1925-007 Chancery Causes: C. J. Cutchins vs C. H. Hayes, A. W. Hayes + 403
Isle of Wight County R. E. L. Watkins, trustee

other SURNAMES: GARDNER, Holland

C. J. Ketchins

v. Bill

A. W. Hayes et als

Bill of Particulars.

Filed. Third Mon. Feb. 1923

Test R. A. Edmonds. clk

SAUNDERS & HUTTON
Attorneys at Law
Suffolk, Va.

COMMONWEALTH OF VIRGINIA:

TO THE SHERIFF OF ISLE OF WIGHT COUNTY—Greeting:

We command you that you summon C. H. Hayes, A. W. Hayes, and R. E. L. Watkins., Trustee

to appear at the Clerk's Office of the Circuit Court of the County of Isle of Wight at the rules to be holden for the said Court on the Third Monday in February, 1923, to answer a bill in chancery exhibited against them in our said Court by

.....C. J. Cutchins.....

And have then and there this writ.

Witness, R. A. Edwards, Clerk of our said Court, at the Courthouse, this 3rd day of February, 1923, and in the 147th year of the Commonwealth.

R. A. Edwards Clerk.

(2)

C. J. Hutchins

V~~irginia~~ Chancery No.

C. H. Hays et als

ORIGINAL SUBPOENA.

VIRGINIA, Clerk's office of the Circuit Court of the County of Isle of Wight:

This Monday Feb. 1923

Returned, entered and filed.

Teste: R. A Saunders *Clerk*

To 2nd Feb. — *Rules.*

Saunders & Hutton. p.q.

Executed in the County of Isle of Wight this 1 day of Feb. 1923 by delivering a true copy of the within notice to C. H. Hays in person.

W. H. Chapman. Sheriff

By J. I. Hearn. D. S.

COMMONWEALTH OF VIRGINIA:

TO THE SHERIFF OF ~~ISLE OF WIGHT~~ Southampton COUNTY—Greeting:

We command you that you summon C. H. Hayes, A. W. Hayes, and R. E. L. Watkins., Trustee

to appear at the Clerk's Office of the Circuit Court of the County of Isle of Wight at the rules to be holden for the said Court on the Third Monday in February, 1923, to answer a bill in chancery exhibited against them in our said Court by

.....C. J. Cutchins.....

And have then and there this writ.

Witness, R. A. Edwards, Clerk of our said Court, at the Courthouse, this 3rd day of February, 1923, and in the 147th year of the Commonwealth.

R. A. Edwards Clerk.

C. J. Blythwood

Virginia Chancery No. 3

C. H. Thorp et als.

ORIGINAL SUBPOENA.

VIRGINIA, Clerk's office of the Circuit Court of the County of Isle of Wight:

Third Mon. Feb. 1923

Returned, entered and filed.

Teste: R. A. Edwards *Clerk*

To 2nd Feb. *Rules.*

Saunders v Shelton p.q.

Executed in Southampton County Virginia this 10th day of Febuary 1923 by delivering a true copy hereof to the within named R. T. I. Watkins ~~Pumpkin~~ in person and on the 12 th day of Febuary by delivering a true copy hereof to the within named A. W. Hayes, in person

C. C. Rees Sheriff

Of Southampton County Virginia

C. J. CUTCHINS - - - - - - - - - - - - - - - - - COMPLAINANT.

VS.

C. H. HAYES, A. W. HAYES AND R. E. L. WATKINS,

TRUSTEE - DEFENDANTS.

TO HONORABLE B. D. WHITE, JUDGE OF THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY, VIRGINIA.

YOUR COMPLAINANT RESPECTFULLY REPRESENTS THE FOLLOWING FACTS.

FIRST,-THAT LUVENIA HAYES BY HER DEED DATED MARCH 6, 1909, AND RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY, VIRGINIA, IN DEED BOOK No. 77, AT PAGE 261, A COPY OF WHICH DEED IS HERETO ATTACHED MARKED "EXHIBIT A", AND PRAYED TO BE READ AS A PART HEREOF, CONVEYED TO C. H. HAYES CERTAIN LAND IN ISLE OF WIGHT COUNTY, VIRGINIA, FULLY DESCRIBED IN SAID DEED, RESERVING UNTO HERSELF AN ESTATE FOR HER LIFE, WHICH DEED PROVIDES, AMONG OTHER THINGS, THAT THE SAID C. H. HAYES AT THE GRANTORS DEATH SHOULD TAKE POSSESSION OF THE SAID FARM, AND SHOULD PAY TO THE SAID C. H. HAYES, AND CERTAIN OTHER PARTIES THEREIN NAMED, THE SUM OF SIX HUNDRED ($600.00) DOLLARS EACH, AND WHICH SAID DEED FURTHER PROVIDES THAT SAID AMOUNTS SHOULD BE A CHARGE AND A LIEN UPON THE SAID LAND IN FAVOR OF THE SAID PARTIES, AND SHOULD BEAR INTEREST FROM THE DATE OF THE DEATH OF LUVENIA HAYES.

SECOND,- THAT ON OR ABOUT SEPTEMBER 1, 1915, THE SAID A. W. HAYES IN THE LIFE TIME OF LUVENIA HAYES BORROWED FROM YOUR COMPLAINANT THE SUM OF SIX HUNDRED ($600.00) DOLLARS, AND THEREUPON EXECUTED HIS BOND DATED SEPTEMBER 1, 1915, FOR THAT SUM, WITH INTEREST FROM DATE UNTIL PAID, PAYABLE ON DEMAND TO YOUR COMPLAINANT, TOGETHER WITH A DEED OF TRUST BEARING EVEN

DATE THEREWITH SECURING THE SAME BY IT, AND WHICH DEED OF TRUST IS DULY RECORDED IN SAID CLERK'S OFFICE IN DEED BOOK No. 84, AT PAGE 434, WHICH IS HERETO ATTACHED, MARKED "EXHIBIT B", AND PRAYED TO BE READ AS A PART HEREOF. THE SAID A. W. HAYES CONVEYED TO R. E. L. WATKINS, TRUSTEE, A ONE-FOURTH (1/4) UNDIVIDED INTEREST IN CERTAIN CHATTEL PROPERTY, AND ALL THE RIGHT, TITLE AND INTEREST OF THE SAID A. W. HAYES IN AND TO THE SAID SUM OF SIX HUNDRED ($600.00) DOLLARS, THE PAYMENT OF WHICH WAS MADE A CHARGE UPON THE SAID FARM BY THE DEED OF LUVENIA HAYES, AS AFORESAID.

THIRD,- THAT THEREAFTER YOUR COMPLAINANT NOTIFIED THE SAID C. H. HAYES THAT HE HELD THE BOND OF THE SAID A. W. HAYES FOR THE SAID SUM OF SIX HUNDRED ($600.00) DOLLARD, AND THAT THE SAID A. W. HAYES HAD ASSIGNED TO R. E. L. WATKINS, TRUSTEE, AS AFORESAID, HIS RIGHT, TITLE AND INTEREST IN AND TO THE SAID SUM OF SIX HUNDRED ($600.00) DOLLARS, PAYMENT OF WHICH WAS MADE A LIEN UPON SAID FARM, AS AFORESAID.

FOURTH,- THAT UPON THE DEATH OF THE SAID LUVENIA HAYES, WHICH TOOK PLACE ON THE DAY OF THE SAID C. H. HAYES TOOK FULL POSSESSION OF THE SAID FARM, AND, AS YOUR COMPLAINANT IS ADVISED, PROCEEDED TO PAY THE SAID A. W. HAYES THE SAID SUM OF SIX HUNDRED ($600.00) DOLLARS ON OR ABOUT JULY 29, 1922, NOTWITHSTANDING THE FACT THAT THE SAID C. H. HAYES HAD FULL KNOWLEDGE OF YOUR COMPLAINANT'S RIGHTS IN THE PREMISES.

FIFTH,- THAT NEITHER THE SAID DEBT, NOR ANY PART THEREOF, HAS BEEN PAID, THAT SAID INTEREST IN THE SAID CHATTEL PROPERTY IS OF INCONSIDERABLE VALUE, AND, AS YOUR COMPLAINANT IS ADVISED, IS NOT AVAILABLE FOR SUBJECTION TO THE SAID DEED OF TRUST.

