's agent, that after you bought the property with Mr. Joyner relying upon you as agent you refused to let Mr. Joyner have it in accordance with your agreement and that you thereby perpetrated a fraud upon him. What have you to say about this?

A.- Well I went over there some time in January. It may have been about the middle. I went over there to see him about my hogs. They were missing right much and I went to see if they were not in the field.

Q.- Was that in the Polly Field?

A.- On the whole premises.

I got ready to leave him and I walked down to the lower end of the field to see if the fence was down. When we got there he stopped and says ~~mmm~~ "Mr. Pierce now is the time to buy this property." I says, "why so?" He says "Mr. Whitley is in tough luck and I think it can be bought for less than \$2,000.00 now". And he said "how much money will you put in it!" I said "Jap, I haven't got the money by me but I can get all of it I reckon. I reckon I can raise as much as \$600.00 or \$700.00 but if you can arrange to buy it for \$2,000.00 I will try to satisfy Mr. Whitley". Then he said he didn't think I could buy it anyway. He suggested getting Mr. Richard Turner to buy it. He said he could sell the timber off of it for four cents a bunch to Dr. Gale, I think, to help pay for it. I said "Jap, if you sell the timber off of it I will be just as bad off for trash as if I hadn't put a dollar in it." There was a snow on the ground at that time and I went on home after his saying he would get Mr. Richard Turner to buy it for him ^{I told him} to get anybody he choosed.

Q.- Mr. Joyner has alleged that you agreed to buy it for him. What have you to say about that?

A.- He never asked me to buy it for him. He always asked me how much money would I put in it.

Q.- What did you do, if anything, to ever lead him to think that you would try to buy it for him?

A.- Not anything at all. Because he never asked me to buy it for him.

Q.- Did you ever tell him that you would buy it for him?

A.- No, I just told him I would arrange to let him have \$2,000.00 provided I could satisfy Mr. Whitley. That is all I ever told him.

Q.- Mr. Joyner has testified that after this conversation in the Polly Field you showed him a letter you received from Mr. Whitley in which Mr. Whitley wrote you that he would like to sell you the property.

A.- Well, I think it read this way: in his letter: He understood I wanted the property, and to set a date and he would meet me at Zuni.

Q.- Have you this letter?

A.- No, I haven't.

Answer objected to by Mr. Sebrell on the ground that the letter is the best evidence. But witness answered: "I think I can get it. I think it's home in my trunk".

Q.- Did you show that letter to Mr. Joyner at your house?

A.- I think I did.

Q.- What did you say then, if anything, to lead Mr. Joyner to believe that you would endeavor to deal with Mr. Whitley for him.

A.- Not anything at all. I didn't do anything to lead him to believe I was trying to buy it for him, nor for myself either at that time because he had already arranged to have another buy it for him.

Q.- Did you reply to Mr. Whitley's letter, and, if so, what did you tell him.

A.- I told my wife to write him. I think my wife told him I would meet him at Zuni the next Saturday week.

Q.- Did you meet him there?

A.- Yes sir, I met him there.

Q.- Tell the circumstances under which you went there, to Zuni, to meet him.

A.- That Saturday morning came. I hooked my horse to the buggy and I asked my wife if she was able for me to leave her and she said she reckoned she was. I hitched up my horse and went on to Zuni. I went by Mr. Joyner's, as I was in the custom of hollowing to Jasper to come on and let's go to Zuni, I called him on that morning. He came out and got on the buggy and we went on to Zuni. I said to him after he got on the buggy, I said, "Jap don't you have anything to say to Mr. Whitley this morning about the place. Let me talk to him first and see what sort of figures I can get". He said, "all right," and I went on and met Mr. Whitley and I took him out there beside of Tommie Hall's house and talked.. And after I talked to him I couldn't do anything with him. He charged me \$2,500.00 and I left him and went on round there to Mr. Turner's store door and called Jasper. He was engaged in playing a game of cards with somebody. I thought I would get him and ~~go~~ we would go home and I would tell him what had happened. He said, "You take Mr. Whitley and go on out and I will get home anyway I can", and I did so and I never saw Jasper any more until after I bought the property the following Monday week, about ten (10) days after.

Q.- Does this property upon which Mr. ^{Jasper} Joyner was living at that time and the property in dispute adjoin where you live.

A.- Yes sir.

Q.- How far was Mr. Joyner's house from your house approximately?

A.- Well, I think it is maybe a quarter of a mile.

Q.- Did he ever come to see you to know what you had said to Mr. Whitley that morning at Zuni.

A.- No, sir, he never did.

Q.- You said you bought the property from Mr. Whitley the Monday week

following the Saturday.

A.- Yes sir, the Monday week following the Saturday I saw Mr. Whitley at Euni I bought it.

Q.- When did you see Mr. Joyner next?

A.- I saw him I think it was the next day after I bought it.

Q.- What did you then tell him?

A.- I told him I had bought that property.

Q.- What claim, if any, did he make then that you had bought the property for him?

A.- Not any at all. I told I had bought the property and the terms I had bought it on. I told him Mr. Whitley said he had promised to furnish ~~him~~/a roll of wire over there. I told Mr. Whitley that was all right, I had an extra roll and I would furnish the wire myself and he could get it any time.

Q.- Did you ever furnish the wire?

A.- After that Mr. Joyner and I had a fuss. He abused me and we fell out. I sent the roll of wire over there by a colored man that worked for me.

Q.- Was the wire put up?

A.- Some time after that he left word down there at Mr. Johnson's store he told Mr. Johnson that inasmuch as I had sent the wire over there if I would send some staples he would put it up.

(Question objected to by Mr. Sebrell as hearsay.)

And I did buy the staples and left them there. I told Charlie Johnson to hand them to him and he stopped there and got them.

Q.- Did he put the wire up?

A.- Yes sir, it is up, I don't know who did it.

Q.-

CROSS-EXAMINED BY MR. SEBRELL.

Q.- What time was it that you and Mr. Joyner had your conversation in the Polly Field?

A.- Some time in January. There was the largest snow we had that winter. I don't know what time of the month it was.

Q.- When he told you he thought it a good time to buy it, buy the farm from Mr. Whitley, you understood did you not that Mr. Joyner wanted to buy it?

A.- I had heard him say it several times.

Q.- The question came up as to whether 'twould be best for you or Mr. Turner to buy it.

A.- No sir it did not. No such a question was asked.

Q.- Did he not say that he did not think you would be able to buy it cheap but that he thought Mr. Turner would be the best one to buy it for him.

A.- Jasper Joyner said he did not think I could buy it at all.

Q.- Did he ask you how much money you would advance on it for him?

A.- Yes sir I think he asked me how much money I would put in it.

Q.- How much did you tell him you would put in it.

A.- I said "I haven't got the money Jap but I could raise \$600.00 or \$700.00 ~~and~~ and if I could arrange to satisfy Mr. Whitley I might put as much as \$2,000.00 in it."

Q.- About what time was it when you received a letter from Whitley saying that he would sell it.

A.- Why, it was ~~announced~~ in February, some time in February. Along about the second week in February.

Q.- Now, why, -do you know why, Whitley should have written to you that he wanted to sell it.

A.- I do not know, - I think he said he understood I wanted it.

Q.- Had you ever expressed any desire to buy it?

A.- I never said a word to him ~~about it~~ before that day at Zuni about buying it.

Q.- Until ~~he~~ you received his letter then the only talk that you had had about buying it was with Mr. Joyner as already testified to by you.

A.- That is the only time I ever approached him about buying it.

Q.- You said that the next day after receiving this letter you show-

ed it to Mr. Joyner.

A.- I didn't say next day. I said after then, after we had that talk in the Polly Field. We were killing some pigs. Jasper was over there and I showed him the letter.

Q.- What made you show the letter to Joyner.

A.- Why I had no reason for it especially. I did not mind showing it to anybody. There was no secret about it.

Q.- Did you not show it to Joyner for the very reason that he had been talking to you about buying it.

A.- No sir, I did not.

Q.- Was it at this time that Joyner told you that he could sell the stave timber to Dr. Gale?

A.- At the time I showed him the letter?

Q.- Yes?

A.- No it was not. It was over there at the Polly Field at the time we had the first talk.

Q.- When you showed Joyner Whitley's letter what did he say?

A.- He asked me if I was going to meet him and I told him I was.

Q.- Did he say anything about going with you?

A.- No sir, he did not.

Q.- When you wrote to him, - when you told Joyner that you were going to meet him and when you wrote Whitley that you would be there on Saturday week was it your intention to try to buy the land for Joyner.

A.- 'Twas not my intention to buy it at all but just to try to see what sort of figures I could get.

Q.- Were you going to try to see what you could get him to take for it for Joyner.

A.- No sir I didn't have that in view at all. Just to get his figures on it that's all.

Q.- Were you getting the figures for yourself or for Joyner?

A.- I wasn't getting them for anybody specially. He had done asked another man to buy it. He didn't ask me to buy it.

Q.- When you went down to Zuni you went by Joyner's house and you called Joyner out to know if he would go with you.

A.- Yes sir I asked him if he wanted to go with me.

Q.- I understood you to say that you did this just because you were in the habit of asking him to go to Zuni with you.

A.- Yes sir that's so. I frequently asked him to "come on and let's go to Zuni."

Q.- You did not have in your mind ^{at} ~~the~~ time that Mr. Joyner was desirous of purchasing the farm about which you were going to talk to Mr. Whitley that day.

A.- Yes sir I did; I knew he wanted it. He had told me he wanted it.

Q.- And did not that have something to do with your asking him to go to Zuni with you that day.

A.- Not at all.

Q.- Have you been to Zuni many times without Mr. Joyner?

A.- Have I been many times without him?

Q.- Yes.

A.- Why certainly I have. I've been many a time with him too.

Q.- Did you always go by and ask him to go with you?

A.- No/sir, I didn't always.

Q.- I understand from you that on your way to Zuni that day you told Mr. Joyner not to have anything to say to Mr. Whitley about the farm. Why did you tell him that?

A.- I just asked him not to have anything to say ^{that morning;} ~~to~~ ^{first} to let me ~~see~~ what sort of figures I could get. I did not have any motive at all. Of course, I took him down there for company, as I had done often.

Q.- Did you not understand that you were going to see what you could get him to take for the farm for Joyner?

A.- No sir, I didn't. I didn't understand any such mess as that. Nothing like it. He had not asked me to buy it.

Q.- Then why did you ~~want~~ want Joyner not to say anything to Whitley?

A.- I thought he would hve plenty of chance to talk to him that evening.

And so he did. He was with him all the evening, or pretty near all.

Q.- What was your objection to Joyner talking to Whitley?

A.- No objection at all. I simply asked him to let me talk to him first.
I had no objection at all.

Q.- Wasn't it your purpose that after you had talked with Whitley and found out what he would sell the land for to tell Joyner what it could be bought for.

