

1919-019 Chancery Causes: A. C. Lyon vs f. M. Corbin + Doris D. Corbin  
Isle of Wight County

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296

other surnames: Bradshaw,  
Saunders, Young

# ISLE OF WIGHT COUNTY

No. 296

A. C. Lyon

vs.

J. M. Corbin et al

Depositions in drawer  
marked as such.

June 8th. 1920.

Mr. Jno. N. Sabrell, junior,  
Norfolk,  
Virginia.

Dear John: Re Lyon vs. Corbin et al

Herewith copy of the record, the best I can make it, in the above named case. Also is handed you, herewith, carbon copy of an agreement between Lyon and Saunders and Bradshaw which Lyon brought to this office and asked me to put with the record. I presume it can nowhere be put in except with the testimony, and you can put it in there if counsel for the defendants agree to it.

The original contracts between Lyon and Corbin, filed with the bill cannot, of course, be copied, since they have been lost, apparently while the papers were out of this office and in the hands of the attorneys in this cause.

Yours very truly,

# RETURN RECEIPT.

*Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.*

*John H. Schell Jr.*  
-----  
(Signature or name of addressee.)

*E. M. Hittman*  
-----  
(Signature of addressee's agent.)

*June 70*  
Date of delivery, -----, 19*20*

Post Office Department

OFFICIAL BUSINESS

REGISTERED ARTICLE

No. 101

INSURED PARCEL

No. \_\_\_\_\_

Return to

A. S. Johnson  
(NAME OF SENDER)

Street and Number, }  
or Post Office Box, }

Post Office at

Salisbury, N. C.  
State W. Va.

PENALTY FOR PRIVATE USE  
TO AVOID PAYMENT OF  
POSTAGE, \$300.

POSTMARK OF DELIVERING  
OFFICE

AND DATE OF DELIVERY

THIS DEED, Made this \_\_\_\_\_ day of \_\_\_\_\_, 1919,  
between A. C. LYON and MAYWOOD E. LYON, his wife, parties of the  
first part, and F. M. CORBIN, party of the second part, all of the  
County of Isle of Wight, Virginia,

WITNESSETH: That for and in consideration of One (\$1.00) dol-  
lar and of the conveyance by the said party of the second part, to-  
gether with Doris D. Corbin, his wife, to A. C. Lyon of that certain  
parcel of land upon which they have formerly resided, containing  
eighty (80) acres, and as shown in deed of conveyance bearing even  
date herewith, the said A. C. Lyon and Maywood E. Lyon, parties of  
the first part, do grant, bargain, sell and convey unto the said  
F. M. Corbin, party of the second part, the following real estate  
situate in the County of Isle of Wight, Virginia:

All that certain tract of land, lying in Isle of Wight County,  
Virginia, about two and one-half miles from Isle of Wight Court House,  
on the road leading from Isle of Wight Court House to Smithfield,  
which was conveyed to A. C. Lyon, W. J. Bradshaw and A. Lee Saunders  
by Anne R. Young by deed dated the 14 day of February, 1918,  
and duly recorded in the Clerk's Office of Isle of Wight County, Vir-  
ginia, excepting that parcel thereof situate on the East side of the  
said Court House-Smithfield road and North of the norther<sup>n</sup>most ditch  
of said farm and of a line in extension of said ditch to the line of  
John Godwin, which said parcel is reserved to the said A. C. Lyon.  
Reference to said deed is hereby made for a more particular descrip-  
tion of said land.

All of the timber of every kind and description eight (8) inches  
across the stump ten (10) inches about the general level of the ground  
on the east side of the said road named above, is reserved by the  
parties of the first part, with the privilege of nine (9) years from  
the first day of January, 1919, to cut and remove the same and with  
an additional extension thereof for a further period of five (5)

years at six per centum (6%) interest per annum on Two Thousand (\$2,000.00) dollars for so much time of extension as may be taken advantage of.

The grantors covenant that they are seized in fee simple of the said land with its appurtenances; that they have the right to convey the said land to the grantee; that the grantee shall have quiet possession of the said land, free from all encumbrances; that they, the said parties of the first part, will execute such further assurances of the said land as may be requisite; and that they have done no act to encumber the said land.

Witness the following signatures and seals.

A. C. Lyon (SEAL)  
Maywood E. Lyon (SEAL)

STATE OF VIRGINIA,

COUNTY OF ISLE OF WIGHT, to-wit:

I, Ida M. Patten, a Notary Public in and for the County of Isle of Wight, in the State aforesaid, whose commission expires on the 8th day of February, 1921, do certify that A. C. Lyon and Maywood E. Lyon, his wife, whose names are signed to the writing above bearing date on the \_\_\_\_\_ day of \_\_\_\_\_, 1919, have acknowledged the same before me in my County aforesaid.

Given under my hand this 2nd day of October, 1919.

Ida M. Patten  
Notary Public.

DEED.

A. C. LYON AND MAYWOOD E.

LYON, his wife,

to

F. M. CORBIN.

*Lyon & Corbin  
Exhibit C.  
with amendments  
B.W.*

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

HAMPTON ROADS PAPER CO., NORFOLK

ENTIRE WANT OF MUTUALITY OF LEGAL RIGHT AND EQUITABLE REMEDY.

"HE WHO COMES INTO EQUITY MUST DO SO WITH CLEAN HANDS".

or

"HE WHO COMMITS INEQUITY SHALL NOT HAVE EQUITY".

Lyon cannot enforce specific performance against Corbin, because Corbin could not nor cannot enforce specific performance.

The real estate which Lyon claims that he is the owner—was at the time of the making of the contract— in the name of W. J. Bradshaw, A. Lee Saunders and A. C. Lyon and further that it was encumbered to the extent of \$12,000.00( \$6,000.00 due to B. P. Chapman by deed of trust to J. T. Chapman trustee; \$6,000.00 to the Bank of Windsor by deed of trust to F. T. Leathers, Trustee).