SIXTH,- THAT THE AFORESAID DEED OF TRUST CONSTITUTES EQUITABLE ASSIGNMENT OF THE AMOUNT TO BE PAID A. W. HAYES BY C. H. HAYES UPON THE DEATH OF THE SAID LUVENIA HAYES, AND THAT YOUR COMPLAINANT IS ENTITLED NOT ONLY TO A PERSONAL JUDGMENT AGAINST THE DEFENDANTS C. H. HAYES AND A. W. HAYES FOR SUCH AMOUNT, WITH LEGAL INTEREST THEREON FROM THE DATE OF THE DEATH OF LUVENIA HAYES, BUT IS ENTITLED TO HAVE THE BENEFIT OF THE LIEN OR CHARGE UPON SAID LAND CREATED BY SAID LUVENIA HAYES AS SECURED FOR THE PAYMENT OF THE SAID SIX HUNDRED ($600.00) DOLLARS TO BE PAID THE SAID A. W. HAYES BY THE SAID C. H. HAYES, AS AFORESAID.

IN TENDER CONSIDERATION WHEREOF, AND FOR AS MUCH AS YOUR COMPLAINANT IS REMEDILESS SAVE IN A COURT OF EQUITY WHERE ALONE SUCH MATTERS ARE PROPERLY COGNIZABLE YOUR COMPLAINANT PRAYS THAT THE SAID C. H. HAYES, A. W. HAYES AND R. E. L. WATKINS, TRUSTEE, MAY BE MADE PARTIES DEFENDANTS TO THIS BILL AND REQUIRED TO ANSWER THE SAME, BUT NOT ON OATH, THE OATH BEING HEREBY WAIVED; THAT PROPER PROCESS BE ISSUED; THAT THE SAID LAND BE SUBJECTED TO THE PAYMENT OF THE DEBT DUE YOUR COMPLAINANT BY THE SAID A. W. HAYES TO THE EXTENT OF SIX HUNDRED ($600.00) DOLLARS, WITH LEGAL INTEREST THEREON FROM THE DATE OF THE DEATH OF THE SAID LUVENIA HAYES; THAT IN THE EVENT SAID LAND CANNOT PROPERLY BE SO SUBJECTED YOUR COMPLAINANT MAY HAVE A PERSONAL JUDGMENT AGAINST THE SAID C. H. HAYES AND A. W. HAYES FOR THE SAID SUM OF SIX HUNDRED ($600.00) DOLLARS, WITH INTEREST AS AFORESAID; THAT YOUR COMPLAINANT MAY HAVE ALL SUCH FURTHER AND GENERAL RELIEF IN THE PREMISES WHICH THE NATURE OF HIS CASE MAY REQUIRE, OR TO EQUITY MAY SEEM MEET, AND YOUR COMPLAINANT WILL EVER PRAY, ETC.

Sanders Phelps
Counsel.

C. J. Aitchison
Complainant,
by Counsel

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

C. J. Cutchins,
Complainant,

Vs.

C. H. Hayes, and others,
Defendants.

In Chancery,

On Bill

DEPOSITIONS.

Saunders and Hutton,
Atty's.

SAUNDERS & HUTTON
Attorneys at Law
Suffolk, Va.

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

C. J. CUTCHINS,

v.

C. H. HAYES AND OTHERS.

The deposition of C. H. Hayes taken before Ella M. Whitehurst, a Notary Public in and for the City of Norfolk, Virginia, at 527 Seaboard National Bank Building, Norfolk, Virginia, on the 4th day of March, 1925, taken by consent of parties plaintiff and defendants, to be read as evidence in behalf of the defendants in a certain suit in equity depending in the Circuit Court of Isle of Wight County, Virginia, in which C. J. Cutchins is plaintiff and C. H. Hayes and others are defendants.

Present: J. K. Hutton, of Counsel for Plaintiff;
John N. Sebrell, Jr., Counsel for Defendants.

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

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

   A. C. H. Hayes; 55 years; near Franklin, Virginia; farmer; and I am the defendant.

2. Q. You were the administrator of the estate of your father, Timothy Hayes, and also the administrator of your mother, Lavinia Hayes, were you not?

   A. Yes, sir.

3. Q. It appears from a deed made by Mrs. Lavinia Hayes on the 6th day of March, 1909, that she conveyed to you certain land in Isle of Wight County, reserving to herself a life estate upon condition that you should pay to A. W. Hayes, W. R. Hayes and Lizzie Gardner the sum of Six Hundred Dollars ($600.00) each, and to the children of Zella Holland jointly the sum of $600.00. Have those amounts been paid by you to the parties named?

A. Yes, sir.

4. Q. Were they paid by you before this suit was brought against you?

A. Yes, sir.

5. Q It is claimed by the plaintiff, Mr. C. J. Cutchins, that Mr. A. W. Hayes gave him a deed of trust or lien of some kind upon this fund. Please state whether or not at the time that you paid this money over to A. W. Hayes that you had ever known of the existence of such deed of trust or lien?

A. No, sir.

6. Q. Were you informed of any lien against this fund at the time that you paid it?

A. No, sir.

7. Q. Mr. Cutchins claims that he told you that A. W. Hayes owed him a claim and that he had secured him with the amount which you were to pay. Did he tell you anything of that kind?

A. After I had settled with A. W. Hayes.

8. Q. Had he made any such statement or given you any such information prior to your settlement with A. W. Hayes?

A. Not but one time, that was when he called in Mr. Matt Moore's store and asked me when I was going to settle the estate, and I told him as soon as the two years was up, and he said that my brother Woody owed him a little money and he wanted to collect it.

9. Q. What was said about A. W. Hayes having secured him with this amount?

A. Nothing at all.

10. Q. When you use the word Woody, you meant A. W. Hayes?

A. Yes, sir.

11. Q. Then tell us whether or not you had ever received any information from any source that Woody Hayes had assigned to him or secured him with the funds which you were to pay?

A. No, sir.

12. Q. What did you understand Cutchins to intend when he asked you if anything was to be paid to Woody Hayes?

A. I understood he told me that Woody Hayes owed him a little and he never said any amount or nothing.

13. Q. From whom did you think he was going to collect it?

A. I did not know, sir.

14. Q. If Woody owed him the money snd he was inquiring whether Woody was going to receive any money who would be the one to pay him?

A. Woody would be the one.

15. Q. Well, what did you have to do with paying Mr. Cuthins?

A. Nothing at all.

16. Q. So I understand from you that when you paid A. W. Hayes the $600.00 provided for in Mrs. Lavinia Hayes deed that you did not know that Mr. Cutchins had any claim on it whatever?

A. No, sir.

17. Q. Do you recall how this money shown in your administrator's account of Timothy Hayes was paid to the parties?

A. I do not know exactly now.

18. Q. Have you paid anything to A. W. Hayes since you had any notice of the claim of Mr. Cutchins?

A. No, sir, I have not.

19. Q. And do you owe Mr. A. W. Hayes anything at this time?

A. No, sir.

20. Q. You said you talked with Mr. Cutchins about it in Mr. Matt Moore's store. Is that the same place Mr. S. R. Nicholson keeps?

A. Yes, sir, the same old stand.

21. Q. You said that the only conversation you had with Cutchins was in that store and at one particular time?

A. Yes, sir.

22. Q. Was anything said at that time about his having a lien on A. W. Hayes' interest?

A. No, sir.

CROSS-EXAMINATION:

By Mr. J. K. Hutton:

1. XQ. It appears that your father, Timothy Hayes, bequeathed a one-fourth interest in all chattel property to A. W. Hayes which interest was conveyed in trust by A. W. Hayes to secure C. J. Cutchins the payment of $600.00. I hand you your account as administrator of Timothy Hayes and ask if the sum of $807.59 shown to have been paid A. W. Hayes by you as such administrator was part of the amount received from the sale of the chattel property bequeathed in that will?

   A. The chattel property was not sold until Lavinia Hayes died and then it came in with that $600.00.

2. XQ. You have in this account an item: Cash received $3620.00. Do you mean to say that this amount includes the aggregate of all the $600.00 items that you were to pay under your mother's deed?