A.- It was my purpose to tell him but I did not get chance to. He wouldn't get up off his seat. He told me to take Mr. Whitley and go on out. He would get home the best way he could.

Q.- If you were not trying to get a price for Joyner why were you anxious to tell him the result of your negotiation with Whitley.

A.- Well I can tell you why that was. I had done promised him if I could satisfy Mr. Whitley I'd find out whether it could be bought for \$2000.00 I was under some obligation ~~him~~ to him for \$2,000.00 provided it could be bought for that and no more. I would not put any more in it.

Q.- Then ^{if} I understand you, your idea was to see Mr. Whitley and if you could get him down to such terms that you would not have to put in but \$2000.00 you felt under some obligations to communicate the fact to Joyner so that he might buy.

A.- I was going to tell him what could be done if I could have gotten him out doors to talk to him.

Q.- He told you to go on with Mr. Whitley and you did not get a chance to tell him of the result of your talk with Mr. Whitley.

A.- I didn't. No sir.

Q.- You left Mr. Joyner at Zuni and you and Mr. Whitley drove on together.

A.- Yes sir.

Q.- When did you see Mr. Joyner after that?

A.- I don't think I see him any more until the next Tuesday or Wednesday after I bought the property.

Q.- Although Mr. Joyner lived within a quarter of a mile of you and you had talked with Mr. Whitley and had kept ~~him~~ Joyner from talking to

Mr. Whitley.

(Deponent interrupted with answer, "No sir I didn't keep)
(him from it.")

yet you did not see Joyner at all and communicate with him the result of your interview with Whitley?

A.- No sir. I didn't keep him from talking to Mr. Whitley. He talked to him and carried back to Zuni that evening. I didn't ask him not to talk to him. I just asked him not to talk to him at Zuni that morning until after I had talked to him in regards to the place.

Q.- And you never did tell Mr. Joyner anything about your conversation with Mr. Whitley or what the property could be bought for till after you had bought it?

A.- I did not tell then. I did not tell him what passed between us at Zuni because he has never been to me and asked me.

Q.- Did you tell him at any time before you bought it?

A.- I did not.

Q.- How much did you pay for it when you did buy it?

A.- Well I paid \$2100.00 and Mr. Whitley kept a year's rent off of it.

Q.- Did you not tell Mr. Joyner soon after you had bought this land that you had bought it and that you gave \$2,100.00 and Whitley was to have the rent?

A.- I might have told him that I don't know.

Q.- It was the very next day after you bought the property that you told him about it?

A.- I couldn't say positively the next day. Anyway it was in the next day or two.

Q.- You told Mr. Corbitt that you saw Joyner the next day after you bought it?

A.- Maybe I did tell him. I know it was the next day or the second day.

Q.- That was the first time that you had seen Joyner after you had bought?

A.- The first time I had seen him to speak to him since the day we went to Zuni together to meet Mr. Whitley.

Q.- You said then you and Mr. Joyner had a fuss. What was this fuss

about?

A.- Well the fuss was about- because I would not let him get the property I bought for myself.

Q.- Joyner claimed that you bought the land for him.

A.- Well I didn't do it. He didn't ask me to do it.

Q.- Will you tell me if Joyner did not claim that you did?

A.- Yes sir, he claimed that when we had the fuss.

Q.- He tried to get you to sign a paper giving him a right to the land?

A.- He did, but I didn't do it.

Q.- And that was what the fuss was about?

A.- That was what the fuss was about.

Q.- Before you bought the property for \$2,100.00, possession to be given the first of the year, did you consult Joyner to ascertain whether ~~on~~ ~~now~~ he desired you to purchase at that price?

A.- No sir, I did not.

Q.- Then when did Whitley make you the offer of \$2,100.00?

A.- He didn't make me the offer. I made him that offer and he agreed to take it. He said it suited me better than anyone else.

Q.- Didn't Mr. Joyner tell you that Mr. Whitley was asking \$2,500.00 for the place but that he thought he could buy it some cheaper.

A.- He had told me that. Because he bought it one time himself for that- or took an option on it.

Q.- He told you that he was going to try to get it some cheaper?

A.- He said he was going to try to get Mr. Turner to buy it for \$2000.00 if he could.

And further this deponent saith not.

The witness C. H. Johnson, being duly sworn, deposes as follows:

Q.- Mr. Johnson, you know Mr. A. J. Pierce?

A.- Yes sir.

Q.- And Mr. W. J. Joyner?

A.- Yes sir.

Q.- Mr. Pierce has testified to something about Mr. Joyner wanting some staples to put up a wire fence. Please state what you know of this.

A.- Mr. Joyner told me if Mr. Pierce would pay for the staples and leave them there at my place he would get them and put up the wire.

Q.- Did you tell Mr. Pierce that?

A.- Yes sir and Mr. Pierce paid for the staples.

Q.- Did Mr. Joyner get them?-get the staples?

A.- Yes sir. Yes.

Q.- About when did this happen?

A.- I don't know. Some time last year. I never expected to hear any talk of it any more. I suppose it was along in April,- March or April. It was not in the latter part of the year. It was in the early part of the year.

Q.- Mr. Joyner you are a merchant at Luni, are you?

A.- Yes sir.

CROSS-EXAMINED- BY MR. SEBRELL.

Q.- Is it not a fact that the staples were left ^{by Mr. Pierce} to be delivered to Mr. Joyner and that they were put in ~~him~~ with his mail and sent out to him?

A.- Well, I don't know who carried them. My clerk got them. He is at war now but I ordered him to get them.

Q.- You do not know ^{yourself} whether Mr. Joyner ever got them or not?

A.- Well, no sir. I can't swear to that.

Q.- You cannot say that he did not refuse to take them?

A.- No sir.

RE-DIRECT CROSS-EXAMINATION,- BY MR. CORBITT.

Q.- You do know Mr. Johnson that Mr. Joyner told you that if Mr. Pierce furnished the staples he, Mr. Joyner, would put up the wire?

A.- That is the way I understood it. I will tell you just the size of it. It's been more than a year ago and I never expected to hear it any more. I had no idea, and if I had known I would have to come here to-day I would never have sold ten cents worth of staples.

Q.- You do know, as you have heretofore testified, that you reported to ^{to Mr. Pierce that} ~~that~~ Mr. Joyner said that if Mr. Pierce would buy the staples he, Mr. Joyner, would put the wire up and that when you told Mr. Pierce that Mr. Pierce told you to let him, Mr. Joyner, have the staples?

A.- (Question objected to by Mr. Sebrell as leading and also)
(as it is a conversation between Pierce and the witness)
(to which the plaintiff was not a party, and is irrelevant.)

A.- Yes sir, he did.

RE-CROSS-EXAMINED- BY MR. SEBRELL.

Q.- Was not the entire transaction with regard to the staples had between Mr. Joyner and your clerk?

A.- Was it between my clerk and Mr. Joyner?

Q.- Yes?

A.- No Mr. Joyner said something to me about the staples. But Mr. Sebrell, to be plain with you I never expected to hear anything more of it any more. I did not know anything about ^{any of} this transaction between them.

Q.- And therefore you would not be able to say exactly what words were used about the matter.

A.- No, I could not. It has been so long ago. I told Jack I was a friend of both of you.

All signatures waived by consent.

Mr. A. J. Pierce, being recalled for further examination,
deposes as follows:

By Mr. Corbitt.

Q. Mr. Pierce, do you know Constant Joyner?

A. Yes, I know of him.

Q. Do you know him?

A. Yes, he worked with me a while.

Q. In the testimony taken in this case in behalf of Mr. Jasper Joyner Constant Joyner said that he had heard you say that you had bought the land in question for Jasper Joyner but that you were going to keep it yourself.

A. I never said any such word in my life to any one.

Q. Constant Joyner further says that you said you bought it for Jasper but was going to keep it yourself.

A. I never said any such thing in my life; God knows I didn't; I will be honest about it.

Q. Did you ever discuss with Constant Joyner at all the purchase?

A. I might have talked to him about buying it along about that time when Jasper Joyner was raring about it so much, cussing and doing. I have never told any body that I bought it for any body but myself. I never bought it for anybody but myself.

Q. Did you ever say in the presence of Mr. J. T. Joyner that you had bought this property for Jasper Joyner?

A. No, sir, I did not. If I did I don't know anything about it. I drank a whole lot of whiskey about that time, I am sorry to say; at Zuni two or three times full of whiskey, and every time that I was there full of whiskey him or Mr. Joyner or some of his people or Sam Turner would tackle me about this property. That's why I said if I bought it for Jasper Joyner I did not know anything about it.

NOTE: It is agreed that there shall be introduced as evidence as part of the record the original contract between Jesse Whitley and A. J. Pierce dated the 6th day of March, 1916, and the deed from Jesse Whitley and wife to A. J. Pierce, given pursuant to the said agreement.

CROSS EXAMINATION.

By Mr. Sebrell.

Q. Mr. Pierce, if I understand you your statement

Now is that when you were talking to Mr. J. T. Joyner and Mr. Constant Joyner that you had been drinking liquor and that you don't remember having made the statements that they had testified to. Is that correct?

- A. I never made no such statement; I never made no such statement to my knowledge.
- Q. Do you remember what you said while you were drunk?
- A. No, sir, I don't know whether I did it.
- Q. How, then, can you say that you did not make those statements while you were drunk?
- A. I said to my knowledge.
- Q. Then you may have made these statements and not have remembered them because you were drunk.
- A. I am satisfied that I never made such a remark in my life to anybody.
- Q. Did you not say in the presence of Clarence Edwards, a justice of the peace in Isle of Wight County, at the trial of the peace warrant before him that you had sworn out for Mr. Joyner, that you were trying to buy the property for Joyner at \$2,000.00 and if you had bought it at \$2,000.00 you would have bought it for him, but that you could not buy it for \$2,000.00 as Mr. Whitley charged you \$2,100.00 and you then decided to buy it for yourself?
- A. No, sir, I did not.
- Q. Did you not also testify in the Circuit Court of Isle of Wight County at the trial of appeal from the decision of Justice Edwards on this peace bond in the presence of the court and including Mr. J. R. Saunders that if you could have bought the property for \$2,000.00 you would have bought it for Mr. Joyner, but that not being able to get it at those figures you bought it for yourself?
- A. I didn't say that. I said if I could have bought it for \$2,000.00 I would be under obligations to him.
- Q. And didn't Mr. Saunders ask you whether or not you communicated to Mr. Joyner the fact that you could not buy for \$2,000.00 but could buy for \$2,100.00?
- A. No, he did not; God knows he didn't.
- Q. Didn't he ask you that question?
- A. No, sir, he did not, if he did I don't remember it.
- Q. And did you not then testify in answer to Mr. Saunders's question that you did not communicate with Mr. Joyner the fact that you could not purchase for less than \$2,100.00 before you bought it for yourself?
- A. No, sir, I did not; such question I never heard before.

RE-DIRECT EXAMINATION.

By Mr. Corbitt.