This condition as to title and liens were the same on January 1st 1919 as they were at the making of the contract and in fact were in the same status at the institution of this suit and today while W. J. Bradshaw and A. L. Saunders have conveyed their interest to Lyon, there in the same deed of trust outstanding with J. T. Chapman as trustee and which Lyon in his evidence admits is not paid.

With these facts, I ask could Corbin enforce specific performance against Lyon? If not, then Lyon certainly cannot enforce specific performance against Corbin.

In the case of Moore's Adm'r. v. FitzRandolph and others, 6 Leigh 175, it was held:

"The rule, that equity refuses specific execution of contracts where the remedy is not mutual, applies to cases in which there is not such mutuality of remedy at the time the contract is made; not to cases in which the mutuality of remedy is taken away by a subsequent contingent event".

In a note to this case, it is stated:

"A contract to be specifically enforced must be mutually binding at the time it is entered into. The remedy must be alike attainable by both parties to the agreement."

In the case of Wood v. Dickey, 90 Va. 164, the case of Duval v. Myers, 2 Md Chy. 401, is cited, in which it is said:

"The right to specific performance of a contract, so far as the mutuality is concerned, depends upon whether the agreement itself is obligatory upon both parties; so that upon the application of either against the other, the court would coerce a specific performance."

It was said by Mr. Justice Strong in the case of Rutland Marble Co. v. Riply, 10 Wall., at page 359:

"It is a general principle that when, when from personal incapacity, the nature of the contract, or any other cause, the contract is incapable of being enforced against one party is equally incapable of enforcing it specifically against the other, though its execution in the latter way might in itself be free from the difficulty attending its execution in the former."

In the case of Bumgardner v. Leavitt, 13 S. E. 67(W. Va), the court cites Pom. Spec. Perf. sec. 165, as follows:

"It is a familiar doctrine that if the right to the specific performance of a contract exists at all, it must be mutual. The remedy must be alike attainable by both parties to the agreement."

In the case of Wood v. Dickey, 90 Va. 160, the court held

"A court of equity in this state will not decree specific execution of a contract where there is not mutuality both of obligation and remedy, as both parties must, by the contract itself, have a right to compel specific performance."

In the case of Chilhowie Iron Co. v. Gardner, 79 Va. 305, it was said:

"Can there be a contract without mutual obligation? Can there be an agreement between two parties which binds one of them absolutely and the other only at his pleasure."

In the case of Shenandoah Valley R. R. Co. v. Dunlop and wife, 86 Va. at page 349, it is said:

"It is a fundamental rule in equity that a contract to be specifically enforced, must, in general, be mutual in its obligation and in its remedy, and it must be mutual ab initio. If, therefore, from the personal incapacity of one of the parties or other cause, the contract, when concluded, is not enforceable against such party, no subsequent act or event can render it capable of enforcement against either party. In other words, it must be enforceable originally, or not at all."

In *Cheatnam v. Cheatham*, 81 Va. at page 402, it is said:

"Upon a consideration of the question raised by the first appeal as to the validity of the executory agreement of Mrs. Cheatham, her husband, and her trustee, with Webb & Stokes, we will observe that if the husband and wife agree to sell and convey the wife's land, the agreement cannot be specifically enforced against either of them; not against the wife, says Mr. Minor, because she is incapable of binding herself by any executory contract; not against the husband, because coercion employed against him would be the moral coercion of the wife. And since the agreement cannot be enforced against them, it follows that it cannot be enforced by them."

Counsel may say that in Virginia a mere encumbrance on real estate is not sufficient to bar a suit for specific performance, either by the vendor or vendee.

But *Hudson v. Max Meadows Land Co.* 97 Va. 341 says:

That is true "if the encumbrance may be readily removed without injury to either party by the application of the purchase money thereto".

*Supr* → This would not apply here because there is no "purchase money" to relieve the encumbrance.

Then this case came again to the Court of Appeals, see 99 Va. 537 where the court decides:

"But where the defendant contracted to convey land by an unincumbered title, which condition the plaintiff has not waived and the land is ~~so~~ incumbered with other property that it is impossible for the defendant to comply with the condition, specific performance should not be decreed."

Lyon's contract with Corbin reads:

"and a good and sufficient deed to be given".

See *Goddin v. Vaughan* 14 Gratt 102 where it says "upon a sale of real estate, whether at public or private sale, where nothing is said about the title, the purchaser is entitled to have a clear title with covenants of general warranty".

*Lyon*  
Therefore *Lyon* has not performed his contract nor can he be compelled to do so upon a bill filed against him, he is clearly not entitled to the aid of a court of equity.

THE DESCRIPTION OF THE LAND IS TOO INADEQUATE AND INDEFINITE  
FOR THE COURT TO ENFORCE SPECIFIC PERFORMANCE.

The contract of Lyon to Corbin calls for:

"Following real estate situate in the County of Isle of Wight ~~of~~ the State of Virginia and being a part of the Young Farm as follows: all of that part of the said Young Farm lying on the west side of the Court House-Smithfield Road conveyed to A. C. Lyon, W. J. Bradshaw and A. L. Saunders by Anne R. Young as per deed duly recorded in the Clerk's Office of the Circuit Court of Isle of Wight County and all of said land conveyed to the parties named above in said deed except the cut or strip of land lying north of the first ditch for the balance of the Young Farm and a straight line with said ditch ~~xxx~~ to the lands of John Godwin on the east side of the said Court House-Smithfield Road named above."

The contract of Corbin to Lyon calls for:

"the farm on which the said parties of the first part now reside and contain eighty acres, more or less, sale in the gross and not by the acre."