   A. I do not know, sir. Mr. Watkins did the work.

3. XQ. Can you state generally the value of the chattel property handled by you as administrator of your father?

   A. No, sir, not now.

4. XQ. Was that property sold or divided in kind among the parties?

   A. Sold at public auction.

5. XQ. When did you have this conversation that you have described about with C. J. Cutchins?

   A. I do not remember exactly, it was soon after my mother died he met me on the street and asked me, but I do not remember what day.

6. XQ. Mr. Cutchins testified that this occasion was about two or three months after your mother's death; so far as you know, that is true?

   A. Yes, sir; it was about two or three months after she died.

7. XQ. He further testified that on that occasion he asked you if your brother, A. W. Hayes, held an interest in your father's and mother's estate and you told him that he did hold some. That is true?

   A. The only thing he asked me was when was I going to settle the estate, he said that brother A. W. Hayes owed him a little money and he wanted to try to collect it.

8. XQ. Then he did not tell you on that occasion that your brother had secured him with his interest?

   A. No, sir.

9. XQ. Then as I understand your testimony you did know that your brother A. W. Hayes owed a debt to C. J. Cutchins but that you did not know that the debt was secured in any way?

A. No, sir.

10. XQ. Who represented you in all this transaction?

A. R. E. L. Watkins.

11. XQ. The money paid by you was paid out upon his advice, was it not?

A. Yes, sir.

12. XQ. And he drew all the papers in connection with it?

A. Yes, sir.

13. XQ. Have you had any conversation with Mr. Watkins about this claim of C. J. Cutchins against your brother A. W. Hayes at any time?

A. No, sir.

14. XQ. Sure of that?

A. Not until after we had settled the estate, Charlie Cutchins come over there after me and told me that Mr. Lee Watkins said come down there, and I went down there and they wanted us to get together and see if we could not compromise.

15. XQ. Was Cutchins present at the time you had that conversation?

A. Yes, sir.

16. XQ. Then the only conversation you had with Mr. Watkins on the subject was in the presence of Mr. Cutchins. Is that true?

A. Yes, sir.

17. XQ. Did you tell Mr. Watkins on that occasion that you knew that Cutchins had a claim against A. W. Hayes, but you did not know that it was in the nature of a deed of trust?

A. Yes, sir. I told Mr. Watkins that, about his meeting me on the street, and about what he said.

18. XQ. If Mr. Watkins testified you had any other conversation at any other time about it he was mistaken, is he?

A. We did not have any other.

19. XQ. Mr. Watkins never called your attention to this deed of trust that he had written for Mr. Cutchins at any time?

A. No, sir.

20. XQ. The sum of $600.00 required to be paid by the deed was paid at a different time from the time that you had the $807.00 put down in your administrator's account, was it not?

A. No, sir, it was all paid at the same time

21. XQ. Did you remember at the time you paid this out about your conversation with C. J. Cutchins, or had it escaped your mind?

A. I know about that, about the conversation we had in Nicholson's store, that all I knew.

22. XQ. So you still remember that conversation when you paid the money out?

A. Yes, sir.

23. XQ. And you did not call the attention of either Mr. Watkins or Mr. Cutchins to that situation?

A. No, sir.

24. XQ. Did you know that Mr. Cutchins was expecting you to protect his interest in the matter of this debt owed by A. W. Hayes?

A. No, sir.

25. XQ. And the only thing Mr. Cutchins has ever asked you about this matter or said to you about this matter was when you were going to settle the estate?

A. Yes, sir.

RE-DIRECT EXAMINATION:

By Mr. Debrell:

1. Q. The conversation which you had with Mr. Watkins in the presence of Mr. Cutchins was after you had settled the matter with A. W. Hayes?

A. Yes, sir, after I had settled the estate.

And further this deponent saith not.

Signature waived by consent

STATE OF VIRGINIA,

CITY OF NORFOLK, to-wit:

I, Ella M. Whitehurst, a Notary Publicin and for the City of Norfolk, in the State of Virginia, do hereby certify that the foregoing deposition of C. H. Hayes was duly taken before me by consent of parties at the time and place, and for the purposes in the caption hereto mentioned.

Given under my hand this 4th day of March, 1925.

_____

Notary Public.

Notary's fee, $ 7.50,
charged to Defendant.

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

C. J. Cutchins,

v.

A. H. Hayes and others.

The depositions of C. J. Cutchins and R. E. L. Watkins taken before Evelyn Palmer, a Notary Public for the City of Suffolk, Virginia, at the Office of Saunders and Hutton, 103 West Washington Street, in the City of Suffolk, Virginia, on the 20th day of June, 1923, and the 8th day of August, 1924, respectively, taken by consent of parties plaintiff and defendants, to be read as evidence in behalf of the plaintiff in a certain suit in equity depending in the Circuit Court of Isle of Wight County, Virginia, in which C. J. Cutchins is plaintiff and C. H. Hayes and others are defendants.

Present: John K. Hutton and J. R. Saunders, of
Counsel for Plaintiff;
John N. Sebrell, Jr., Counsel for Defendants.

C. J. Cutchins, being duly sworn, deposes and says:

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

A. Name, C. J. Cutchins; age, 54; residence, Isle of Wight County; Virginia; occupation, farmer.

Q. Mr. Cutchins, you have brought a suit against C. H. Hayes for the recovery of a certain sum of money alleged in the bill and filed along with your deed of trust which you have marked exhibit "B". I hand you exhibit "B" and ask you if that is the original deed of trust paper which you now hold,

A. Yes.

Q. Do you still hold the debt mentioned in the deed of trust?

A. Yes.

Q. Has no part been paid on the principal or any part on the the interest?

A. Nary cent of interest.

Q. Did you mean that neither interest nor principal had been paid?

A. No sir.

Q. He who prepared that deed of trust, did he also have it recorded?

A, Yes sir.

Q. Did you ever have any talk with Mr. C. H. Hayes about your claim?

A. I went to him soon after the death of his mother and asked him did his brother, A. W. Hayes, hold interest inhis father's and mother's estate and he said he did hold some. I told him that A. W. Hayes owed me a claim and had secured me with his interest, and he says, "That is all right as he holds an interest". That was all that past between us.

OBJECTION: The preceding question and answer objected to on the grounds that the records would be the best evidence.

Q. About when was it you went to see Mr. Hayes?

A. Soon after the death of his mother. No money had been drawn out in the settling business.

Q. Did you know who Mr. Hayes' attorney was at that time?

A. Yes sir. I knew Mr. Watkins.

Q. Did you say anything to Mr. Watkins about it?

A. About the time I went to Mr. Watkins and asked him what must I do about that claim against A. W. Hayes? He said I should not bother with it now but wait until I get ready to settle the estate. He says they will have to settle with you before they settle the business.

OBJECTION: Somuch of this answer as relates to a conversation purporting to be had between the witness and R. E. L. Watkins is hearsay and immaterial.

Q. At the time you talked with Mr. Watkins did he remember the deed of trust paper? A. Yes sir.

A OBJECTION: Objected to for the same reason and for the reason that the understanding or statement of Watkins cannot bind or effect the rights of the defendant.

Q. After talking to Mr. Watkins did you make yourself quiet and wait?

A. I didn't say anything more about it because I thought Mr. Watkins knew what he was talking about and I made myself easy.

Q. Did you later find out that the money had been paid out to Mr. A. W. Hayes?

A. Why, I didn't know that the money had been paid for some 15 or 20 days and then I found out.

Q. When do you mean it was 15 days? Before you found it out or befor it had been settled with the heirs?

A. It was 15 days after it had been settled with the heirs.

Q. Did you go to see Mr. Watkins again?

A. Yes sir. I went to see Mr. Watkins to ask about the settlement.

Q. What was the result of that interview?

A. He says, "By the way, you hold a deed of trust against A. W. Hayes", I says, "Yes, I hold the papers," and he says "I wish you would bring them down here and let me look for the deed of trust. He says you have had that deed of trust recorded, haven't you?" I says, "Yes sir, certainly I have", so I taken the papers down to him to look over

and he says, " I don't know no reason you cannot get your money. That was all he said.

OBJECTION: Objected to for the reason that any interview with Watkins was irrelevant and not binding upon the defendant.