Q. Mr. Pierce, you said that Constant Joyner had worked for you. What had been your experience with Constant Joyner as to his truthfulness?

A. Not any truth about him. He just lied to me; I could not rely on anything at all.

Q. What would you say as to your believing him on oath?

A. I wouldn't believe him on oath.

Q. How long have you known him?

A. I have known him ever since he was a small boy; I never had any dealings with him only when he came to work. I never could place any confidence in him, trust him with anything. I never knew when he was telling the truth. That's all I know about it.

W. R. Hall, being duly sworn, deposes as follows:

By Mr. Corbitt:

Q. Where do you live, Mr. Hall?

A. I live in Isle of Wight County four miles east of the court house and about seven miles from Zuni.

Q. Your name is W. R. Hall?

A. Yes, sir.

Q. What relationship, if any, are you to Mr. A. J. Pierce?

A. He married my sister; she is dead now.

Q. Do you know this piece of property upon which Mr. Jasper Joyner is now living?

A. I know about it.

Q. It adjoins the property upon which Mr. A. J. Pierce now lives?

A. Yes, sir.

Q. State how intimate your relations constantly have been with Mr. A. J. Pierce.

A. Well, we have always been friendly - very intimate. My sister was sick nearly all the time after she was married and I used to go there nearly every week to see her.

- Q. It has been testified to here that this property in question was bought by Mr. Pierce from Mr. Jesse Whitley on the first day of the March 1916 term of Isle of Wight Court, that is, on the 6th day of March, 1916. Please state when you next saw Mr. Pierce after he bought this property.

WITNESS: When I next saw him after he bought this property?

MR. CORBITT: Yes.

- A. I can't remember the exact date.
- Q. How many days after?
- A. It was sometime during the month of March.
- Q. Can you tell how many days after the court day upon which he bought it?
- A. I couldn't tell exactly, but my impression is that it was the last of the month.
- Q. Did you ever hear him say that he had bought this property for Jasper Joyner?

MR. SEBRELL: Question objected to as any statement made by the defendant or the witness would be self-servient.

- A. No, sir.

Mr. George H. Hall, being duly sworn, deposes as follows:

- Q. State your name, age, place of residence and occupation.
- A. Name George H. Hall, age 38 years, I live in Isle of Wight County four miles from Isle of Wight court house.
- Q. Do you know Mr. Jasper Joyner and Mr. A. J. Pierce?
- A. Yes, sir.
- Q. Are you a brother of Mr. W. H. Hall, who just testified?
- A. Yes, sir.
- Q. Upon what terms have you and Mr. A. J. Pierce been?
- A. He married my sister and I used to go there every week.
- Q. The evidence is that Mr. A. J. Pierce bought the property upon which Mr. Jasper Joyner now lives from Jesse Whitley at March court, 1916, that is, on the 6th day of March. Please state whether or not you were at the court house that day and talked with Mr. Pierce after he bought this property from Mr. Whitley?

A. Yes, sir. I was; I did talk with him afterwards.

Q. Did he tell you he had bought the property?

A. Yes, sir.

Q. Did he tell you he had bought the property for himself?

MR. SEBRELL: Question objected to.

A. No, sir.

Q. Did he tell you he had bought it for Jasper Joyner but did not want to let him have it?

MR. SEBRELL: Question objected to.

A. No, sir.

Q. What, if anything, did he tell you to lead you to believe that he had bought it for Jasper Joyner but did not want to let him have it?

MR. SEBRELL: Question and answer objected to on the ground that it asks for a statement made by the defendant not in the presence of the plaintiff and intended to serve the defendant's own interest.

A. No, sir.

Q. From what he said to you whom did you understand he bought the property for?

MR. SEBRELL: Question objected to for reason above and because calling for a conclusion by the witness.

A. For himself.

Q. Do you know Constant Joyner?

A. Yes, sir.

Q. How long have you known him?

A. I have been knowing him all of his life.

Q. What has been his occupation since you have known him?

A. Well, from one place to another, worked for a little while here and a little while running about.

Q. Am I to understand that he worked as a day laborer?

A. Yes, sir.

Q. Have you had an opportunity to reach any conclusion about his truthfulness?

MR. SEBRELL: Question objected to as it is not the proper way to prove the general reputation.

A. I could not believe him.

Q. Why do you say you could not believe him?

MR. SEBRELL: question objected to on the same reason.

A. Because he is not truthfull.

Q. Are you speaking from your own knowledge or from what you heard others say?

A. A big portion of my own knowledge.

Q. What would you say as to your believing him on oath?

MR. SEBRELL: Question objected to on the same reason.

A. I couldn't believe him.

Q. Suppose he was to swear to anything on oath?

MR. SEBRELL: Objected to on same reason.

A. I wouldn't believe him.

Q. Do you know his general reputation for truth and veracity among people who know him?

A. Yes, sir, I do.

Q. What is that reputation for truth and veracity?

A. Not very good.

CROSS EXAMINATION.

By Mr. Sebrell:

Q. Did you not, just a moment ago, say that you had based your opinion for Mr. Joyner's truth and veracity on your own knowledge and not from what you had heard?

A. I said on my own knowledge.

Q. Did you not also say you did not base it upon what you had ~~xxx~~ heard?

A. I did not base it on what I had heard.

Q. As a matter of fact, you have not heard anybody discuss his reputation have you?

A. No, sir.

Q. You have never heard his reputation brought in question?

A. I know enough without all that.

Q. But, as a matter of fact, you have never heard discuss his reputation?

A. Yes, sir.

Q. What made you say a few minutes ago that you had not?

A. I have heard, but paid no attention to it; I know enough without that.

Q. You never paid any attention to what?

A. To what I heard people say.

Q. You paid attention to what was being said here to you didn't you?

A. I heard you all talking about it.

Q. Were you paying attention to what was asked you a moment ago?

A. Yes, I paid attention to you.

Q. Then what made you say that you had never heard Mr. Joyner's reputation discussed?

A. I said that I had never paid any attention to his reputation when people were talking about it.

Q. But did you not say that you had never heard it discussed?

A. I never said I never heard it discussed.

Q. Just now I asked you as a matter of fact have you heard anybody discuss his reputation and you answered "No". Was that the truth?

A. I said that I had but I had not paid any attention to it.

Q. Who have you ever heard discuss his reputation?

A. You.

Q. So when you said that you had heard his reputation discussed you were referring to what I said, were you not?

A. Yes, you were the one that was speaking about his reputation there.

Q. Were you referring to my discussing it?

A. Yes, but I know enough.

Q. Have you heard anybody discuss his reputation except in the questions which I have propounded to you?

A. No, I have not.

Q. Then when you say that you had heard his reputation discussed you are referring to the questions that I had propounded to you with reference to his reputation.

- A. I haven't heard anyone say any more about it than what I heard Mr. Sebrell say in these questions here to me this morning.

Mr. Clarence Edwards, being duly sworn, deposes as follows:

By Mr. Sebrell:

- Q. State your name, residence, occupation and do you know the parties to this suit.
- A. Clarence Edwards, live at Isle of Wight Court House, farmer and justice of the peace. I know the parties.
- Q. Please state whether or not you were the justice of the peace who tried a peace warrant sworn out against W. J. Joyner, the plaintiff, by A. J. Pierce,

MR. CORBITT: Question is objected to as it is irrelevant and immaterial to the issues involved in this suit.

- A. Yes.

- Q. In the course of that trial, did Mr. A. J. Pierce make any statement to you about buying the Whitley farm for W. J. Joyner?

MR. CORBITT: Question objected to for the reason above given and for the further reason that no foundation has been laid for the introduction of this testimony.

- A. Yes, sir.

- Q. What was that statement?

MR. CORBITT: It is understood that similar objections apply to all questions.

- A. Mr. Pierce stated in my presence that if he could have bought the farm for \$2,000.00 it would have been Jasper Joyner's, and after he could not buy it for \$2,000.00, he decided he wanted it for himself.
- Q. Did he make any other statement touching upon the question as to who he was buying the property for?
- A. Why, he only said he was buying it for Joyner for \$2,000.00 if he could have gotten it; just as I told you.

CROSS EXAMINATION.

By Mr. Corbitt:

- Q. Mr. Edwards, isn't it a fact that Mr. Pierce told you that if he could have bought it for \$2,000.00 he would have felt under some obligations to Mr. Joyner?

A. No, sir.

Q. What did he tell you?

A. He said if he could have gotten it for \$2,000.00 it would have been Jasper Joyner's farm. After he could not buy it for \$2,000.00 he decided he wanted it for himself.

Mr. W. J. Joyner, being recalled for further examination, deposes as follows:

By Mr. Sebrell:

Q. Mr. Joyner, you have already been sworn in this case, I believe?

A. Yes, sir.

Q. Mr. Pierce has testified that on the day that you and he went to Zuni at which time he met Mr. Whitley that there was no understanding that he was going to see Mr. Whitley about the farm in your behalf. Please tell what is a fact in that behalf.

MR. CORBITT: Question objected to on the ground that the witness has heretofore testified fully as to what happened between him and Mr. Pierce on the trip to Zuni.

A. Going on to Zuni, Mr. Pierce said to me, he said: "Jap, I don't want that property at any price, but I can buy it cheaper than you or anybody else. If you will promise me this morning that you won't talk to Mr. Whitley about the place, I will buy it for you and get it cheaper", and I promised him I wouldn't talk to Mr. Whitley.

Q. Did you see Mr. Whitley that afternoon?

A. Yes, sir.

Q. Did you talk to him about the place?

A. No.

Q. Why?

A. Because I had promised Mr. Pierce I wouldn't talk to him; I would let him make the deal.

MR. CORBITT: Same objection is made to all the above questions and answers and any such questions that may follow.

Q. Mr. Pierce testified that after he had seen Mr. Whitley he went to some store where you were playing cards to take you home and that you declined to leave. Please state the circumstances in regard to this.

A. Just as we were going in to Zuni I promised Mr. Pierce I would not go out with him. I would let him take Mr. Whitley out so that he would have a fair chance to talk to him.

Q. When he came to the door of the store and called you why did you not go?

A. Because I done promised him I would not go out with him; I would let him take Mr. Whitley out,

Q. Mr. Pierce testified that he did not tell you that he would buy the place for you. Did he tell you that he would?

A. Yes, sir, he did tell me so and said that he could buy it cheaper than anybody else; just leave it to him.

MR CORBITT: Question objected to on the ground that the witness has heretofore testified fully on this point.

Q. Were you, at any time, notified by Mr. Pierce or anybody else that he was trying to buy the farm for himself?

A. No, sir, he told me he didn't want it at any price but that he would buy it for me.

Q. At the time that he told you that he had bought it, who did you think he had bought it for?

A. For me.

MR. CORBITT: Question and answer objected to on the ground that the witness has been asked his opinion where it is proper for the court to decide whether the witness had any right to believe that Mr. Pierce was buying it for him.