Grayson L. Co. v. Young 118 Va. 122:

"A contract which a court of equity will specifically enforce must identify and describe the land directly or by reference with reasonable certainty. The description must be such as to enable the Court to determine with certainty, with the aid of such extrinsic evidence as is admissible under the rules of evidence, what property was intended by the parties to be covered thereby. The description need not be given with such particularity as to make a resort to extrinsic evidence unnecessary. Reasonable certainty is all that is required. Extrinsic evidence is allowed in order to apply, not to alter or vary the written instrument. It cannot be used to supply any defect or omission in the terms of the written contract, but is restricted to an explanation of what is contained in the contract."

Here "Pugh shall make or cause to be made a legal title or deed to 100 acres of land lying in Grayson county and on Garrett's Knob adjoining the Carson land, boundary to be laid off by survey by said Pugh,\*\*\*\*\*This contract was, by the decree complained of, specifically executed, and in this we thinkg there was error."

The above case cites Crockett v. Green, 3 Del Chy.Rep. 466 where the agreement was 'I agree to sell to Alfred R. Crockett two acres and 159 square perches of land, commencing 170 feet from the south side of Green street, running parallel to Green street, with a front of one acre on Broad street'

Held that the agreement was too uncertain to be enforced by a decree for specific performance; that the land mentioned in the agreement, being a part of other land of the defendant, and not capable of identification as a distinct and separate holding, the metes and bounds cannot be ascertained without supplying the defect by parol evidence of something not referred to in the contract.

It also cites Rampke v. Bouhler, 203 Ill 384, 67 N. E. 796, where the contract was to convey 4 lots 25 feet by 150 feet deep in either section 8 or 9 Town 36. It was held that this contract could not be specifically enforced.

Also Grier v. Rhye 69 N. C. 346 where the contract was to convey a certain piece of land in the county aforesaid adjoining the lands of "A" and "B" and others, being a part of the Alexander tract, supposed to contain 30 or 35 acres. It was held to be so vague and indefinite that a court cannot enforce it specifically.

Also ~~Waxx~~ In Mathews v. Jarrett, 20 W. Va. 415, the opinion was delivered by Judge Snyder, and it was held, that "a contract which a court of equity will specifically enforce must be certain as well as fair in its terms, and the certainty required has reference both to the description of the property and the estate to be conveyed. Uncertainty as to either, not capable of being removed by extrinsic evidence is fatal to any suit for a specific performance. Extrinsic evidence is such case is only admissible to a very limited extent. It cannot be used to supply any defect or omission in the terms of the written contract, but is strictly confined, in cases where no fraud, mistake, or other equitable incident of a like character is alleged, to the function of explanation, and of exhibiting the surrounding circumstances in the manner and only to the same extent that such evidence is permissible in the interpretation of all other written instruments. In a suit for the specific ~~performance~~ execution of a contract for the purchase of land, where neither the contract itself, nor the extrinsic proof of the surrounding circumstances, identifies or defines the tract or boundaries of the land, or ~~fact~~ refers to any thing by which it may be identified with reasonable certainty, the court will not decree a specific performance, but will dismiss the bill.

The title bond in that case described the land to which it referred as ten acres of land on the west side of the branch on the Keeny place (where said Mathews now resides) \*\*\*That description is certainly not less definite than that under consideration, where merely described the land as being in Grayson county on Garret's Knob and adjoining the Carson land.

Also in Westfall v. Cottrills, 24 W. Va 510, ~~X E. x E.~~ ~~111~~ the land was 40 acres off the Spring fork end of my tract of 147 acres on Beach fork in Calhoun County. Held too vague for specific performance.

Also in Blankenship v. Spencer 31 W. Va. 510, 7 S. E. 433 where the land sold was 67 $\frac{1}{2}$  acres, being the lower end of a certain survey sold and conveyed to S ~~and~~ by W, and adjoining the land of H. and R. in the district of F. in the county of G in the State of W. Va., Held too vague.

Corpus Juris Vol 18 page 182 says "If there is a conveyance of part of the tract, such part must be so distinguished that it may be definitely ascertained and identified, and where a deed call for a part of a larger tract of land and there is no identification of the part intended to be conveyed by measurement of quantity, and nothing further in the deed by which the part may be identified, there is an uncertainty vitiating the deed. For example, a description is insufficient,

or the deed is void, where it fails to specify the portion or tract out of which the land is to be taken, or does not designate some certain proportionate interest, or quantity, or does not describe any specific tract; or does not identify the particular proportionate interest intended; or does not show which fractional part intended is conveyed; or does not make apparent the intent to convey; or where it is impossible to locate a tract of the particular shape specified without conflict with other boundaries.

Guinn v. Warbution (W. Va.) 60 S. E. 1100 was where the contract called for "a certain parcel of land containing 14 acres, more or less, and bordering on Warbution Branch and on Big Sandy, and situated in the district of Big Sandy and county of Kanawha". Held too vague.

See Dathey v. Buchanan Lumber Co. (N. C.) 66 S. E. 580, where the court says: "Where a grantor undertakes to convey a part of a tract of land, the deed must itself furnish the means by which the part can be located; otherwise the deed is void."

In Merritt v. Bunting, 107 Va. 174:

"A deed conveying land in order to be valid against a subsequent purchaser, must so describe and identify the property conveyed as to afford the means, with the aid of extrinsic evidence, of ascertaining with accuracy what is conveyed and where it is. In the case at bar, the land conveyed was described as situated on Chincoteague Island and embraced within certain courses and distances, but no starting point or ending point is given, and hence the location of the land could not have been ascertained, and the deed is inoperative as against a subsequent purchaser for value even if he had notice of its existence."