Q. Mr. Cutchins, after the death of Mr. Hayes who took possession of the farm?

A. Mr. C. H. Hayes took over the farm. He was living there with his mother and took it over.

Q. Do you know whether he has paid out the money acquired from Mr. Hayes? A. Yes sir. He has.

OBJECTION: Objected to on the ground that it was hearsay from R. E. L. Watkins.

Q. Did he settle with all of the heirs?

A. Yes sir.

A. Yes sir.

CROSS EXAMINATION by Mr. Sebrell.

Q. How long had A. W. Hayes been owing you this $600.00?

A. It has been about three years.

Q. Did he get the money from you at the time that he executed the deed of trust which you have filed with your bill as exhibit "B"?

A. Yes sir. I gave him a check for it.

Q. And that check was for $600/00?

A. Yes sir.

Q. And you loaned him the money then?

A. Yes sir.

Q. When was it you talked with C. H. Hayes about the money A. W. Hayes owed you?

A. Soon after the death of his mother. I took him in Nickerson's store and asked him did his brother have an interest.

Q. Do you know about what year Mrs. Lavinia Hayes died?

A. I don't know rightly, about three years ago. I think she died about August. It will be three years in August.

Q. Then, so far as you remember it was August, 1920?

A. Yes sir, that is right.

Q. Your conversation then with Mr. C. H. Hayes was 11 years after Mr.

A. W. Hayes had borrowed this money from you?

A. About six years ago.

REMARK by Mr. Sebrell. That was the deed so made in 1915 and I was looking at the deed of Mrs. Hayes made in 1910.

Q. When you went to see C. H. Hayes and asked him if his brother, A. W. Hayes, had any interest in the estate you told him that A. W. Hayes owed you some money, did you not?

A. I told Mr. C. H. Hayes that his brother had secured me with his interest in the estate and his reply was, "Well, he's got an interest".

Q. That is all that you said to him?

A. Yes sir.

Q. You didn't tell him how much it was?

A. No sir.

Q. Nor did you tell him how he had secured you?

A. No sir.

Q. And you expected A. W. Hayes to pay you with what he should get out of the estate?

A. I was looking for the administrator to pay me.

Q. You were not looking for that at the time you were making the loan, were you?

A. I was looking for the property to pay me.

Q. You certainly did not expect the administrator to pay you, did you?

A. I went to him the first year and called for the interest and he would not pay that so I made myself easy and waited for hismother to die.

Q. You are now talking about Mr. A. W. Hayes?

A. Yes. Mr. A. W. Hayes.

Q. How long after Mrs. Hayes' death was it when you had the conversation with Mr. C. H. Hayes in Mr. Nickerson's store?

A. A few months. I don't recall what date.

Q. About what date, as near as you can recall?

A. About three months.

Q. When A. W. Hayes borrowed this $600.00 from you he told you that he was to receive $600.00 from his mother out of this land, did he not?

A. He told me he wanted to secure me with his interest in his father's and mother's estate.

Q. It is stated in your bill in this case that the deed of Mrs. Lavinia Hayes provided that C. H. Hayes was to take possession of the farm and should pay to the other parties named therein, including A. W. Hayes, the sum of $600.00 each, that is right is it not?

A. Yes sir.

Q. You therefore knew that C. H. Hayes, in order to get the property, had to pay to A. W. Hayes $600.00?

A. Yes sir,

Q. That was the $600.00 that you expected A. W. Hayes to pay you back with?

A. That's right, A. W. Hayes' $600.00 and his 1/4 interest.

And further this deponent saith not.

R. E. L. Watkins, being duly sworn, deposes and says:

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

A. R. E. L. Watkins; age, 55; residence, Franklin, Virginia; occupation, attorney at law.

Q. State whether or not you a re acquainted with C. H. Hayes and A. W. Hayes, defendants in this suit and whether you knew Lavinia Hayes.

A. I know all the parties to this suit and I knew Mrs. Lavinia Hayes.

Q. Did you, on or about the first of September, 1915, write a deed of trust, executed by A. W. Hayes conveying a one-fourth (1/4) interest in the chattel property Lavinia Hayes left at her death and of all the other interest of A. W. Hayes in the property left by his mother, to you in trust to secure C. J. Cutchins the payment of the sum of $600.00?

A. The deed of trust referred to conveyed the interest of A. W. Hayes in the property of his father, Timothy Hayes. At the time of the drawing of the deed, Mrs. Lavinia Hayes was then living.

Q. Will you examine this paper (indicating deed of trust introduced in evidence and marked "Exhibit B") and say whether this is the deed of trust which you wrote and just referred to by you?

A. Yes sir. This is the deed of trust which I wrote and which was just referred to by me.

Q. Did you represent C. H. Hayes in the settlement called for by the deed mentioned?

A. Yes. I represented C. H. Hayes as administrator of the estate of Timothy Hayes as well as of the estate of Lavinia Hayes, he having qualified as administrator of both estates.

Q. Did you know at the time the settlement was made that C. J. Cutchins held the bond of A. W. Hayes secured by the deed of trust referred to?

OBJECTION: Objected to as immaterial and incompetent.

A. I knew and I didn't know. It is true that I had drawn the trust deed in 1915 but the transaction had entirely gone out of my mind. At the time of the settlement by Mr. C. H. Hayes as administrator there was no impression whatever on my mind of the execution of the deed in favor of C. J. Cutchins for the interest of A. W. Hayes in his property. Mr. Cutchins had been to see me once or twice during the course of the administration of the estate of Mr. Hayes and had spoken of his claim, but I did not recall then, though he spoke of his claim, that his claim was a bond secured by a deed of trust. After the account had been closed, Mr. Cutchins came to my office and called my attention to the fact that he had not been settled with by Mr. Hayes, and then advised me that he held the deed of trust securing a bond on the interest of A. W. Hayes in his property. Then he brought to my office the trust deed and the bond. The bond and trust deed came too late in so far as I was concerned and there was nothing that I could do for Mr. Cutchins in that settlement.

Q. Did Mr. C. J. Cutchins have a talk with you about this deed of trust shortly after the death of Lavinia Hayes and before the settlement was actually made?

A. Yes.

Q. It has been testified to by C. J. Cutchins that in that conversation you told him that he was not to bother about that claim now, that it would be paid when the settlement was made.

OBJECTION: Question objected to on the ground that the conversation between C. J. Cutchins and the witness is irrelevant and immaterial.

Q. What is your memory along that line?

OBJECTION: Same objection.

A. I, undoubtedly, told Mr. Cutchins that his claim was secured by the trust deed and that there would not be any settlement by Mr. Hayes without his settling with Mr. Cutchins of the amount due him

on the bond which he held against A. W. Hayes secured by the deed of trust aforesaid, but that conversation occured at least two years before there was any settlement made by the administrator and Mr. Cutchins had failed to bring to my notice the bond so that I would have it with the papers of Mr. Hayes at the time of settlement, and for that reason it was overlooked.

Q. When, or about when, was the settlement actually made?

A. I cannot tell you definitely, but I think sometime in 1923.

Q. Did the conversation referred to occur between the death of Lavinia Hayes and the settlement?

A. Yes sir.

Q. Q. From your testimony Mr. Watkins, I take it that you simply overlooked this matter when the settlement was made?

A. Yes.

Q. Did Mr. Cutchins, shortly after the settlement come to see you about this paper again?

A. Yes.

Q. What did you tell him?

OBJECTION: Objected to as being irrelevant and immaterial.

A. My recollection is that I told him his paper was possibly a lien on the land or the interest of A. W. Hayes in the land which was conveyed to C. H. Hayes by Mrs. Lavinia Hayes, but, I also explained to him at the same time that it was not a question that I had gone into to investigate, that perhaps he and Mr. C. H. Hayes could get together and settle the matter without any controversy.

Q. Who got you to write that deed of trust?

A. Mr. A. W. Hayes.

CROSS EXAMINATION by Mr. Sebrell.

Q. I believe you state that C. H. Hayes was administrator of the estate of Lavinia Hayes, deceased, and was also administrator of the

estate of Timothy Hayes, deceased?

A. Yes sir.

Q. And you, as attorney for the administrator, made out the administration accounts and settled the same for him?

A. Yes sir.

Q. I hand you a statement marked statement of account of C. H. Hayes, administrator of Lavinia Hayes, deceased, and ask you whether or not that represents the settlement of that administration account?