Q. At the time he informed you that he had purchased it did you claim it and ask him to make the papers to you?

A. Yes, sir.

Q. Is that what you had a fuss about?

A. Yes, sir, as soon as I understood he bought it I claimed the property at that price.

Q. That was before deed was made, was it not?

A. Yes, sir, that was on Tuesday morning and he bought it on Monday.

Q. Where were you when he told you he bought it?

A. In the road; he called me from the house, I was eating breakfast.

Q. Did he want to see you about anything else other than he had bought it?

- A. No, sir, if he did he never said anything about it.
- Q. Did he, at that time, deny that he had bought it for you?
- A. No, sir, he told me how he got on the other day; he had bought it - how he bought it.
- Q. When you asked him to give you a paper showing that he bought it for you what did he say?
- A. He said he was busy that morning and could not do it, but that he would fix it in a few days and give me a contract.

MR. CORBITT: Question and answer objected to on the ground that the witness has heretofore been called and testified fully on all these questions.

- Q. Mr. Pierce has testified that you did not ask him to buy the property for you but said that you would get Richard Turner to get the property for you.
- A. It was the understanding before between Mr. Pierce and myself in the Polly Field that Mr. Turner was to do the writing and get the price.
- Q. Did you have any reason to doubt that Mr. Pierce was negotiating in your behalf for the purchase of the farm?

MR. CORBITT: Question objected to on the ground that it calls for a conclusion of the witness.

- A. No, sir.

CROSS EXAMINATION.

By Mr. Corbitt:

- Q. When did you first know that Mr. Whitley would be at Zuni that morning when you went with Mr. Pierce?
- A. He called me to the road and said that he was going to Zuni and to go with him.
- Q. You remember when Mr. Pierce called you to the road?
- A. Yes, sir?
- Q. How did you know that Mr. Whitley was coming from Zuni out to the farm that day?
- A. I know that he always comes out there when he comes to Zuni.
- Q. How did you know anything but that he was going to Zuni to meet Mr. Pierce and had no intention of coming to the farm.
- A. Mr. Pierce told me he was going there and got me to promise that I would let him bring him out there;

That I would not come back with him.

- Q. You mean to say that Mr. Pierce told you that Mr. Whitley was not only going to Zuni that day to meet him but that Mr. Whitley was also coming out to the farm with Mr. Pierce?
- A. Yes, sir, he got me to promise him that he would take him out to the farm and he would have a fair chance to talk to him.
- Q. You are positive now that Mr. Pierce told you that Mr. Whitley was coming out to the farm that day?
- A. Yes, sir.
- Q. and because you promised Mr. Pierce that you would let him take Mr. Whitley out you did not answer him when he called you in the store?
- A. I answered him; I did answer him when he called me.
- Q. What did he say to you when he called you?
- A. He said "Do you want to go out with us?" That is what he said.
- Q. What did he mean "Do you want to go out with us?"
- A. I suppose he meant with him and Whitley. He had Mr. Whitley on the buggy.
- Q. How do you know he had Mr. Whitley on the buggy?
- A. I had two eyes; saw the horse and buggy and Mr. Whitley standing on it.
- Q. Where were you at that time? Engaged in a game of cards in the store?
- A. Yes, sir.
- Q. Where was the horse and buggy?
- A. Horse and buggy was out by the door?
- Q. And from where you were sitting at this card game you could see Mr. Whitley sitting in the buggy?
- A. Through the door or window, either one.
- Q. Whose store was that you were in?
- A. R. J. Turner's.
- Q. It didn't look very much as if Mr. Pierce objected to your going out with him and Mr. Whitley did it when he called you to know if you would go out with them?
- A. I know that he got me to promise him that I wouldn't go with him. I don't know, he called me; I didn't ask him that.
- Q. But he did call you and ask you to go out?

- A. No, sir, He asked me did I want to go out with them.
- Q. Did you have any right to believe that he didn't want you to go with him?
- A. I didn't; why he asked me that question I don't know; I don promised him I wouldn't go out with them.
- Q. You testified heretofore that you did not see Mr. Pierce any more until the day he told you he bought the farm. Is that correct?
- A. Yes, sir.
- Q. That was about ten days after he told you he bought the farm; wasn't it?
- A. I don't remember how many days.
- Q. You testified before that this was Saturday that you and Mr. Pierce were at Zuni when Mr. Whitley came there.
- A. Yes, it was on Saturday.
- Q. You also testified that the next Monday week was Isle of Wight Court - March court - did you not?
- A. I don't remember whether I made that statement or not.
- Q. It was thought, however, that the Monday week was the first Monday in March - it was the March term of Isle of Wight Court, was it?
- A. It was the first Monday he bought the property; I don't know if it was the following Monday or not.
- Q. Was it the following Monday week or the following Monday two weeks?
- A. I just told you I didn't know.
- Q. How long was it between the time that you and Mr. Pierce went to Zuni that day you were talking about before the March court day on which Mr. Pierce bought the property?
- A. I don't remember how many days it was.
- Q. March court was on Monday wasn't it?
- A. Yes, sir.
- Q. You went to Zuni on Saturday you said with Mr. Pierce.
- A. I did.
- Q. Was the March court day the next Monday after that Saturday?
- A. I just told you I didn't remember.
- Q. Was March court day the second Monday after that Saturday?

A. I just told you I didn't remember.

Q. Now, Mr. Joyner, was the March court at which you said Mr. Pierce bought the property from Mr. Whitley the third Monday after that Saturday or not?

A. I just told you I didn't remember how many Mondays that was.

Q. You are not prepared to say then whether it was two days after you went with Mr. Whitley to Zuni that Mr. Pierce bought the property of Mr. Whitley or whether it was fifteen days, are you?

A. I am not prepared to say for certain.

Q. Didn't you say for certain how long it was when you testified before in this case?

A. I don't remember whether I did or not.

Q. If you did testify how long it was that time why is it that your memory is not as good as it was then?

A. I don't know that I did.

Q. Why didn't you go to Mr. Pierce after that day at Zuni and ask him what had passed between him and Mr. Whitley in reference to the purchase of that property?

A. Because he done promised me that he would buy it for me and I was expecting him to make the deal from him and waiting to hear from him.

Q. Were you deeply interested in purchasing that place?

A. Made my arrangements to purchase the place.

Q. Why was it that you didn't show enough interest in it after Mr. Pierce saw Mr. Whitley at Zuni to go to Mr. Pierce and ask him what he was able to do with Mr. Whitley?

MR. SEBRELL: This question is objected to on the ground that it is, as a great many before, simply a repetition of the same question and is means of mere consumption of time and encumbers the record.

MR. CORBITT: Mr. Sebrell always objects to the consumption of time when the time is consumed in seeking evidence that is against his client.

A. I was waiting for him to let me know what he did.

Q. That explains then your lack of interest in seeing him about it.

A. There was no lack of interest about it.

Q. That was the only reason then why you did not go to see Mr. Pierce about it?

A. The reason I didn't go was because I promised him

that I would let him make the deal for me.

Q. Is that any reason why you should not have asked Mr. Pierce how he progressed with the deal?

A. I should think so.

Q. Didn't you tell Mr. Pierce that you would not want him to negotiate with Mr. Whitley for you but wanted Mr. Richard Turner to do it?

A. No, sir, I ain't never told him so.

Q. When was this Saturday that you went to Zuni - what month and what year - when you went to Zuni with Mr. Pierce to see Mr. Whitley?

A. Sometime in February, 1916.

Q. Which Saturday in February, 1916?

A. I can't tell you - I don't know.

Q. Do you know whether it was the first Saturday in February, 1916?

A. I just told you I didn't know.

Q. You still say that you don't know whether it was the first Saturday in February, 1916, or the second Saturday in February, 1916.

A. I said it was in February, 1916.

Q. And it was on a Saturday?

A. Yes, sir.

Q. But you don't know which Saturday it was in February?

A. Not positive; no, sir.

Q. Which Saturday in February, 1916, would you say it was to the best of your belief?

A. Well, if I was going to say to the best of my belief I would say about the middle - between the middle and the last.

Q. Now, to the best of your belief, was it nearer the middle part or the latter part of February, 1916?

A. Well, I wouldn't say positively - it was somewhere between the middle and the last.

Q. Is there any reason why you should not know the day - which Saturday in February, 1916, it was as well as you knew when you testified first in this case?

A. I don't know as I knowed then.

Q. That don't answer my question. Why won't you know if there was any reason why you should not know as well today what Saturday in February, 1916, it was as you knew when you first testified in your behalf in this case?

- A. There is no reason that I know of.
- Q. If you testified before that it was the second Saturday in February, 1916, that you and Mr. Pierce went to Zuni to see Mr. Whitley what would you say about that testimony?
- A. I would have to know what I said to answer that question.
- Q. You don't have to know that you said it. I asked you if you said that then what would you say now as to the correctness of that statement?
- A. I told you I don't know what Saturday that was.
- Q. If you testified before that it was the last Saturday in February what would you say about it now as to the correctness of that testimony?
- A. I told you I don't remember what Saturday it was.
- Q. And you are not prepared to say whether it was two days after you and Mr. Pierce went to Zuni to see Mr. Whitley before Mr. Pierce bought the property from Mr. Whitley or twenty days?
- A. No, sir, I didn't keep no count of the days.
- Q. However long it may have been, you never knew what passed between Mr. Pierce and Mr. Whitley at Zuni until after Mr. Pierce bought the property, did you?
- A. No, sir, I did not.
- Q. And you never, during that time, asked Mr. Pierce what passed between him and Mr. Whitley at Zuni?
- A. I didn't see him.
- Q. Did you try to see him?
- A. No, sir.

Mr. Pierce recalled.

By Mr. Corbitt:

- Q. Mr. Pierce, Mr. Jasper Joyner has testified that the reason he did not go back with you from Zuni that Saturday that you heard so much about was because as you and he were going to Zuni he promised you that he would not go back with you but that you could take Mr. Whitley back to the farm so that you could have a fair chance to talk to him. What have you to say about that?
- A. I say there isn't anything of it so. I did not know Mr. Whitley was going out to the farm until after I went to the store and called Mr. Joyner to come on and let's go home and his reply was to me "Mr. Whitley wants to go out; you take Mr. Whitley, go right on and I will get out the best way I can." And I said "Why I can carry all

three; you can both go in the buggy" and he said "No, it will be too much". Then I went right on and looked for Mr. Whitley and told Mr. Whitley that I would take him out to Miss Jennie Birdsong's. Then I hitched my horse and we went out. That is all I can say.

Q. And Mr. Whitley, before going to Zuni that day, notified you that he would want to go out to the farm?

A. No, sir, he just wrote me word to meet him at Zuni any day that I would set and I did go.

Q. In going to Zuni that morning did you think that Mr. Whitley was going back to the farm?

A. I had no reason to believe it; he didn't say anything about it in the letter and thought he was going right back.

By Mr. Hutton.