In the case of Smith and others v. Mullen and others, in 113 Va. 671, the Court said:

"A court of equity will decline to interfere to enforce a contract for the sale of land which is vague and indefinite in its description of the land sold. The agreement sought to be enforced must <sup>not</sup> only be clearly proved; it must be certain and definite in all its parts. Its terms must be sufficiently precise to obviate any reasonable misunderstanding of their import."

In that case the court cited a number of cases, including the case of Westfall v. Cottrills supra, and Blankenship v. Spencer, supra and also cited the case of Butcher v. Creel's heirs, 9 Gratt, 201 wherein

C conveyed to B five acres of land, including a mill and saw mill, 'reserving to himself the right to build or erect a saw-mill on the opposite side of the said river, or at the further end of the dam of the aforesaid saw and grist mill'. It was held that there was no such certainty in the description of the land intended to be excepted out of the conveyance as to withdraw it from the operation of the deed."

The court also cited the case of Virginia Iron, Coal & Coke Co. v. Grance's Nest C. & C. Co. 102 Va. 405,

"where it appeared that the contract described no definite boundary, but called for a piece of land lying on Sandy Ridge, in Wise County Va., say forty or fifty acres, more or less', out of a larger boundary, it was conceded that the contract was void for uncertainty in its description of the land referred to."

The court in Berry v. Wortham, 96 Va. 89, ~~in~~ held that:

"It is an elementary doctrine of courts of equity that they will not specifically enforce any contract unless it be complete and certain."

*In Cathey et al v. Buchanan Lumber Co (N.C.)  
66 S.E. 580 it was held:*

*"Where a grantor undertakes to convey a part of a tract of land, the deed must itself furnish the means by which the part can be located; or otherwise the deed is void."*

ABILITY AND WILLINGNESS OF PLAINTIFF TO DO HIS PART .

In Powell v. Berry 91 Va., at page 572 it is said:

"He who demands the execution of an agreement ought to show that there has been no default in him, in performing all that was to be done on his part. A court of equity will closely scrutinize the conduct of the party insisting on specific performance, and if he be in default, it will leave him to such remedy as he may have in a court of law.

In Grubb v. Moore 108 Va. 72 the court says:

"The general rule is, that a court of equity will not specifically enforce a contract at the suit of a party who is himself in default in respect thereto, or has himself violated its terms and obligations. Powell v. Berry 91 Va. 568, Cox v. Cox 26 Gratt 305; Bowles v. Woodson 6. Gratt 78; Harvie v. Banks 1 Rand. 408, and many others.

"The general rule and an exception to it are thus stated by Judge Staples in delivering the opinion of the court in Cox v. Cox supra: "Every bill for the specific execution of a contract is an application to the sound discretion of the court. It is not a case requiring the interposition of the courts ~~of the courts~~ ex debito justitiae (as a matter of right), but rests in their ~~discretion~~ discretion, upon all the circumstances. He who seeks the exercise of this extraordinary jurisdiction must show a contract certain and definite in its terms, that he himself is in no default, but has performed his part of the agreement; or in the language of the judges, that he is 'ready, desirous, prompt and eager' to do so \*\*\*\*\* When the party seeking performance is himself in default, whether he can have it or not depends in a great measure upon how far the default goes to the essence of the contract."

101 Va. 25

In Mc Allister v. Harman/we find:

"The burden is on the vendor who asks for the specific ~~performance~~ execution of a contract to show that he has such title as he contracted to convey. Judge Allen in Carrington v. Otis 4 Gratt 253; Hendricks v. Gillespie, 25 Gratt 197. See also Fry on Spec. Per. sec 24 8 2 4; 2 Mincr's Inst. 893-4

See 114 Va. 141.

In Bowles v. Woodson 6 Gratt 78, the record in a suit by the vendor must show that the vendor could convey good title.

See Wood v. Walker 92 Va. 24 where it was required of vendor to show that he done all that was required, also his ability and willingness to convey by sufficient title and that he had tendered sufficient deed.

*Lynn never offered to make title*

In Beeten v. Scheffer 21 Gratt at page 491, the

Court says:

" I am satisfied he is not entitled to a specific execution. No principle is better settled than that which requires that the party seeking specific performance must have shown himself ready, prompt and eager. In Benedict v. Lynch, 1 John Ch. R. 370, Chancellor Kent, upon a careful review of all authorities bearing upon this subject, uses the following language: it may then be laid down as an acknowledged rule in courts of equity, that where a party who applies for a specific performance has omitted to execute his part of the contract by the time appointed for that purpose, without being able to assign any sufficient justification or excuse for his delay, and where there is nothing in the conduct of the other party that amounts to an acquiescence in that delay, the court will not compel a specific performance. Nor is it necessary for the party resisting the performance, to show any particular injury or inconvenience; it is sufficient that he has not acquiesced in it, but considered it as releasing him."

*Jackson v. Legn 3 Legh 1161 -*

*Intention of parties -*

*Time is — essence where interest on purchase price can <sup>not be</sup> computed*

Encumbrance on the property.

See *Kenny v. Hoffman* 31 Grat. at page 451 which says:

"A court of equity is anxious to protect a purchaser and give to him reasonable security for his title; not compelling him to take a title, not knowing whether it is good or bad." 1 Sudg. Vend, top page 577 chap X prag 3 article I. in *Garnett v. Macon* and others., 2 Brock. R. 185, 244, Chief Justice Marshall said: "both on principle and authority, I think it is very clear that a specific performance will not be decreed on the application of the vendor unless his ability to make such a title as he had agreed to make be unquestionable." "This objection is not confined to cases of doubtful title. It applies to encumbrances of every description, which may in any manner embarrass the purchaser IN THE FULL AND QUIET enjoyment of his purchase." Those citations of authority are made with approval in *Hendricks et als. v. Gillispie*, 25. Gratt. 181 the doctrine on this subject is very fully stated by Judge Staples and authorities reviewed in *Christian v. Cabell*, 22 Gratt. 82.