A. Yes sir.

The statement is offered in evidence and marked "R. E. L. Watkins, Exhibit 1".

Q. I hand you statement marked "R. E. L. Watkins, Exhibit #2", which I offer in evidence and ask whether or not the same is a statemnt of the account of C. H. Hayes, administrator of the estate of Timothy Hayes, deceased, as finally rendered and settled?"

A. Yes sir, this appears to be the account as settled for Timothy Hayes' estate.

Q. Will you please inspect the statements and tell us how much, if anything, from either of the estates went into the hands of C. H. Hayes other than as commissions?

A. In the account of C. H. Hayes as administrator of Timothy Hayes, he received nothing except his commissions, $181.04; in the account of C. H. Hayes as administrator of Mrs. Lavinia Hayes, he received $34.56 as his distributive share of that estate and his commissions of $10.99.

Q. As I understand it from you, all of the disbursements which appear upon these two statements, marked Exhibits 1 and 2 as with your evidence, were made by you as attorney for the administrator?

A. Yes sir.

Q. And I also understand from you that that disposed of and distributed the entire proceeds of each estate?

A. Yes sir.

Q. I would suppose that Mr. C. H. Hayes, the administrator of the estate, left the entire matter of the settlement of the estate in your hands?

A. He did. Of course, I was dependent upon him to produce before me such accounts as were proved before the administrator and that was the course of the settlement.

Q. Was any account of C. J. Cutchins produced to the administrator?

A. None whatever. All accounts produced before the administrator are shown in the statement made up by me for him and filed with the Commissioner of Accounts of Isle of Wight County, Virginia.

Q. I understood that the deed of trust, which has been referred to, was written by you at the instance and request of A. W. Hayes?

A. Yes sir.

Q. C. H. Hayes was not in any way connected or interested in that transaction so far as you know?

A. None whatever.

Q. So far as you know he had no knowledge of that transaction?

A. So far as I know he had no knowledge of it.

Q. You said that Mr. Cutchins came to you and talked to you some two or three years before the settlement of the estate about the debt owing to him by A. W. Hayes?

A. Yes sir.

Q. He knew, did he not, that you were attorney for the administrator?

A. Yes sir.

Q. And so his transactions with regard to the estate were had with you and not with Mr. C. H. Hayes?

A. I don't know that I can say that for this reason, that he claims to have talked to Mr. Hayes also about his claim and also spoke to me about it.

Q. You mean to say that he has testified that he talked with Mr. Hayes about it. Do you know that he has talked to Mr. Hayes aboutit?

A. No sir. I do not know.

Q. And when you said he had talked to you about it, you mean he had talked to you about his claim but not about talking to Mr. Hayes about it?

A. That is right.

Q. So, whether he had in fact ever mentioned the matter to C. H. Hayes you don't know?

A. I do not.

Q. At the time of the settlement of the estate the fact that you had previously written this deed had escaped your recollection?

A. Completely.

Q. It is, therefore, certain that you yourself had not said anything to Mr. C. H. Hayes about it?

A. I had not.

RE-EXAMINATION by Mr. Hutton.

Q. Did you have any conversation with C. H. Hayes of any character with respect to Mr. Cutchins' claim before settlement was made?

A. No sir.

Q. If, when the settlement was made, you had remembered this claim would you have considered it in the settlement?

OBJECTION: The question objected to as speculative, calling for an opinion and otherwise irrelevant and incompetent.

A. I would have advised C. H. Hayes, as administrator, to withhold so much of the funds as was due to A. W. Hayes until the rights of the parties could be determined.

Q. Were you aware, at and before the settlement in question, of the terms of the Lavinia Hayes deed requiring the payment of the sum of $600.00 to each several of the heirs?

OBJECTION: Counsel objects to this question as being irrelevant and immaterial.

A. I had read the deed and knew its terms, as you can readily see from the preamble to the deed of trust which I drew.

Q. Did you have anything whatever to do with the payment of any or all of these various amounts of $600.00 by C. H. Hayes?

A. The various amounts of $600.00 provided by the Lavinia Hayes deed?

Q. Yes.

A. I drew the checks for Mr. Hayes in the payment of these several interests as recited in the deed; also prepared the receipts for each of the heirs and distributees to sign, discharging him of the obligation.

Q. You, therefore, represented Mr. C. H. Hayes in the settlement provided for by the said deed?

A. Yes sir.

Q. Was anything, at that time, said about the Cutchins' claim?

A. None whatever.

Q. I understand then, that you are unaware of any knowledge that might have been brought home to C. H. Hayes before the settlement of the existence of the Cutchins claim?

A. Yes sir.

RE-CROSS EXAMINATION by Mr. Sebrell.

Q. When you say that you represented Mr. C. H. Hayes in the payment of the $600.00 to be paid to the several parties under the provisions of the Lavinia Hayes deed, did you mean that you were employed by him any further than the payment of the sums and the preparation of the receipts so that he could have a proper acquitance and release?

A. The only service that he requested of me was the preparation of the proper receipts and the drawing of the checks for him.

Q. He did not employ you to investigate any of the records or make any other inquiries as to whether or not any other parties were entitled to the sums of $600.00?

A. He did not.

Q. And such inquiry and investigation was not part of your duties in that particular case?

A. None whatever.

RE-EXAMINATION by Mr. Hutton.

Q. Did Mr. Cutchins employ or retain or attempt to retain you for the purpose of making collection of the claim he had against Mr. Hayes?

A. Before then?

Q. No, after.

A. Mr. Cutchins did not attempt to employ me to make any collection of his claim.

Q. You did not consider yourself attorney for Mr. Cutchins?

A. Did not.

Q. Did you consider it your duty, in your representation of C. H. Hayes, to advise him as to the proper disbursement of the said sums of $600.00?

A. No. The only duty that I had in that connection was to draw the $600.00 each to the heirs that were entitled to it under the deed of Mrs. Lavinia Hayes and to prepare the proper receipts acquitting Mr. Hayes of further liability in that.

Q. You represented him, did you, in no other capacity with respect to the settlement of the estate of Timothy and Lavinia Hayes?

A. Only in so far as the distribution of the funds and the payment of the accounts which were properly proven before him as administrator.

RE-CROSS EXAMINATION by Mr. Sebrell.

Q. There is some question as to what was the reason that C. J. Cutchins came to you about his claim against A. W. Hayes. Is it not a fact that he came to you because you had previously drawn the deed of trust in which this debt was secured?

A. There was no other reason why he should have come to me.

Q. And you did not communicate that to Mr. C. H. Hayes?

A. No sir.

And further this deponent saith not.

STATE OF VIRGINIA,

City of Suffolk, to-wit:

I, Evelyn Palmer, a Notary Public in and for the City of Suffolk, in the State of Virginia, do hereby certify that the foregoing depositions of C. J. Cutchins and R. E. L. Watkins were duly taken before me by consent of parties at the time and place, and for the purposes in the caption hereto mentioned.

Given under my hand this 8th day of August, 1924.

Evelyn Palmer.
Notary Public.

STATEMENT OF ACCOUNT OF C.H. HAYES, ADMINISTRATOR

OF LAVINIA HAYES,DECEASED.

DEBTOR.

To account of sales,	$ 219.80

CREDIT.

By Commissions,		10.99
To Clerk of Court for Qualifying,		10.50
To Clerk of Sale & Attorney,		10.00
Commissioner of Accounts,Including recording,		7.50
To A.W. Hayes,		34.56
To W.R. Hayes,		34.56
To Lizzie H. Gardner,		34.56
To the Children of Mrs. Zella Holland,(5 in number)		34.56
To C.H. Hayes,		34.56
		219 .79
To Balance in hand,		.01
	$ 219.80	219. 80

R. E. L. Watkins, Exhibit #1

marked by
Evelyn W. Palmer
Notary Public.

STATEMENT OF ACCOUNT OF C.H. HAYES, ADMINISTRATOR OF

TIMOTHY HAYES, DECEASED.

DEBTOR.

To Cash received, $3620.93

CREDIT.