Q. Who did you say was in the buggy with you at Zuni when Mr. Joyner came to the door?

A. I didn't say there was anybody - there was nobody; I hadn't even hitched my horse and didn't know Mr. Whitley was going with me until after I called Mr. Joyner in that game of cards to come out and let's go home.

Q. You heard Mr Joyner testify - he was mistaken, was he, when he said that you drove up to the store where he was at the time and had Mr. Whitley with you?

A. He was mistaken.

Q. If it should be testified to by a witness present at the time that you did have Mr. Whitley with you in front of the store at Zuni, you would say that witness was mistaken?

A. I certainly would.

Q. Did I understand you to say you didn't expect Mr. Whitley to go back with you when you went back from Zuni?

A. I didn't expect him to go back with me.

Q. You deny that you ever told Mr. Joyner not to go with you and Mr. Whitley on that day so that you would have a fair chance to talk to him?

A. Yes, sir, I do deny it.

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

By, Mr. Hutton:

Please state your name, age, residence and occupation

and if you know A. J. Pierce and W. J. Joyner.

- A. Name, J. R. Saunders; age, 30; residence, Suffolk; occupation, attorney-at-law; I know both Joyner and Pierce.
- Q. Please state if you heard A. J. Pierce make any statement in reference to any notice given by him to W. J. Joyner in reference to the price that was to be paid for the farm purchased by A. J. Pierce from Jesse Whitley.
- A. On the day Mr. Pierce testified against Mr. Joyner at Isle of Wight Court House when Mr. Joyner was being prosecuted by Mr. Pierce, Mr. Pierce trying to put him under a peace bond, I asked Mr. Pierce, as counsel for W. J. Joyner, whether or not, when he found out he could not buy the land from Mr. Jesse Whitley at the price of \$2,000.00, he then notified Mr. Joyner, and he stated that he did not. I was interested in the case and expected this suit, and I purposely asked Mr. Pierce that question with a view to this case. I also understood Mr. Pierce to say that if he could have bought the land for \$2,000.00 it was to be for Joyner but that he found that he could not but it for \$2,000.00 and he bought it for \$2100.00 for himself.

CROSS EXAMINATION.

By Mr. Corbitt:

- Q. Mr. Saunders, you are not only attorney for Mr. Joyner in this suit to which you have referred in your testimony but you have also been attorney for him in the peace suit brought by Joyner against Pierce, have you not?
- A. Yes, sir.
- Q. Are you prepared to say exactly what Mr. Pierce stated about what would have been the situation if he could have bought the land for \$2,000.00?
- A. As I have stated, my understanding of what Mr. Pierce said was that he went to see Mr. Whitley to buy the land for \$2,000.00 for Mr. Joyner and that he found that he couldn't but it for \$2,000.00 so he bought it for \$2100.00 for himself. Judge White heard this testimony and if his recollection is clear on this evidence, no doubt, he will remember the statement.

MR. CORBITT: Counsel for Mr. Pierce objects to the witness giving his conclusions drawn of what Mr. Pierce testified and also objects to introducing in this record what he said would be the testimony of Judge White who has not been sworn and who has not testified in this case.

- Q. Can you state the exact language used by Mr. Pierce at that time with reference to his buying

it for \$2,000.00?

- A. I can not state the exact words but I have stated my understanding of what Mr. Pierce said and I think my mind is absolutely clear on that point.
- Q. You are stating, then, the conclusions you drew of what Mr. Pierce said and not what Mr. Pierce said; is that correct?
- A. I am stating my understanding of the English language when used by a witness on the stand, but I do not recall, as I have stated, the exact words.
- Q. You can not say, then, what Mr. Pierce said at that time?
- A. This is about the fourth time I have stated that I did not recall the exact words.
- Q. And for the fifth time, if you choose to put it that way, I will be glad to have you say if that wasn't simply the conclusion that you drew from what you understood Mr. Pierce to mean rather than what he said.
- A. I do not think any man who had average intelligence could have mistaken what Mr. Pierce said on that point.
- Q. If no man who had average intelligence could have mistaken what Mr. Pierce said on that point, please state what Mr. Pierce did say and not your own conclusion.
- A. I again say that I do not recall the exact words used but my mind is absolutely clear that Mr. Pierce did say that if he could have bought the land for \$2,000.00 it was to have been for Mr. Joyner.
- Q. What else did he say inasmuch as he could not buy the land for \$2,000.00?
- A. He said that he couldn't buy the land for \$2,000.00 and that he did buy it for \$2100.00 for himself.

6
IN THE CIRCUIT COURT OF
ISLE OF WIGHT COUNTY, VIR-
GINIA.

W. J. JOYNER

v.

A. J. PIERCE, ET ALS.

ORDER.

Subi Jan 4, 1917

00077393

VIRGINIA,

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY:

-----1
W. J. JOYNER, '
 '
v. '
 '
A. J. PIERCE, ET ALS. '
-----1

On motion of A. J. Pierce, one of the respondents
in the above entitled cause, leave is granted him to file his an-
swer which said answer is accordingly this day filed.

4
IN THE CIRCUIT COURT OF
ISLE OF WIGHT COUNTY, VIR-
GINIA.

W. J. JOYNER,

v. 253

A. J. PIERCE, ET AL.

ORDER.

copy page 400

VIRGINIA,

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY:

W. J. JOYNER,

v. § 253

A. J. PIERCE, ET ALS.

On motion of Jesse Whitley one of the defendants
in the above entitled cause, leave is granted him to file his an-
swer which said answer is accordingly this day filed.

1
W. G. Jaynor
No 252
Pence et al

Memo

Filed Oct 24/1916

TO A. S. JOHNSON, CLERK OF THE CIRCUIT COURT OF ISLE OF WIGHT
COUNTY, VIRGINIA:

W. J. Joyner.....Complainant

vs. IN CHANCERY

R. J. Pierce and ~~Thos. J. Pierce~~.....Defendants

John Whitley and Helen Whitley

Issue summons FIRST RULES (First Monday) in ~~June~~, ^{November}

1916.

J. H. Hammers

p. q.

8

W. J. Joyner

N. Y. No 253

Alfred no 1100

Pyramiden Order

26 June 1917

W. J. Joyner

N. Y. No 253

Alfred no 1100

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

In Vacation. On the 26th day of June 1917.

W. J. JOYNER,

v.

A. J. PEARCE, JESSE WHITLEY, AND

HATTIE C. WHITLEY, his wife.

On motion of complainant, an injunction is awarded restraining and enjoining the defendants, their agents, attorneys, and all other persons from proceeding to obtain or executing any writ of possession in favor of the defendants against the said complainant, or in any manner interfering with the possession of the complainant of the land in the bill and proceedings in this cause mentioned, until the first ^{Monday in October} ~~day of September~~, 1917, unless this injunction shall be sooner enlarged or dissolved.

But before the complainant shall have the benefit of this order, he or someone for him shall enter into bond, with approved security, before the Clerk of this Court in the penalty of \$ 500⁰⁰, condition for the payment of all such damages as shall be awarded and all such costs as shall be incurred in case this injunction shall be dissolved.

All of which is certified to the Clerk of the Circuit Court of Isle of Wight County this 26th day of June, 1917.

J. D. White

W. J. J. J. J.

v. Chavany No 253

O. J. P. J. J.

Copy of Inspection
Order

I executed the within Order this the 2 day of
July 1917 by Serving a true
copy of the same on A. J. P. J. in person
in the County of Isle of Wight.

R. Augustus Edwards
Sheriff of Isle of Wight Co.

VIRGINIA: IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY, IN VACATION,
JUNE 26TH. 1917.

W. J. Joyner

vs)

A. J. Pierce, Jesse Whitley and Hattie C. Whitley.

On motion of complainant, an injunction is awarded restraining and enjoining the defendants, their agents, attorneys, and all other persons from proceeding to obtain or executing any writ of possession in favor of the defendants against the said complainant, or in any manner interfering with the possession of the complainant of the land in the bill and proceeding in this cause mentioned, until the first Monday in October, 1917, unless this injunction shall be sooner enlarged or dissolved.

But before the complainant shall have the benefit of this order, he or someone for him shall enter into bond, with approved security, before the Clerk of this Court in the penalty of \$500.00, condition for the payment of all such damages as shall be awarded and all such costs as shall be incurred in case this injunction shall be dissolved.

All of which is certified to the Clerk of the Circuit Court of Isle of Wight^{County} this 26th. day of June, 1917.

A copy,

Teste, [Signature] Clerk.

The bond required by the above order has been executed.

Teste, [Signature] Clerk.

14
VIRGINIA: IN THE CIRCUIT
COURT OF ISLE OF WIGHT
COUNTY.

W.J. JOYNER,

v.

A.J. PEARCE, JESSE WHITLEY
AND HATTIE C. WHITLEY, his
wife.

INJUNCTION ORDER.

Enter this: Nov. 17 1917.

M. G. Horne
882 Gardner

Virginia: Clerk's Office of the Circuit Court of the County of Isle
of Wight November 20th. 1918, this vacation order was received and
entered of record.

Teste, *C. H. H. H.* Clerk.

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

W. J. JOYNER,

v.

A. J. PEARCE, JESSE WHITLEY, and

HATTIE C. WHITLEY, his wife.

On motion of complainant, an injunction is awarded restraining and enjoining the defendants, their agents, attorneys, and all other persons from proceeding to obtain or executing any writ of possession in favor of the defendants against the said complainant, or in any manner interfering with the possession of the complainant of the land in the bill and proceeding in this cause mentioned, until *the final disposition of this cause*, unless this injunction shall be sooner ~~ended~~ ^{abridged} or dissolved *by order of this Court*.

But before the complainant shall have the benefit of this order, he or someone for him, shall enter into bond, with approved security, before the Clerk of this Court in the penalty of \$500.00, conditioned for the payment of all such damages as shall be awarded and all such costs as shall be incurred in case this injunction shall be dissolved.

All of which is certified to the Clerk of the Circuit Court of Isle of Wight County, this 16th day of November, 1917.

*Emmett A. Parn, judge
of the Court of Vestings for the
City of Portsmouth*

20

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE
OF WIGHT COUNTY.

W. J. JOYNER

v. { 253

A. J. PIERCE, JESSE WHITLEY
AND HATTIN C. WHITLEY, his
wife.

DECREE.

1918
Dec. 3.
Entered this
P. H. W.

C. O. B. 7
page 482

✓

ing to the said Special Commissioner the said sums hereinabove mentioned, for which services as Special Commissioner the said John N. Sebrell, Jr., will be allowed a fee of TWENTY-FIVE DOLLARS (\$25.00) to be taxed as a part of the costs in this suit. But before the said Special Commissioner shall act

hereunder he shall execute a bond for the sum of \$ 2500.00 payable to the Commonwealth of Virginia conditioned upon the faithful performance of his duties as Special Commissioner.