In *Newberry et als. v. French* 98 Va. 479 it was held that: "A vendor who has contracted to deliver a good and sufficient deed to land, and who knows that he has not the legal title thereto, and cannot make such deed cannot complain of the failure of the vendee to notify him of objections thereto. He cannot deny knowledge of the condition of his own title.

The Court in the above case further said:

It is well settled that a purchaser of land, at a private sale, will not be required to pay his purchase money and take in exchange therefor a defective or even doubtful title, and especially is this true where, as in the case at bar, he has contracted for a good and sufficient deed, which undertaking is not confined to the form of the deed, but includes a good title. *Garnett v. Macon*, 6 Call 309, 367; *Jackson v. Ligon* 3 Leigh 174; *Christian v. Cabell* 22 Gratt. 82; *Hendricks v. Gillispie* 25 Gratt. 181; *Clark v. Hutzler*, 96 Va. 73; and *Matney v. Ratliff*, 96 Va. 231.

In *Garnett v. Macon*, supra, Chief Justice Marshall says: "Both on principle and authority, I think it is very clear that a specific performance will not be decreed on the application of the vendor, unless his ability to make such a title as he agreed to make unquestionable.

In *Jackson v. Ligon* supra, Judge Carr says: "It is a principle laid down in many cases in equity that an unwilling purchaser shall not be compelled to take a title with a cloud upon it; and that principle is absurdly strengthened here, where the party has contracted for a GOOD AND LAWFUL RIGHT."

In Virginia the only cases where the vendor with a cloud upon his title can seek specific performance is where the purchase money will take care of the liens. See 97 Va. 341 and again the same case in 99 Va. 537.

*See (Sp. Ref.) also plain in this doctrine -*

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

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CHAS. W. DAVIS

MEMORANDUM:

VIRGINIA;

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

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A. C. LYON,

v.

F. M. CORBIN AND DORIS D. CORBIN.

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Summons in Chancery to Rules Third Monday in February, 1919.

*John N. Sebrell, Jr.*  

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p. q.

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G. C. Lyon  
n<sup>y</sup> Chauncy. No. 296  
F. M. Cotton et al

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Memorandum

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Filed Feb'y 4. 1919  
Feb, Johnson Pl.

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VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

A. C. Lyon, Plaintiff

vs.

F. M. Corbin  
& Doris D. Corbin, Defendants.)

IN CHANCERY.

This cause came on this day to be heard on the bill and the exhibits filed therewith, the answer of the defendants with replication thereto, the depositions of witnesses taken on behalf respectively of the plaintiff and the defendants, and exhibits filed during the taking of such depositions and was argued by counsel. On consideration whereof the court doth adjudge, order, and decree that the bill of the complainant be dismissed and that he, the complainant, pay to the defendant his cost by him about his defence in this behalf expended.

*The complainant having indicated a desire to apply to the Supreme Court of Appeals of Virginia for an appeal from this decree it is ordered that this decree be suspended for <sup>ten</sup> days.*

In the Circuit  
Court of the  
High Court of  
Virginia.

|               |             |
|---------------|-------------|
| A. C. Lyon    | Complainant |
| vs \$296      |             |
| F. M. & Doria | Defendants  |
| D. Corbin     |             |

Final decree dis-  
missing the bill.

1919  
~~Dec. 15~~ May 31  
inter his.  
R. D. W.

6037 page 554

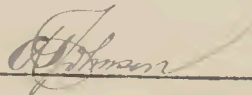
COMMONWEALTH OF VIRGINIA,

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

We command you that you summon F. M. CORBIN and DORIS D. CORBIN, to appear at the Clerk's Office of the Circuit Court for our County of Isle of Wight, at the Rules to be holden therefor, on the THIRD MONDAY in February, 1919, to answer a bill in chancery filed against them by A. C. LYON. And have then and there this writ.

WITNESS, A. S. Johnson, Clerk of said Court,  
at the Courthouse of said County, this 4th. day of  
February, 1919.

Teste,

 Clerk.

John N. Sebrell, Jr. p.q.

2

V. E. Brown

No. 1 Cy. No. 296

F. M. Corbin et al

Dulphorne

111

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

Feb 11

1919

Teste

C. E. Brown

Clerk.

Not finding F. M. Corbin at his usual place of abode I executed the with  
in summons this the 11th day of February 1919 in the County of Isle Of  
Wight by serving a true copy of the same on Mrs F. M. Corbin his wife for  
the said F. M. Corbin and explained to her the purport of same, and I fur  
ther executed the same in said County by serving a true copy in person  
on Doris D. Corbin.

R. A. E. Brown, Jr.  
Sheriff Isle Of Wight Co.

VIRGINIA,

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

A. C. LYON

VS.

F. M. CORBIN AND DORIS D. CORBIN.

The joint and separate answers of F. M. Corbin and Doris D. Corbin to a bill of complaint filed against them in the Circuit Court of Isle of Wight County by A. C. Lyon, complainant.

These respondents, reserving to themselves the benefit of all just exceptions to the said bill of complaint, for answer thereto, or to so much thereof as they are advised, that it is material they should answer, answer and say:

That it may be true that they and the said A. C. Lyon entered into the contracts set forth in bill marked respectively Exhibits "A" and "B"; that both of said contracts were made at the same time and are parcels of one transaction, and must be read as one contract; that they were not and were never intended to be deeds of bargain and sale; that they were merely bargains for deeds of conveyance for certain real estate to be made in the future; that the said A. C. Lyon paid no consideration whatever for the land of the defendant, F. M. Corbin, or was he expected to pay any consideration until the time for the execution of the contracts, to wit, on the 1st day of January, 1919, at which time he agreed that he would pay the said F. M. Corbin for his land mentioned in the contracts by conveying to the said F. M. Corbin the land of the complainant mentioned in his contracts, with General Warranty of title.