By Cash to Clerk of Court for qualifying.		6.50
Bond premiums, 13 years,		175.50
Attorney's fee,		20.00
Commissioner of Accounts, including recording,		7.50
Commissions,		181.04
Distribution:		
To A.W. Hayes,	807.59	
To W.R. Hayes,	807.59	
To Lizzie H. Gardner,	807.59	
To the Children of Zella Holland (5 in Number)	807.59	
Total Credits - - - - - - - - - - -		$ 390.54
Total Distributions - - - - - - - -		3230.36
	$3620.93 - -	$ 3620.90
To Balance in hand	-	.03
	$3620.93	$3620.93

R. E. L. Watkins, Exhibit #2.

Marked by,
Evelyn Palmer,
Notary Public

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

From Ella M. Whitehurst,
Notary Public -
527 Seaboard Nat. Bank Bldg -
Norfolk, Va.

3/7/25

C. J. Cutchins v. C. H. Hayes and others.

Deposition of C. H. Hayes, to be read as evidence in behalf of the defendants in a certain suit in equity depending in the Circuit Court of Isle of Wight County, Virginia.

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

C. J. CUTCHINS,

v.

C. H. HAYES AND OTHERS.

Depositions of

C. H. HAYES.

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

HAMPTON ROADS PAPER CO., NORFOLK

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

C. J. CUTCHINS,

v.

C. H. HAYES AND OTHERS.

The deposition of C. H. Hayes taken before Ella M. Whitehurst, a Notary Public in and for the City of Norfolk, Virginia, at 527 Seaboard National Bank Building, Norfolk, Virginia, on the 4th day of March, 1925, taken by consent of parties plaintiff and defendants, to be read as evidence in behalf of the defendants in a certain suit in equity depending in the Circuit Court of Isle of Wight County, Virginia, in which C. J. Cutchins is plaintiff and C. H. Hayes and others are defendants.

Present: J. K. Hutton, of Counsel for Plaintiff;
John N. Sebrell, Jr., Counsel for Defendants.

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

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

   A. C. H. Hayes; 55 years; near Franklin, Virginia; farmer; and I am the defendant.

2. Q. You were the administrator of the estate of your father, Timothy Hayes, and also the administrator of your mother, Lavinia Hayes, were you not?

   A. Yes, sir.

3. Q. It appears from a deed made by Mrs. Lavinia Hayes on the 6th day of March, 1909, that she conveyed to you certain land in Isle of Wight County, reserving to herself a life estate upon condition that you should pay to A. W. Hayes, W. R. Hayes and Lizzie Gardner the sum of Six Hundred Dollars ($600.00) each, and to the children of Zella Holland jointly the sum of $600.00. Have those amounts been paid by you to the parties named?

A. Yes, sir.

4. Q. Were they paid by you before this suit was brought against you?

A. Yes, sir.

5. Q. It is claimed by the plaintiff, Mr. C. J. Cutchins, that Mr. A. W. Hayes gave him a deed of trust or lien of some kind upon this fund. Please state whether or not at the time that you paid this money over to A. W. Hayes that you had ever known of the existence of such deed of trust or lien?

A. No, sir.

6. Q. Were you informed of any lien against this fund at the time that you paid it?

A. No, sir.

7. Q. Mr. Cutchins claims that he told you that A. W. Hayes owed him a claim and that he had secured him with the amount which you were to pay. Did he tell you anything of that kind?

A. After I had settled with A. W. Hayes.

8. Q. Had he made any such statement or given you any such information prior to your settlement with A. W. Hayes?

A. Not but one time, that was when he called in Mr. Matt Moore's store and asked me when I was going to settle the estate, and I told him as soon as the two years was up, and he said that my brother Woody owed him a little money and he wanted to collect it.

9. Q. What was said about A. W. Hayes having secured him with this amount?

A. Nothing at all.

10. Q. When you use the word Woody, you meant A. W. Hayes?

A. Yes, sir.

11. Q. Then tell us whether or not you had ever received any information from any source that Woody Hayes had assigned to him or secured him with the funds which you were to pay?

A. No, sir.

12. Q. What did you understand Cutchins to intend when he asked you if anything was to be paid to Woody Hayes?

A. I understood he told me that Woody Hayes owed him a little and he never said any amount or nothing.

13. Q. From whom did you think he was going to collect it?

A. I did not know, sir.

14. Q. If Woody owed him the money and he was inquiring whether Woody was going to receive any money who would be the one to pay him?

A. Woody would be the one.

15. Q. Well, what did you have to do with paying Mr. Cuthins?

A. Nothing at all.

16. Q. So I understand from you that when you paid A. W. Hayes the $600.00 provided for in Mrs. Lavinia Hayes deed that you did not know that Mr. Cutchins had any claim on it whatever?

A. No, sir.

17. Q. Do you recall how this money shown in your administrator's account of Timothy Hayes was paid to the parties?

A. I do not know exactly now.

18. Q. Have you paid anything to A. W. Hayes since you had any notice of the claim of Mr. Cutchins?

A. No, sir, I have not.

19. Q. And do you owe Mr. A. W. Hayes anything at this time?

A. No, sir.

20. Q. You said you talked with Mr. Cutchins about it in Mr. Matt Moore's store. Is that the same place Mr. S. R. Nicholson keeps?

A. Yes, sir, the same oldmstand.

21. Q. You said that the only conversation you had with Cutchins was in that store and at one particular time?

A. Yes, sir.

22. Q. Was anything said at that time about his having a lien on A. W. Hayes' interest?

A. No, sir.

CROSS-EXAMINATION:

By Mr. J. K. Hutton:

1. XQ. It appears that your father, Timothy Hayes, bequeathed a one-fourth interest in all chattel property to A. W. Hayes which interest was conveyed in trust by A. W. Hayes to secure C. J. Cutchins the payment of $600.00. I hand you your account as administrator of Timothy Hayes and ask if the sum of $807.59 shown to have been paid A. W. Hayes by you as such administrator was part of the amount received from the sale of the chattel property bequeathed in that will?

   A. The chattel property was not sold until Lavinia Hayes died and then it came in with that $600.00.

2. XQ. You have in this account an item: Cash received $3620.00. Do you mean to say that this amount includes the aggregate of all the $600.00 items that you were to pay under your mother's deed?

   A. I do not know, sir. Mr. Watkins did the work.

3. XQ. Can you state generally the value of the chattel property handled by you as administrator of your father?

   A. No, sir, not now.

4. XQ. Was that property sold or divided in kind among the parties?

   A. Sold at public auction.

5. XQ. When did you have this conversation that you have described about with C. J. Cutchins?

   A. I do not remember exactly, it was soon after my mother died he met me on the street and asked me, but I do not remember what day.

6. XQ. Mr. Cutchins testified that this occasion was about two or three months after your mother's death; so far as you know, that is true?

   A. Yes, sir; it was about two or three months after she died.

7. XQ. He further testified that on that occasion he asked you if your brother, A. W. Hayes, held an interest in your father's and mother's estate and you told him that he did hold some. That is true?

   A. The only thing he asked me was when was I going to settle the estate, he said that brother A. W. Hayes owed him a little money and he wanted to try to collect it.

8. XQ. Then he did not tell you on that occasion that your brother had secured him with his interest?

   A. No, sir.

9. XQ. Then as I understand your testimony you did know that your brother A. W. Hayes owed a debt to C. J. Cutchins but that you did not know that the debt was secured in any way?

A. No, sir.

10. XQ. Who represented you in all this transaction?

A. R. E. L. Watkins.

11. XQ. The money paid by you was paid out upon his advice, was it not?

A. Yes, sir.

12. XQ. And he drew all the papers in connection with it?

A. Yes, sir.

13. XQ. Have you had any conversation with Mr. Watkins about this claim of C. J. Cutchins against your brother A. W. Hayes at any time?

A. No, sir.

14. XQ. Sure of that?

A. Not until after we had settled the estate, Charlie Cutchins come over there after me and told me that Mr. Lee Watkins said come down there, and I went down there and they wanted us to get together and see if we could not compromise.

15. XQ. Was Cutchins present at the time you had that conversation?

A. Yes, sir.

16. XQ. Then the only conversation you had with Mr. Watkins on the subject was in the presence of Mr. Cutchins. Is that true?

A. Yes, sir.

17. XQ. Did you tell Mr. Watkins on that occasion that you knew that Cutchins had a claim against A. W. Hayes, but you did not know that it was in the nature of a deed of trust?