And the Court doth further adjudge, order and decree that should the said W. J. Joyner fail or refuse to make the payments as provided in this decree then the injunction hereinbefore awarded in this cause on the 18 day of June, 1917, be, and the same is, hereby dissolved and that the said W. J. Joyner shall be required forthwith to surrender possession of the said property to the said A. J. Pierce, and in that event the said A. J. Pierce shall recover of the said W. J. Joyner his costs in and about the defending of this suit, but should the plaintiff, W. J. Joyner, make the payments as hereinabove ordered he shall recover of the defendant, A. J. Pierce, his costs in and about the prosecution of his suit in this behalf expended.

All that certain tract or parcel of land lying, situate and being in the County of Isle of Wight, Virginia, containing three hundred and fifty (350) acres, more or less, and bounded as follows: on the North by the lands of A. J. Pierce (formerly belonging to O. L. Batten) and J. S. Crocker, on the South by Anna Turner, on the East by the lands of A. J. Pierce (formerly belonging to O. L. Batten), and on the West by Blackwater River, and being the same land conveyed to said A. J. Pierce by deed from Jesse Whitley and Hattie C. Whitley, his wife: _____

pays to the said A. J. Pierce, or to his attorney, the sum of TWO THOUSAND, ONE HUNDRED DOLLARS (\$2,100.00) with interest on ONE HUNDRED DOLLARS (\$100.00) thereof from the 6th day of March, 1916, until paid, with interest on FIVE HUNDRED DOLLARS (\$500.00) thereof from August, 1st, 1916, until paid, and with interest on ONE THOUSAND, FIVE HUNDRED DOLLARS (\$1,500.00) thereof, from the 1st day of January, 1917, until paid, and also pays to the said A. J. Pierce, or to his attorney, the further sum of SIXTEEN AND 50/100 DOLLARS (\$16.50) with interest thereon from November 30th, 1917, until paid, being taxes paid on the land in question by A. J. Pierce for the year 1917 and the still further sum of FOURTEEN DOLLARS (\$14.00) for wire furnished by the said A. J. Pierce and used on the said farm.

And the Court doth further adjudge, order and decree that if the said A. J. Pierce shall fail or refuse to make, acknowledge and tender such deed to the said plaintiff within 20 days from the date of this decree, then John N. Sebrell, Jr., who is hereby appointed Special Commissioner for the purpose and duly empowered thereto, shall execute and deliver for record to the said plaintiff, W. J. Joyner, said deed conveying said land with special covenants of title upon the said Joyner pay-

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

W. J. JOYNER,

v.

A. J. PIERCE, JESSE WHITLEY AND HATTIE C.
WHITLEY, his wife.

This day this cause came on to be heard on the original and amended bills of complaint, and the exhibits therewith filed, the answers of the defendants thereto, and on the depositions of witnesses for both plaintiff and defendants, and was argued by counsel.

On consideration whereof, the Court being of opinion that the plaintiff has sustained the allegations of his bill and is entitled to the relief therein prayed and to a conveyance of the land therein described, doth adjudge, order and decree that the injunction hereinbefore awarded in this cause on the 28 day of June, 1917, be and the ^{same} ~~is~~ hereby perpetuated and made permanent and the said defendants, their agents, attorneys and all others be forever enjoined from proceeding to obtain or execute any writ of possession in favor of defendants, or either of them, against the said complainant, or in any manner interfering with the possession of the said W. J. Joyner in the land in the bill and proceedings mentioned and hereinafter described, provided, however, and upon the express condition, that the said W. J. Joyner, or someone for him, within 20 days after the tender to him or to his attorney by the said A. J. Pierce of a good and sufficient deed conveying to the said W. J. Joyner with special warranty of title and free from any encumbrance created thereon by A. J. Pierce since the 6th day of March, 1916, the land in the bill and proceedings mentioned and described as follows:

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

W. J. JOYNER,

v. IN EQUITY

A. J. PIERCE, ET ALS.

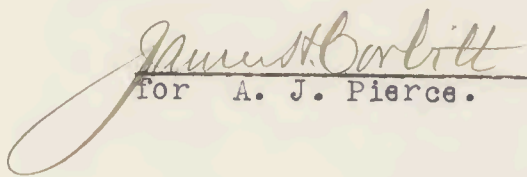
B R I E F.

JAMES H. CORBITT
ATTORNEY AND COUNSELLOR AT LAW
SUFFOLK, VIRGINIA

action of trespass or ejectment", it does not apply to a suit in equity which alleges no relation between Joyner and Pierce different from what existed when the unlawful detainer proceeding was instituted.

From the evidence and the law applicable to the case the complainant is clearly not entitled to the relief he seeks.

Respectfully,

 Counsel
for A. J. Pierce.

had bought the place that Whitley said he wasn't going to furnish any wire that year and that he (Pierce) would let him have a roll to take the place of the wire Whitley was to furnish. Although Joyner picked a row with Pierce, Pierce sent the wire over to Joyner's house. Joyner then saw C. H. Johnson, a merchant at Zuni, and told him that, if Pierce would pay for the staples and leave them at Johnson's store, he would get them and put up the wire. Johnson delivered the message to Pierce, Pierce paid for the staples and left them at Johnson's store and Joyner got the staples and put the wire up. These facts are undisputed by Joyner. They show conclusively that Joyner deliberately put up Pierce's wire with staples bought by Pierce on Pierce's land. If Pierce bought the land for Joyner, he certainly was under no obligation to furnish Joyner wire and staples to be put up on the land. The acceptance by Joyner of the wire and staples and putting up the wire shows conclusively that Joyner recognized the land as belonging to Pierce.

Furthermore, it is res adjudicata that, as against Joyner, Pierce has now the right to the possession. This was finally determined by the judgment in Pierce's favor in the unlawful detainer proceedings. Since the relation of the parties has not changed one iota from the date of the institution of the unlawful detainer proceedings to the present time, if Pierce was entitled to the possession then, he is entitled to the possession now. If Joyner intended to enjoin anything he should have endeavored to enjoin the unlawful detainer proceedings prior to the hearing before the Judge and a jury. He elected not to do that and he should not now be allowed to enjoin the final judgment in unlawful detainer of the writ of possession issued thereon. Code Section 2721 does not help Joyner. This section applies strictly to "any

misremembering or misreporting it afterwards." The only witness, however, who said he had heard Pierce make such an admission was Constant Joyner. Constant Joyner said:

"I heard him say that he had bought it for Mr. Joyner and he told me that he was going to keep it himself."

This witness was a day laborer, evidently of no great intelligence, and Pierce and George H. Hall testified they would not believe him on oath. An effort seems to have been made to get Pierce to talk when he was under the influence of whiskey but there is no testimony that even then he admitted he bought the property for Joyner. Nor would he ever admit he was wrong in his dealings with Joyner. He always contended that "Jap" treated him wrong without cause.

Now Joyner's acts belie his words and are sufficient to show that he never considered Pierce his agent.

FIRST. He went with Pierce to Zuni to see Whitley on a Saturday in February, 1916, and, although he says Pierce was acting as his agent in seeing Whitley, Joyner, living within a quarter of a mile of Pierce, never afterwards sought to learn from Pierce the result of his interview with Whitley; he made no enquiries and no effort whatever to learn anything. It was admittedly not sooner than the following Tuesday week (at least eleven days thereafter) that Pierce told Joyner he had bought the place. Joyner, the last time he was on the witness stand, testified that he did not know how long it was after he and Pierce went to Zuni before Pierce told him he had bought the place- Joyner could not say that it was not as long as twenty days, and, yet, he admitted that during all that time he had not approached Pierce to find out what Whitley had said at Zuni, although he lived only a quarter of a mile from Pierce.

SECOND. Joyner says that Pierce told him after he

alleged and proven to have had with Pierce? He says Pierce agreed to lend him \$2,000.00 and that he should have the right to cut the timber from the land in order to pay Pierce his money back.

There is no allegation or evidence as to how long the loan was to stand, how to be secured, and if it was to be repaid by cutting the timber, how soon the timber would have to be cut, how the timber sold should be collected for, what proportion of the gross proceeds of sale of timber should be turned over to Pierce, etc. Joyner had no money and, so far as the record shows, no other means, yet he claims to have relied upon Pierce to buy the land for him and upon Pierce and Gwaltney to lend him the entire purchase price. It cannot be contended that the contract Joyner claims was only that Pierce should buy the land for him. Joyner does not so claim. He claims the contract was that Pierce was not only to buy the land for him but was also to lend him \$2,000.00 to help pay for it and that he should have the right to repay the \$2,000.00 by cutting and selling the timber, but he fails to even allege or prove other essential terms of the contract. The entire contract must be proven and it must be definite. Joyner's allegations and evidence falls far short of what the law requires. Even if Joyner claimed that the contract he had with Pierce was that Pierce should buy the land for him and nothing more, the evidence falls far short of what the law requires.

Joyner claims Pierce was his agent and Pierce denies it. Some witnesses were introduced in an effort to prove admissions by Pierce that he had bought the land for Joyner. The authorities cited above show that this is "a species of evidence that must be received with great caution, no matter how pure the source from which we derive them, because of the liability of mistaking or misunderstanding the admission when made, and of

In Garrett v. Rutherford, 108 Va. 478, on page 479, Judge Whittle says:

"Other witnesses were also examined, pro and con, giving with more or less circumstantiality their recollections of casual conversations had with the parties, or in their presence, subsequent to the purchase and conveyance, touching the ownership of the farm; and from a decree dismissing the cross-bill, this appeal was allowed.

In Greenleaf on Evidence (14th Ed.), section 200, the author, in discussing the probative value of such evidence, says: 'With respect to all verbal admissions, it may be observed that they ought to be received with great caution. The evidence consisting as it does in the mere repetition of oral statements, is subject to much imperfection and mistake; the party himself being misinformed, or not having clearly expressed his own meaning, or the witness having misunderstood him. It frequently happens, also, that the witness, by unintentionally altering a few of the expressions really used, gives an effect to the statement completely at variance with what the party actually did say.'

Of that species of testimony, Snyder, Judge, in Vangilder v. Hoffman, 22 W. Va. 1,11,12 affirms: 'The whole claim of the plaintiff rests upon the mere verbal statement of the appellant, gathered by witnesses from casual conversations. Evidence consisting of the mere repetition of oral statements — and especially when made to and proved by persons having no interest in the subject of the conversation — is of the weakest and most unreliable character, and should be received with the greatest caution. And unless corroborated by other proof, or aided by surrounding circumstances, it must be held insufficient to establish any material fact.' Citing Horner v. Speed, 2 P. & H. 616. See also Phelps v. Seely, 22 Gratt. (Va. R. Ann.) 573, and authorities in foot note to that case."

See also Hudkins v. Crim (W. Va.), 61 S.E. 166.

APPLICATION OF THE LAW TO THE FACTS.