These defendants further say that the said contracts of the said A. C. Lyon in express terms provided that

the conveyance of his land to the said F. M. Corbin should be made on the 1st day of January, 1919. In other words, the said F. M. Corbin was to be paid for his land by the conveyance to him by A. C. Lyon of the A. C. Lyon land by a good and sufficient deed with General Warranty of title; that the said defendants were under no legal or moral obligation to make and deliver a deed of conveyance to the said A. C. Lyon for their land until he, the said F. M. Corbin, had been paid or tendered his pay by the said A. C. Lyon.

These defendants emphatically deny that either of them on the 1st day of January, 1919, or at any other time, ever agreed to the extension of the time for the specific performance of the contracts, until the 15th day of January, 1919, or any other time, and of this they demand strict proof.

These defendants say that it may be true that the complainant did aver that he would not be ready to specifically execute the contracts on his part until sometime after January 1, 1919, the time set for the performance of the contracts, and did ask for an extension of time to which these defendants never agreed.

These defendants further say that it may be true the complainant approached the said F. M. Corbin on the 1st day of January, 1919, late in the afternoon, and told the said F. M. Corbin that he, the said A. C. Lyon, was under the impression that the contracts provided for the specific performance thereof on the 15th day of January, 1919, and suggested that they perform the contracts on the 14th day of January, 1919, but to this suggestion these defendants emphatically deny that they ever agreed, and they positively aver that they insisted the contracts should be executed according to their terms, to wit, on the 1st day of January, 1919, or not at all.

These defendants further say that for them, time was the very essence of these contracts for the reason that

it was absolutely necessary in their farming operations to know exactly what was to be done for the year 1919, and to know what land they and their tenants were to cultivate; that to wait for the specific execution of the contracts after the 1st day of January, 1919, meant embarrassment, loss and serious damage to these defendants, and that for these reasons, as well as for others, these defendants insisted on standing by the exact terms of the contracts, to wit, that the deeds were to be executed and delivered on January 1, 1919.

They further say that they have now already made arrangements with their tenants and have already themselves begun the cultivation of their own home farm for the year 1919, and that they would be severely damaged to be compelled at this late day to break up and move to another farm. It would mean to them the loss of their tenants as well as the loss of the work and labor already performed by them on their home place, as well as other damage and loss, and that the change in the situation and circumstances of the parties and the condition of things at this late day would make it extremely harsh and inequitable to be compelled now to carry out the contracts which should have been performed and carried out by the complainant on the 1st day of January, 1919, and which these defendants were ready and willing to carry out at that time, and which the complainant absolutely failed at that time to do, or to offer to do.

These defendants further say that the complainant did not on the 1st day of January, 1919, nor has he at any subsequent time tendered to these defendants a good and sufficient deed of General Warranty for any land that he, the said A. C. Lyon, might own, and that, therefore, the said complainant has no right to demand specific performance of the contract at this late day when the time of its performance has so long passed.

These defendants further say that by the terms of the contracts the said A. C. Lyon was to make and deliver to these defendants a good and sufficient deed for said land or real estate, which the complainant claimed to own; that the complainant promised and assured them that the land which he proposed to convey to the defendants by the terms of his contract belonged to him, the said complainant, and that they would have a fee simple title to same and a deed to it in full on the 1st day of January, 1919, and that all liens and encumbrances, if any, on said land of the said complainant should be fully paid off, discharged and wholly removed at the time the contracts were to be performed.

These defendants further say that on the 1st day of January, 1919, the said complainant did not have a fee simple title to the land mentioned in his contracts, that he only owned one undivided one-third of same, and that he was not in a position on the 1st day of January, 1919, to sell and convey and deliver to these defendants the land mentioned in his contracts by a good and sufficient deed with General Warranty.

These defendants further say that they are informed and believe that the said land of the said complainant mentioned in his contracts were on January 1, 1919, subject to heavy mortgages due to third persons, and that the said complainant had made no effort to pay off, discharge and have released said liens or mortgages or encumbrances on said land on January 1, 1919; that these defendants did not contract to deal with third persons; that there was no privity whatever between these defendants or third persons or the mortgagees or beneficiaries to whom the said A. C. Lyon was indebted, and who held claims and liens on his land, nor is their contract to call for any accounting with mortgagees and lien holders to ascertain the extent of said liens on said land.

These defendants, therefore, say that the said com-

plainant not only did not, but could not tender them a good and sufficient deed to the said land on January 1, 1919, and had no right therefore to call on these defendants after that day for an execution of the contracts which he himself was unable to carry out and perform at the specified time.

These defendants further say that the description of the land in said contracts, and especially in the contract of the said A. C. Lyon, is so vague and indefinite that the court can not and ought not to require specific preformance of said contract; that the complainant promised these defendants to have a survey made of said land, but up to this time he has wholly neglected, failed and refused to do so, and has never tendered these defendants any survey of same, and that it is impossible from the terms of the contracts to say what the true boundaries of said land are, or to say what was really intended to be conveyed; that it leaves the question of boundaries of said land open to all sorts of disputes and controversies in the future, nor does said contract even mention the quahtity of land to be conveyed.