A. Yes, sir. I told Mr. Watkins that, about his meeting me on the street, and about what he said.

18. XQ. If Mr. Watkins testified you had any other conversation at any other time about it he was mistaken, is he?

A. We did not have any other.

19. XQ. Mr. Watkins never called your attention to this deed of trust that he had written for Mr. Cutchins at any time?

A. No, sir.

20. XQ. The sum of $600.00 required to be paid by the deed was paid at a different time from the time that you had the $807.00 put down in your administrator's account, was it not?

A. No, sir, it was all paid at the same time.

21. XQ. Did you remember at the time you paid this out about your conversation with C. J. Cutchins, or had it escaped your mind?

A. I know about that, about the conversation we had in Nicholson's store, that all I knew.

22. XQ. So you still remember that conversation when you paid the money out?

A. Yes, sir.

23. XQ. And you did not call the attention of either Mr. Watkins or Mr. Cutchins to that situation?

A. No, sir.

24. XQ. Did you know that Mr. Cutchins was expecting you to protect his interest in the matter of this debt owed by A. W. Hayes?

A. No, sir.

25. XQ. And the only thing Mr. Cutchins has ever asked you about this matter or said to you about this matter was when you were going to settle the estate?

A. Yes, sir.

RE-DIRECT EXAMINATION:

By Mr. Sebrell:

1. Q. The conversation which you had with Mr. Watkins in the presence of Mr. Cutchins was after you had settled the matter with A. W. Hayes?

A. Yes, sir, after I had settled the estate.

And further this deponent saith not.

Signature waived by consent.

STATE OF VIRGINIA,

CITY OF NORFOLK, to-wit:

I, Ella M. Whitehurst, a Notary Publiciin and for the City of Norfolk, in the State of Virginia, do hereby certify that the foregoing deposition of C. H. Hayes was duly taken before me by consent of parties at the time and place, and for the purposes in the caption hereto mentioned.

Given under my hand this 4th day of March, 1925.

Ella M. Whitehurst.

Notary Public.

My commission expires Jan. 5, 1928.

Notary's fee, $7.50, charged to Defendant.

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY:

C. J. Cutchins.....Complainant)
)
vs.) DECREE
)
C. H. Hayes.....Defendant.)

This cause came on this day to be heard on the bill of the complainant taken for confessed as to A. W. Hayes, he still failing to appear and plead, answer or demur the depositions of witnesses for the complainant and C. H. Hayes, defendant, taken by consent, duly filed in this cause, no answer having been filed by said C. H. Hayes, and on the motion of the complainant to reject the defendant's depositions and enter a decree upon the bill taken for confessed, and was argued by counsel.

On consideration whereof, it appearing to the court that the complainant's counsel participated in the taking of the defendant's depositions by cross-examination of the witnesses, and that, at and before the taking of the said depositions, counsel for the said defendant stated to the counsel for the complainant that said defendant's answer had been filed, the court is of the opinion that the filing of the said answer, as required by law, has been waived, and it further appearing that the evidence is not sufficient to entitle the complainant to the relief sought against the defendant, C. H. Hayes, the court doth adjudge, order and decree that the said bill be dismissed as to the said defendant and that he recover of the complainant his reasonable cost, and it further appearing that the complainant is entitled to recover of the defendant, A. W. Hayes, the sum of SIX HUNDRED ($600.00) DOLLARS with interest from the 1st day of September, 1915, until paid, it is adjudged, ordered and decreed that the complainant do recover of the defendant, A. W. Hayes, the aforesaid amount, with interest as aforesaid, and cost of this suit.

VIRGINIA:
IN THE CIRCUIT COURT OF
ISLE OF WIGHT COUNTY;
##########################

C. J. Cutchins,
complainant.

Vs. DECREE

C. H. Hayes,
defendant.

Enter the_____ day of
October, 1925.

Entered in Chancery Order
Book_____, Page_____.

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

C. J. CUTCHINS,

v.

C. H. HAYES AND OTHERS.

DECREE.

From Order 10/26/25 Letter saying Paid.

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

HAMPTON ROADS PAPER CO., NORFOLK

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

C. J. CUTCHINS,

v.

C. H. HAYES AND OTHERS.

This day this cause came on to be heard on the bill of complainant, taken for confessed as to A. W. Hayes, he having been duly served with process and still failing to appear, plead, answer or demur thereto, and on the depositions of witnesses for the complainant, taken by consent, and the depositions of C. H. Hayes, the defendant, taken on the 4th day of March, 1925, by consent of parties plaintiff and defendant, to be read in said cause and duly filed, no other answer or other defense having been filed by said C. H. Hayes, and was argued by counsel.

On consideration whereof, the court being of opinion that the complainant has waived the filing of the answer or other defense of the defendant within the time required by law, and it further appearing that the evidence is not sufficient to entitle the complainant to the relief sought against the defendant, C. H. Hayes, the court doth adjudge, order and decree that the said bill be dismissed as to the said defendant, C. H. Hayes, and that he recover of the complainant his reasonable costs.

And it appearing by confession of said bill that the complainant is entitled to recover of the said defendant, A. W.

Hayes the sum of Six Hundred Dollars ($600.00), with interest from the first day of September, 1915, until paid, it is adjudged, ordered and decreed that the complainant do recover of the defendant, A. W. Hayes the aforesaid amount, with interest as aforesaid, and his reasonable costs in this behalf expended.

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

C. J. CUTCHINS,

v.

C. H. HAYES AND OTHERS.

DECREE.

1935.
Dec. 15.
Entered
BDW.

Book 8
page 311

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

HAMPTON ROADS PAPER CO., NORFOLK

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

C. J. CUTCHINS,

v.

C. H. HAYES AND OTHERS.

This day this cause came on to be heard on the bill of complainant, taken for confessed as to A. W. Hayes, he having been duly served with process and still failing to appear, plead, answer or demur thereto, and on the depositions of witnesses for the complainant, taken by consent, and the depositions of C. H. Hayes, the defendant, taken on the 4th day of March, 1925, by consent of parties plaintiff and defendant, to be read in said cause and duly filed, no other answer or other defense having been filed by said C. H. Hayes, the failure to file such answer or other defense within six months from the date of the service of process being brought orally to the attention of the court by said complainant at the hearing of this cause, and was argued by counsel.

On consideration whereof, the court being of opinion that the complainant has waived the filing of the answer or other defense of the defendant within the time required by law by consenting to the taking and filing of the depositions of the defendant, C. H. Hayes, to be read in evidence in his behalf in said cause, which said deposition said defendant, at the hearing adopted as his answer or defense; and it further appearing that the evidence is not sufficient to entitle the complainant to the relief sought against the defendant, C. H. Hayes, the court doth adjudge, order and decree that the said

bill be dismissed as to the said defendant, C. H. Hayes, and that he recover of the complainant his reasonable costs.

And it appearing by confession of said bill that the complainant is entitled to recover of the said defendant, A. W. Hayes, the sum of Six Hundred Dollars ($600.00), with interest from the first day of September, 1915, until paid, it is adjudged, ordered and decreed that the complainant do recover of the defendant, A. W. Hayes, the aforesaid amount, with interest as aforesaid, and his reasonable costs in this behalf expended.

C. J. Cutchins

vs Cy No.

C. I. L. I. Loys et als.

Memorandum.
Filed. Feb. 15t. 23.

Dep. 750

C. J. Cutchins.....Complainant

vs: In Chancery

C. H. Hayes, A. W. Hayes,

and R. E. L. Watkins, Trustee.....Defendants

Please issue process returnable to ~~first~~ 2nd

February Rules, 1923.

Thomas Thomas

p.q.

Lavinia Hayes

TO) Bargain and Sale

C.H. Hayes

THIS DEED, Made this 6th day of March, 1909, between Lavinia Hayes (widow of Timothy Hayes, deceased) party of the first part, and C.H. Hayes, party of the second part, all of Isle of Wight, County, Virginia.