Let us now endeavor to apply the above principles of law to the facts. In Matney v. Yates, supra, Judge Kelly says: "Was the contract in its essence and effect one of agency, or was it one for the purchase of real estate?" (Italics mine)

For Joyner to prevail in this suit he must prove, first, a contract and, second, that its essence and effect was one of agency. A contract is defined as "an agreement enforceable in law". Clark on Contracts, page 2. What agreement has Joyner

BURDEN OF PROOF.

It is so well settled that the burden of proof is upon the complainant that it is useless to quote authorities to sustain the proposition.

WEIGHT AND SUFFICIENCY OF THE EVIDENCE

In *Matney v. Yates*, supra, on page 424, Judge Kelly says:

"The relationship of principal and agent should of course in all such cases be established by clear and convincing proof" (Italics mine).

In 3 Pomeroy's Equity Jurisprudence (3rd Ed.) § 1058, on page 2043, it is said:

"The existence of a constructive trust, as of a resulting one, must be proved by clear, unequivocal evidence" (Italics mine)

In *Lee v. Elliott*, 113 Va. 618, on page 620, Judge Harrison says:

"It is well settled that though a resulting trust may be established by parol evidence, it must be clear and explicit, and such as to leave no doubt of the character of the transaction" (Italics mine).

In Min. Real Property §475 in discussing an implied trust it is said the proof "must be very clear, and mere parol evidence ought to be received with great caution".

See also note to *Miller v. Blose*, 30 Grat. (Ann.) 744.

REPETITION OF ORAL STATEMENTS - WEIGHT AND SUFFICIENCY OF SUCH EVIDENCE.

In *Horner v. Speed*, 2 Pat. & H. 616, on page 632, Judge Thompson says:

"But however upright and faith-worthy the witness, it must be borne in mind that he was deposing as to confessions, a species of evidence that must be received with great caution, no matter how pure the source from which we derive them, because of the liability of mistaking or misunderstanding the admission when made, and of misremembering or misreporting it afterwards."

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

W. J. JOYNER

v. IN EQUITY

A. J. PIERCE ET ALS.

BRIEF FOR THE DEFENDANT A. J. PIERCE.

The object of the complainant is to establish a constructive trust in the land, the subject of controversy, by holding A. J. Pierce, the holder of the legal title, a trustee for the complainant.

The complainant maintains that Pierce in purchasing the land was acting as his agent and relies upon parol evidence solely to establish the contract between them.

Prior to the decision of *Matney v. Yates* (Sept. 20, 1917), 14 Va. App. 414, the Virginia decisions tended, in principle, to support the view that a constructive trust in real estate cannot be established upon a parol contract of agency (*Matney v. Yates*, supra, page 422). *Matney v. Yates*, however, holds the contrary. It is there said (page 422) the question is:

"Was the contract in its essence and effect one of agency, or was it one for the purchase of real estate? If it was the former, it creates a trust relation, is not within the statute of frauds, and can be established by parol; if the latter, the parties are to that extent dealing with each other as principals and the contract is within the statute and can only be established by such writing as will meet the requirements thereof!"

In the case of *Matney v. Yates* the agency was admitted by demurrer and therefore regarded as a fact; in the case at bar the agency is denied and, therefore, must be proven.

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

W. J. JOYNER,

v.

A. J. PEARCE AND OTHERS.

REPLY BRIEF FOR PLAINTIFF.

JOHN N. SEBRELL, JR.
ATTORNEY AND COUNSELLOR AT LAW
SEABOARD BANK BUILDING
NORFOLK, VIRGINIA

HAMPTON ROADS PAPER CO., NORFOLK

ejectment and does not include suits ^{in equity,} that the action is a bar to
a subsequent suit ^{in equity.} The purpose of unlawful entry and detainer
and the effect of a judgment therein, is so well and clearly set-
tled that it would seem that even an ardent and enthusiastic advo-
cate of litigants' interests would not be deceived into the position
contended for by my friend for the defendant.

The design of an action of unlawful entry is to protect the
actual possession whether rightful or wrongful, and to afford sum-
mary redress and restoration. It may be maintained by one in
possession even as against the owner when he forcibly enters. The
question of title is in nowise involved. The judgment only re-
stores the status quo, but settles nothing as to the title or the
right of possession. Davis v. Mayo, 82 Va. 97; Olinger v.
Shepherd, 12 Gratt. 462.

Respectfully submitted,

cant is the fuss between Joyner and Pearce. What was it about? This is no speculation, For both Joyner and Pearce agree as to the cause of this quarrel. It was because Pearce refused to convey the land to Joyner as Joyner understood he was to do. If Joyner did not believe Pearce was buying the land for him and if Joyner used the wire because he thought the land was Pearce's, can the court conceive why Joyner should have made a demand upon Pearce for a deed, and why his refusal should have been the occasion of a quarrel so intense that a peace bond was required? It would take a stretch of imagination possessed by no human being other than the ingenious counsel for the defendant to conceive a situation, or rather to construe the action of Joyner in insisting almost to the point of violence upon Pearce's compliance with his agreement to purchase for him, as believing his belief that Pearce was his agent in the purchase of the farm.

We further submit that if Pearce considered himself as being authorized to purchase only at a sum not exceeding \$2,000.00 and intended to purchase at that amount on behalf of Joyner, as he admits he was obligated to do, then he would not have a right in equity or conscience to purchase ^{for himself} at any price until he had communicated the situation to Joyner and terminated the fiduciary relation which existed between the two.

RES ADJUDICATA.

Defendant's last hope is res adjudicata. For this contention he relies upon the act of unlawful entry and detainer, tried on the law side of the Circuit Court of Isle of Wight County and in which the equitable title of the plaintiff could not be asserted. This is the second question of law about which we differ. The position of the defendant seems to be that since Section 2721 of the Code declares that it shall not be a bar to any action of trespass or

without Joyner's knowledge or consent. The facts as admitted by Pearce himself, we repeat, entitle Joyner to the relief prayed for.

But the evidence of many reliable witnesses corroborating Joyner's evidence and testifying independently of Pearce's declarations, remove all questions of doubt. Several witnesses testified that they heard Pearce's declaration that he bought the land for Joyner. Clarence Edwards, a Justice of the Peace, and a man without interest in the result, stated that Pearce declared on oath that if he had purchased the land for \$2,000.00 the purchase would have been for Joyner, but as he could not purchase the land for \$2,000.00 he bought it for \$2100.00 for himself. J. R. Saunders, an attorney at law, who had his mind directed to the very point in issue, remembers distinctly that he made a similar statement on oath in a trial in the Circuit Court of Isle of Wight County, and it must be certain that such statement was made there because the question was asked if he communicated to Joyner his inability to purchase at \$2,000.00 and his ability to purchase at \$2100.00 before he bought. There could have been no occasion for this question unless he had made the statement that if he could have purchased for \$2,000.00, he would have purchased for Joyner. Pearce himself, while denying that he made the exact statement, admits that if he had bought for \$2,000.00 he would have been "under obligations" to Joyner. Why?

Counsel for defendant says: "Now Joyner's acts belie his words and are sufficient to show that he never considered Pearce his agent". His first reason for such statement is that Joyner, although living within a quarter of a mile of Pearce's, did not seek to learn from Pearce the result of his interview with Whitley; and, second, that Joyner used wire furnished by Pearce. The testimony of Joyner sufficiently and satisfactorily explains both of these. He was leaving the negotiations to Pearce, just as he had been requested to do. The wire was used not with any idea that it was Pearce's land. Let's see what was Joyner's conduct. Signifi-

was going to meet Whitley there that day about the purchase of the farm and that going down to Zuni that day Pearce requested Joyner not to have anything to say to Whitley himself but to let him (Pearce) see what he could do. All this is admitted by Pearce.

Joyner testifies in this connection that Pearce told him that he would buy it for him as he, Pearce, could buy it cheaper than anyone else. Can any reasonable mind hold any other opinion than that,

when Pearce told Joyner not to have anything to say but leave it to him to see what he could do, he meant to see what he could do about buying the property for Joyner? Could there have been other reason to request the man, whom he knew was anxious to purchase, not to have anything to say about it? and could there be any other explanation of the fact that although Joyner was anxious to purchase and was trying to purchase that he did not say anything to Whitley himself in regard to it? We submit, therefore, that the following facts are not only proved but admitted: That Joyner was anxious to buy the farm and communicated his desire to Pearce. Pearce did not want to buy the farm for himself, but was willing to assist Joyner in purchasing it. That negotiations were opened by Joyner for the purchase of the property, of which Pearce had knowledge; that while these negotiations were pending Pearce and Joyner went to meet the owner at Zuni for the purpose of negotiating for the purchase of the property, and that it was understood that Pearce was to do the talking, and that Joyner should have nothing to say, and that Pearce did negotiate with Whitley and that the result of these negotiations was the purchase of the farm. These facts, we submit, are not only proved but admitted, and we further submit that they of themselves, if there were no further testimony, entitle the plaintiff to the relief for which he prays. A court of equity would not permit Pearce to hold himself out to Joyner as going to represent him in the purchase of the property and then purchase it for himself

2 Corpus Juris, 705;

39 Cyc. 188;

Watson v. Union Iron Co., 15 Ill. App. 509.

The only question, therefore, in this case is whether Pearce was acting for Joyner when he purchased the property. Upon this question we submit that the evidence is clear and convincing that he was. The testimony of Joyner himself is plain and positive, not only that Pearce was negotiating for the purchase of the property on behalf of Joyner but to the further positive statement that, even after the purchase Pearce declared that he had bought it for Joyner and would soon fix up the papers. This testimony of Joyner is not only strong, clear and credible, but is corroborated, not only by the other witnesses, but by all of the facts and circumstances of the case, and especially as we have pointed out by the testimony of Pearce himself. Joyner testified that he went to Pearce, acquainted him with his desire to purchase the farm and asked him how much he would be willing to lend upon the place; that Pearce was willing to let Joyner have as much as \$2,000.00 with which to purchase the property, and that they talked together as to who was the best man to negotiate the trade, reaching a conclusion that Mr. Turner would be the best man. All of this Pearce admits in his testimony. Joyner testifies that following up this conversation with Pearce, he made arrangements with Gwaltney to furnish what further money would be necessary in excess of the \$2,000.00 to be advanced by Pearce. Gwaltney confirms this statement in his evidence. Joyner testifies that while at Pearce's house, Pearce got a letter from Whitley (who was then considering the proposition made by Turner of \$2,000.00), asking if he would like to buy the property, and that a few days later Pearce came by his house, called him out, and requested Joyner to go with him to Zuni as he

and the contract which he made with Whitley was Joyner's contract, and Joyner is to comply with the agreement made for him with Whitley and is entitled to a conveyance of the land according to the terms of the contract of purchase with Whitley. Even if there had been no definite contract of agency between Pearce and Joyner, yet if in purchasing the property Pearce assumed to act for Joyner, the benefit of the contract would inure to Joyner. 2 Corpus Juris 705; 39 Cyc 188; Watson v. Union Iron Co., 15 Ill. App. 509. Acting for Joyner, in making the purchase, Pearce, in taking the deed in his own name, will be held in a court of equity to be a trustee for Joyner.