These defendants say, that they are informed and believe, and therefore assert that there can not and should not be any decree against them for specific performance, because there was and is an entire want of mutuality of legal right and equitable remedy in this case. These defendants could not with the aid of the court have enforced specific performance against the complainant at the time the contracts were to be specifically executed for the reason that the complainant did not at that time have a clear, legal, fee simple title to the land he proposed to convey, and that the court could not, therefore, under the law, require him by a decree of specific performance to convey land which he did not own, and which it was impossible for him to convey, and this defense, if set up, would have defeated the demand of these defendants

for specific performance, if they had prayed for the same; they also say that other pleas growing out of the nature and form of the contracts would also have defeated specific performance against the complainant if it had been asked for by these defendants; and that this want of mutuality in the contracts bar the right of the complainant to ask for or have a decree against the defendants for specific performance.

These defendants deny all the other allegations of the bill not here specifically mentioned, and call for strict proof of same.

And having fully answered, they pray to be hence dismissed of their reasonable costs in this behalf expended, and they will ever pray, etc.

F. M. Corbin

Doris D. Corbin

VIRGINIA,

To wit:

County of Isle of Wight,

I, Parke P. Deans, <sup>Commissioner in Chancery for the Circuit Court of</sup> ~~a Notary Public for~~ the county aforesaid, in the State of Virginia, do certify that F. M. Corbin and Doris D. Corbin, whose names are signed to the foregoing answer, have this day personally appeared before me in my said county, and being duly sworn, made oath that the statements contained in the above answer, as coming of their own knowledge, are true, and that all other statements therein contained, as coming from knowledge or information derived from others, they believe to be true.

Given under my hand this 1st day of March, 1919.

~~My commission expires on the~~      day of     ,

19    .

Parke P. Deans  
NOTARY PUBLIC.  
*Commissioner in Chancery*

ANSWER

F. M. Corbin and Doris  
D. Corbin.

R. H. RAWLES  
ATTORNEY AT LAW  
SUFFOLK, VA.

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

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A. C. LYON,

v.

F. M. CORBIN AND DORIS D. CORBIN.

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

Humbly complaining, your complainant, A. C. Lyon, respectfully shows to the court, as follows:

1. That on the 15th day of October, 1918, F. M. Corbin and Doris D. Corbin, his wife, both of the County of Isle of Wight, and State of Virginia, did in consideration of the sum of one dollar (\$1.00) cash in hand, and for other valuable consideration, grant unto your complainant, with general warranty, the farm on which the said F. M. Corbin and wife then resided, containing about eighty (80) acres, more or less, and situated in the County of Isle of Wight, Virginia, in which grant it was agreed that the full amount of the purchase price was to be paid on or before the first day of January, 1919, when possession and a good and sufficient deed was to be given. The valuable consideration or purchase price mentioned in said grant was the conveyance to F. M. Corbin by A. C. Lyon of a certain piece or parcel of land owned by said Lyon, all of which will appear from the original of said contract or grant herewith filed as Exhibit "A" and prayed to be read and taken as a part of this bill; that on the same day, to-wit, on the 15th day of October, 1918, the said A. C. Lyon and Maywood E. Lyon, his wife, entered into a contract with the said F. M. Corbin whereby in consideration of the sum of one (\$1.00) dollars and other valuable consider-

ation they agreed to sell unto the said F. M. Corbin all that part of the Young farm lying on the west side of the Court House Smithfield road conveyed to A. C. Lyon, W. J. Bradshaw and A. Lee Saunders by Mrs. Annie R. Young as per deed duly of record in the Clerk's Office of the Circuit Court of Isle of Wight County, except the cut of strip of land lying north of the first ditch from the balance of the Young farm and a straight line with said ditch to the lands of John Godwin on the east side of the said Court House Smithfield road named above, reserving the timber on the east side of the said road eight inches on the stump ten inches above the general level of the land, with the privilege of nine years from January 1, 1919, with the privilege of five years more at six per cent (6%) interest on Two Thousand (\$2,000.00) dollars for so much of said extension as might be taken advantage of; it being agreed that possession of the said property should be given January 1, 1919, when the full purchase price was to be paid and a good and sufficient deed given; all of which will more fully appear from the original of said agreement herewith filed as Exhibit "B" and prayed to be read and taken as a part of this bill.

That the valuable consideration mentioned in each of the foregoing contracts was the conveyance by each other party of the land mentioned insaid deeds, the said transaction being in fact a trade or exchange of farms.

2. That sometime afterwards when it appeared that it would be inconvenient for the defendant to move from his home by the first day of January, 1919, it was agreed between the plaintiff and the defendant that the time of the exchange of deeds and delivery of possession should be on the 15th day of January, 1919, instead of the first day of January, 1919, as contained in the original written agreement.

3. That on the 24th day of December, 1918, your complainant rented to the said Corbin the farm known as the Hilton-Johnson farm for the year 1919, agreeing to have certain work done upon the house on said premises, for which the said defendant was to furnish your complainant with a bill of specifications of the lumber necessary to complete the same, and that this list, or specifications, was delivered to your complainant on, to-wit, the 27th day of December, 1918, at which time it would have been impossible to have completed the work in order for the said Corbin to have moved into the said house by the first day of January, 1919.

4. That on the first day of January, 1919, your complainant went to the said defendant Corbin and advised him that he desired to arrange a time before the 15th of January (the date which had been agreed on for the transfer of the possession of the real estate) and suggested the 14th, to which said defendant assented, and your complainant was utterly surprised when on the 3d day of January, 1919, the defendant came to him and declared that as the deeds were not prepared and delivered on the first day of January, 1919, that he would refuse to comply with the said agreement or to execute any further deed, or to surrender the possession of the farm to your complainant, declaring that he considered the transaction between the parties as at an end. Your complainant protested and insisted that the deed to be executed was ready and offered to execute a deed with defendant for the Young farm aforesaid if he would execute a deed for the property upon which Corbin resided, and that he is still ready, and has at all times since been ready, to close the transaction in conformity with the agreement of the parties. Your complainant avers, however, that the said Corbin refuses to execute the said agreement and to execute and deliver to him a sufficient deed conveying the said property. Your complainant says that the said contract of October 15, 1918, is a grant and a deed conveying

to him the said land, but that the same has not been acknowledged and that he, therefore, cannot have the same recorded.