In Wellford v. Chancellor, 5 Grat. 39, is held that where an agent authorized to purchase lands for his principal purchases in his own name and takes a conveyance to himself, he is bound to convey the land to his principal upon compliance with the terms of contract of purchase, in the same plight and condition in which the same was conveyed to him.

See also Jackson v. Pleasanton, 95 Va. 657.

And the agent who purchases for his principal and has a conveyance made to himself is but a trustee of the legal title and will be compelled by a court of equity to convey to his principal.

Frank v. Morris, 9 W. Va. 669.

As a general rule, an agent must not, without his principal's full knowledge and consent purchase for himself property which he is employed to purchase for his principal. If he does so, it is a breach of faith and he will be regarded as holding the property so purchased, although purchased in his own name, or its proceeds, for his principal although he contributes his own funds to the purchase. This rule is held to apply, although the agent had no actual authority to purchase, if at the time of the purchase he assumed to act for the principal and purchased for his benefit.

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

W. J. JOYNER,

v.

A. J. PEARCE AND OTHERS.

REPLY BRIEF FOR PLAINTIFF.

Many authorities are cited by defendants' counsel to establish a contention that the plaintiff must establish his case by clear and convincing proof and of the weight to be given to the repetition of oral statements. These authorities, upon propositions of law that are readily conceded, were doubtless used by my good friend for the defendant in a desire to have the show of some authorities in his favor. I gladly concede what the authorities claim and assume the burden of proving the plaintiff's contention by clear and convincing testimony. The difference between counsel for defendant and myself is principally one of fact and not of law. We do differ upon two propositions: First, we say that, in this suit, it is not necessary to allege or prove the specific terms of any contract between plaintiff and defendant with reference to obtaining the means by which to pay for the land in question. No attempt is made in this suit to require Pearce to make any loan, upon any kind of terms, to Joyner. If we were undertaking to enforce any agreement on the part of Pearce to advance money, then it would be necessary for us to prove all the terms and conditions which entered into such an agreement, but these things are not sought to be done in this suit. The gist of this suit is that when he made a contract of purchase with Mr. Whitley, he was representing Joyner,

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

W. J. JOYNER,

v. IN EQUITY

A. J. PIERCE, ET ALS.

BRIEF FOR THE DEFENDANT
A. J. PIERCE, IN REPLY TO
BRIEF FOR PLAINTIFF.

JAMES H. CORBITT
ATTORNEY AND COUNSELLOR AT LAW
SUFFOLK, VIRGINIA

Court of Appeals in *Wenham v. Switzer*, 59 Fed. 942 on page 946 has well said:

"If he paid more, the purchase would be on his own account. Unless both parties were bound by the contract, it could not be enforced in a court of equity".

As has been heretofore said the object of the complainant is to establish constructive trust in the land, the subject of controversy, by holding A. J. Pierce, the holder of the legal title, a trustee for the complainant by alleging and proving a parol contract for the purchase of real estate and asking the Court to require specific performance of that contract on the part of A. J. Pierce.

Counsel for Pierce respectfully insists:

1st. That there is no evidence sufficient to establish any contract of agency as claimed by Joyner and to justify the Court in directing specific performance.

2nd. That even if there had ever been any contract of agency the purchase by Pierce for himself was made in good faith after the agency had been terminated.

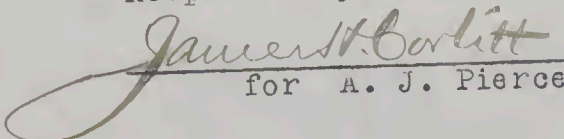
3rd. That even if there had been any contract of agency Pierce was limited by Joyner to a price not to exceed \$2,000.00 and that Pierce had a right to purchase the property for himself at the price of \$2,100.00.

The case of *Wellford v. Chancellor*, 5 Grat. 39, and the case of *Jackson v. Pleasanton*, 95 Va. 657 have been thoroughly discussed by our Court of Appeals in *Matney v. Yates*, supra.

As to these cases Judge Kelly says:

"They can hardly be said to settle conclusively the question as to the character of proof necessary to establish the agency".

Respectfully submitted,

 Counsel
for A. J. Pierce.

employed to effect a purchase of real estate at a price not to exceed \$51,000.00 and to take a contract therefor in his own name to be assigned to the plaintiff. The agent was unable to purchase for \$51,000.00 but did purchase the property for himself at the sum of \$52,000.00 and the Court held that an agent, having used all reasonable efforts to obtain the property for the plaintiff at the limited sum, without success, he had a right to purchase the same for himself at the sum of \$52,000, the contract of employment fixing the law of the case without regard to the fiduciary relation of the parties.

In the case at Bar the most that has ever been shown, admitting the evidence of Clarence Edwards and J. R. Saunders to be true, was that Joyner had limited Pierce to a price not to exceed \$2,000. Clarence Edwards says:

"Mr. Pierce stated in my presence that if he could have bought the farm for \$2000.00 it would have been Jasper Joyner's, and after he could not buy it for \$2000.00 he decided he wanted it for himself".

J. R. Saunders testified:

"I also understood Mr. Pierce to say that if he could have bought the land for \$2000.00 it was to be for Joyner but that he found that he could not buy it for \$2000.00 and he bought it for \$2100.00 for himself".

A. J. Pierce testified:

"I said if I could have bought it for \$2000.00 I would be under obligations to him".

There is not the slightest testimony to show that Pierce ever said or admitted that he said anything more than this which if he had ever been Joyner's agent would have brought him clearly within the doctrine laid down in Pearsall v. Hirsh, supra.

Pierce was limited to \$2,000.00 and had he bought it for \$2,100.00 he could not have made Joyner take the property at \$2,100.00 and, conversely, Joyner could not force Pierce to convey it to him for \$2,100.00. The United States Circuit

In 2 Corpus Juris 705 cited by counsel for the plaintiff we find the following:

"As a general rule an agent must not, without his principal's full knowledge and consent, purchase for himself property which he is employed to purchase for his principal. If he does so it is a breach of faith and he will be regarded as holding the property so purchased, although purchased in his own name, or its proceeds, for his principal, although he contributes his own funds to the purchase. This rule is held to apply, although the agent had no actual authority to purchase, if at the time of the purchase he assumed to act for the principal and purchased for his benefit." (*Italics Mine*).

On the same page of Corpus Juris we also find the following:

"But the rule does not apply where the purchase is made in good faith after the agency has been terminated, or where the agent has purchased for himself at a higher price after unsuccessful efforts to purchase for the principal at the price limited by the latter."

In the case at Bar if Joyner had ever thought there was any agency he must have considered it terminated inasmuch as it clearly appears from the evidence that Pierce never purchased the property until eleven days after he and Joyner went to Zuni, during which time Joyner had never been to Pierce to enquire what passed between Pierce and Whitley at Zuni. From Joyner's own testimony he did not know how long it was after he and Pierce went to Zuni before Pierce told him he had bought the place. Joyner could not say it was not as long as twenty days and yet he admitted he had not approached Pierce to find out what Whitley had said at Zuni although he lived only a quarter of a mile from Pierce.

It is said in Corpus Juris above that the rule does not apply "where the agent has purchased for himself at a higher price after unsuccessful efforts to purchase for the principal at the price limited by the latter". In *Pearsall v. Hirsh*, 14 N.Y. Supp. 305 (cited in 2 Corpus Juris 705) the agent was em-

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

W. J. JOYNER,

v. IN EQUITY

A. J. PIERCE, ET ALS.

BRIEF FOR THE DEFENDANT, A. J.
PIERCE, IN REPLY TO BRIEF FOR PLAINTIFF.

Counsel for plaintiff says:

"The gist of this suit is that when he made a contract of purchase with Mr. Whitley, he was representing Joyner, and the contract which he made with Whitley was Joyner's contract, and Joyner is to comply with the agreement made for him with Whitley and is entitled to a conveyance of the land according to the terms of the contract of purchase with Whitley. Even if there had been no definite contract of agency between Pearce and Joyner, yet if, in purchasing the property, Pearce ASSUMED TO ACT for Joyner, the benefit of the contract would inure to Joyner. 2 Corpus Juris 705; 39 Cyc 188; Watson v. Union Iron Co., 15 Ill. App. 509." (Capitals Mine.)

The evidence in this case clearly shows that Pearce in dealing with Whitley never "assumed to act for Joyner". The original contract for the purchase of the property admitted in the evidence shows on its face that it was a contract between Whitley and Pearce and there is not the slightest evidence to show that Pearce made the impression upon Whitley that he was not purchasing for himself but for Joyner. The authorities cited by counsel for the plaintiff would not be applicable unless it were proven that Pearce made the impression upon Whitley that he was purchasing for Joyner. This is well settled in Virginia. Va. Pocahontas C.Co., v. Lambert, 107 Va. 368, cited in Matney v. Yates (Sept. 20 1917), 14 Va. App. 414, 425, referred to in original brief for the defendant.

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W. J. Jay not
of Cy No
A. J. P. 10 11 12 13

Copy of my written
bond

VIRGINIA: CLERKS OFFICE OF THE
CIRCUIT COURT OF THE COUNTY
OF ISLE OF WIGHT

June 28 1914

Teste, [Signature] Clerk.

Know all men by these presents that we, W. J. Joyner, principal, and W. C. Andrews, R. M. Doles and J. E. L. Gwaltney, sureties, A. J. Pierce Jesse Whitley and Hattie C. Whitley, are held and firmly bound unto 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, IN TESTIMONY WHEREOF, the said W. J. Joyner, principal, and the said W. C. Andrews, R. M. Doles and J. E. L. Gwaltney, sureties have hereunto set their hands and affixed their seals this, the 28th. day June, A. D. 1917.

The Condition of the Above Obligation is Such, that if the above bound W. J. Joyner shall pay all such damages as shall be awarded against him, and all such costs as shall be incurred in case the injunction order, granted on the 26th. day of June, 1917, by the Judge of the Circuit Court of the County of Isle of Wight, in vacation, enjoining and restraining the said A. J. Pierce, Jesse Whitley and Hattie C. Whitley from obtaining and executing any writ of possession in favor of them, or interfering with the possession of the said W. J. Joyner in a certain tract of land mentioned in the bill in a certain chancery suit in which said W. J. Joyner is complainant, and the said A. J. Pierce, Jesse Whitley and Hattie C. Whitley are defendants, shall be dissolved, then the above obligation to be void, or else to remain in full force and virtue.

W. J. Joyner, (SEAL)

W. C. Andrews, (SEAL)

R. M. Doles, (SEAL)

J. E. L. Gwaltney, (SEAL)

Virginia: In the Clerk's Office of the Circuit Court of the County of Isle of Wight the 28th. day of June, 1917, this bond was duly executed and acknowledged by the obligors to the same and ordered to be recorded.

Teste, _____, Clerk.