5. Your complainant further says that relying upon the several agreements of the parties that he proceeded to make his contract of rental for the property which was to be conveyed to him and possession given on the first day of January, 1919, but that by reason of the failure of the said Corbin to complete the transaction, he has been unable, at great loss and damage, to carry out his agreements with other parties with reference thereto.

IN TENDER CONSIDERATION WHEREOF, and inasmuch as your complainant is without remedy save in a court of equity where all such matters are alone and properly cognizable, he prays that the said F. M. Corbin and Doris D. Corbin be made parties defendant to this and be required to answer the same, although answer under oath is hereby expressly waived; that proper process issue, and all necessary orders and decrees be entered and inquiries and accounts be directed and taken; that the said defendants be required to execute a good and sufficient deed properly acknowledged, and to deliver the same ready for registry to complete conveying the property first hereinabove described, and that they be required to execute fully and in all particulars their agreement as contained in the said papers signed by them and dated on the 15th day of October, 1918, and filed as Exhibit "A" with this bill; and that your complainant may have all such other further, general and special relief as the nature of his case may require or to equity shall seem meet. And your complainant will ever pray.

A. C. Lytle

By Counsel

James H. Lytle, Jr.

VIRGINIA.

In the Circuit Court of Isle of Wight County.

A. C. Lyon,

vs.

F. M. Corbin, et als.

In Chancery.

The defendant, by his attorneys, comes and says that the bill of complaint in this cause is not sufficient in law.

*James O. Deane*  
*Att. for Defendant*

p.d.

*Grounds*

1. No deed ~~ever~~ <sup>not in issue</sup> prepared <sup>nor</sup> offered <sup>to nor</sup> + none is attached <sup>to nor</sup> offered with the Bill of Complaint <sup>+ then consider</sup>.
2. From description in Bill of Complaint the property can not be properly identified the description being indefinite & incapable of understanding.
3. The ~~Bill~~ <sup>Bill</sup> doesn't show that complainant was furnished of a clear & sufficient title.
4. The bill shows that there was of the essence of the contract.

Virginia.

In the Circuit Court of Isle of Wight County.

A. C. Lyon,

Vs.

F. M. Corbin, et als,

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\*

In Chancery.

The defendants, by their attorneys, come and say that the bill of complaint in this cause is not sufficient in law.

John D. Brown  
John W. Brown  
P.D.

Grounds

1. Bill shows no need was ever answered by complaint until this Oct 3rd. 1919 & amended bill shows this to be true.
2. From description in Bill of lower <sup>& exhibits</sup> plaintiff the property can not be properly identified the description being indefinite & in a of all enforcement was understanding.
3. The Bill doesn't show that defendant was possessed of a clear & sufficient title.
4. The Bill shows that title was of the essence of the contract.

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

---

A. C. LYON,

v.

F. M. CORBIN AND DORIS D. CORBIN.

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ation they agreed to sell unto the said F. M. Corbin all that part of the Young farm lying on the west side of the Court House Smithfield road conveyed to A. C. Lyon, W. J. Bradshaw and A. Lee Saunders by Mrs. Annie R. Young as per deed duly of record in the Clerk's Office of the Circuit Court of Isle of Wight County, except the cut of strip of land lying north of the first ditch from the balance of the Young farm and a straight line with said ditch to the lands of John Godwin on the east side of the said Court House Smithfield road named above, reserving the timber on the east side of the said road eight inches on the stump ten inches above the general level of the land, with the privilege of nine years from January 1, 1919, with the privilege of five years more at six per cent (6%) interest on Two Thousand (\$2,000.00) dollars for so much of said extension as might be taken advantage of; it being agreed that possession of the said property should be given January 1, 1919, when the full purchase price was to be paid and a good and sufficient deed given; all of which will more fully appear from the original of said agreement herewith filed as Exhibit "B" and prayed to be read and taken as a part of this bill.

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3. That on the 24th day of December, 1918, your complainant rented to the said Corbin the farm known as the Hilton-Johnson farm for the year 1919, agreeing to have certain work done upon the house on said premises, for which the said defendant was to furnish your complainant with a bill of specifications of the lumber necessary to complete the same, and that this list, or specifications, was delivered to your complainant on, to-wit, the 27th day of December, 1918, at which time it would have been impossible to have completed the work in order for the said Corbin to have moved into the said house by the first day of January, 1919.

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to him the said land, but that the same has not been acknowledged and that he, therefore, cannot have the same recorded.

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IN TENDER CONSIDERATION WHEREOF, and inasmuch as your complainant is without remedy save in a court of equity where all such matters are alone and properly cognizable, he prays that the said F. M. Corbin and Doris D. Corbin be made parties defendant to this and be required to answer the same, although answer under oath is hereby expressly waived; that proper process issue, and all necessary orders and decrees be entered and inquiries and accounts be directed and taken; that the said defendants be required to execute a good and sufficient deed properly acknowledged, and to deliver the same ready for registry to complete conveying the property first hereinabove described, and that they be required to execute fully and in all particulars their agreement as contained in the said papers signed by them and dated on the 15th day of October, 1918, and filed as Exhibit "A" with this bill; and that your complainant may have all such other further, general and special relief as the nature of his case may require or to equity shall seem meet. And your complainant will ever pray.

A. E. Lyon,  
By Amuse

Joseph H. H. H.

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

A. C. LYON,

v. { 296

F. M. CORBIN AND DORIS

D. CORBIN.

BILL.

Second February Rules, 1919:

Process returned executed: Bill  
filed: Decree nisi.

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