WHEREAS,the said Timothy Hayes by his last will and testament made certain disposition of his property and of the farm upon which he resided, upon the assumption that the said farm belonged to him; and,

WHEREAS, in fact the said farm did not belong to the said decedent but belonged to the said Lavinia Hayes, his wife;and,

WHEREAS, the said Lavinia Hayes desires to make such disposition of the said farm as shall in every respect carry out what she believes to have been thee wishes of her late husband, and in so doing she is satisfied that it was not the intent of her late husahd to exclude C.H. Hayes from participation in the distribution of his personal property, and that his name was omitted from the list of his legatees by mistake in the draftsman of said will, and it is, therefore, the desire of said Lavinia Hayes to do adjust matters as to remedy said error:

NOW,THEREFORE THIS INDENTURE WITNESSETH: that for and in consideration of the above premises and in further consideration of her natural love and affection for the said C.H. Hayes, her son, and of the obligations assumed by the said C.H. Hayes herein, the said party of the first part, Lavinia Hayes, hereby grants, bargains, sells and conveys unto the said party of the

secon part,C.H. Hayes, his heirs or assigns, in fee-simple and with general warranty, but subject to reservations and conditions hereinafter named, all of that certain tract or parcel of land, together with all buildings and improvements thereon, or thereunto belonging, lying, situate and being in Isle of Wight County, Virginia, upon which said party of the first part resides, containing three hundred and twenty two (322) acres, more or less, and bounded by the right of way of the Seaboard and Roanoke Railroad Company and by the lands of T.C.Holland, Joseph Holland, William Hobbs, J.C. Williams, The Blackwater River, the Spikes Beale farm, the Alex Howell tract, Jerry Goodman, D. A. Holland, Noah Brock, the Henry Duke farm, now belonging to Joe Duke, Joel Bradshaw, Dennis Ruffin, Gilbert Darden, Anthony Myrick, James H. Daughtery and W.R. Hayes;this being the remainder of the tract of land inherited by the said Lavinia Hayes from herfather, Jack Darden, various portions of the original tract have been sold off by her since she inherited same.

The said Lavinia Hayes hereby expressly reserves to herself and for her benefit a life interest in the said farm, and the absolute right of possession and control of same during her life. At her death the said C.H. Hayes shall take the said farm as above provided in fee simple, but subject to the condition precedent that he shall pay to A.W.Hayes,W.R. Hayes and Lizzie Gardner, children of the said Lavinia Hayes, the sum of six hundred ($600.00) dollars each, and to the children of Zella Holland, who are the grand children of Lavinia Hayes, jointly, the sum of six hundred dollars ($600.00), said amounts to be a charge and lien upon the said farm in favor of the said parties and shall bear interest from the

date of the death of the said Lavinia Hayes. If either of the said parties shall die before the said Lavinia Hayes dies, leaving children, then the share of said party shall go to such children.

This disposition of said tract of land is made with the understanding that the said C.H. Hayes shall remain with the said Lavinia Hayes upon said farm as long as she lives and manage said farm for her as is provided in the will of the said Timothy Hayes, and the said C.H. Hayes hereby obligates that upon the death of his mother he will pay to the said A.W.Hayes, W.R. Hayes and Lizzie Gardner and the children of Zella Holland or their children, the sums abpve provided,and further agrees that dufing the life of his mother that he will remain upon said farm with her, manage said farm for her any do all in his power to properly care for his mother during her life.

Witness the following signatures and seals the day and year first above written.

Lavinia Hayes (SEAL)

C.H. Hayes. (SEAL)

State of Virginia,

County of Isle of Wight, to-wit:

I, C. W. Gary, a Notary Public, in and for the County aforesaid, in the State of Virginia, hereby certify that Lavinia Hayes and C.H. Hayes, whose names are signed to the writing above, bearing date the 6th day of March, 1909, have acknowledged the same before me in my County aforesaid.

My commission expires on the 17th day of Oct. 1909.

Given under my hand this 6th day of March, 1909.

C. W. Gary
Notary Public

Virginia: Clerk's Office of the Circuit Court of the County of Isle of Wight, June 5th, 1909, at 2 .30 o'clock P.M. this deed was received and with the certificate annexed, admitted to record.

Teste, A.S.Johnson
Clerk.

A Copy,

Teste, R. A. Edwards, Clerk.

By R. Kay Wills D.C.

D.B. 77, page 261

Lavinia Hays

2o Bros.

C. H. Hays

Exhibit A.

Book 77 - pg. 261.

Hayes ADs

T. D. } To

C. J. Catchings Trustee

E J Cashwell
Franklin Va
R F D No 4

Virginia: In the Clerk's Office of the County Court of Southampton County, the 9 day of May 1922 and was recorded in Deed Book No. 15 page 434

State Tax. Paid 1.00
Clerk, - " 1.25
Comr. Revenue, - "
1922, - " .25

L D

R. E. L. WATKINS,
ATTORNEY AT LAW
FRANKLIN, VA.

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Whereas by the last will and testament of the late Timothy Hayes admitted to probate in Isle of Wight County,Virginia, on the 8th.day of March 1909 and duly recorded in WILL BOOK #34 at page 156,the said Timothy Hayes in said WILL did bequeath to A.W.Hayes one fourth (1/4) interest in all chattel ~~in said~~ ~~property~~ property of which the said Timothy Hayes died possessed, and whereas by a certain deed of Bargain and Sale from Louvinia Hayes,widow of the late Timothy Hayes,to C.H.Hayes dated the 6th.day of March 1909 and recorded in Isle of Wight County, Virginia,in Deed Book #77 p.261,the said Louvinia Hayes did provide among other things that at her death the said C.H. Hayes should pay to the said A.W.Hayes the sum of SIX HUNDRED DOLLARS,which said sum of SIX HUNDRED DOLLARS should be charged against the farm which said farm is fully described in said deed aforesaid,and WHEREAS the said A.W.Hayes desires to borrow the sum of SIX HUNDRED DOLLARS on said chattel property bequeathed in said will and on the said farm conveyed by said deed,NOW, THEREFORE,this deed made this 1st.day of September 1915,by and between A.W.Hayes of the one part and R.E.L.Watkins,Trustee of the other part,

W I T N E S S E T H :

That for and in consideration of the premises and of the sum of FIVE DOLLARS to him in hand paid,the receipt whereof is hereby acknowledged,the said A.W.Hayes doth grant,bargain, sell and convey unto the said R.E.L.Watkins,Trustee,the following property,to wit;

FIRST,The certain sum of Six Hundred Dollars due By C.H.Hayes or to become due by the said C.H.Hayes to the said A.W. Hayes at the death of Mrs.Louvinia Hayes as set out in a certain deed from Louvinia Hayes to C.H.Hayes dated the 6th. day of March 1909 and recorded in the Clerk's office of Isle of Wight County,Virginia,in D.B.77 at page 261.

SECOND,All of the interest,it being a one fourth (1/4) undivided interest of A.W.Hayes in the chattel estate of the late Timothy Hayes as set out in the last will and testament of the late Timothy Hayes,which said Will was duly probated

in the Circuit Court of Isle of Wight County,Virginia,on the 8th.day of March 1909 and recorded in WILL BOOK #34 at page 156,which said chattel estate is to be divided at the death of Mrs.Louvinia Hayes,widow of the late Timothy Hayes.

IN TRUST,HOWEVER,to secure to C.J.Cutchin of Isle of Wight County,Virginia,the payment of the just and full sum of SIX HUNDRED DOLLARS,payable by bond on demand,which said bond is executed by the said A.W.Hayes,bears even date with these presents,contains the homestead waiver,is payable to C.J.Cutchin of Isle of Wight County,Virginia,and bears interest at 6% per annum,payable annually.

IF DEFAULT SHALL be made in the payment of the above mentioned BOND or any part thereof,or the interest thereon,then the said trustee,upon being required so to do shall sell the said property at public auction,but no sale shall be had until the time, place and terms thereof shall have been advertised for a period of at least 20 days and in case of a sale the same shall be had upon the following terms to wit:CASH as to so much as may be necessary to pay the costs of executing this trust and the amount then due,owing or unpaid on said bond,and the balance, if any,pay or secure as the law directs.

IF NO DEFAULT,then the said party of the first part shall have executed to him at his own proper costs a good and sufficient deed of release.

WITNESS the following signature and seal.

A W Hayes (Seal)

State of Virginia,

Southampton County,to wit:I, D C Thornton a Notary Public in and for the county aforesaid,State of Virginia, do hereby certify that A.W.Hayes whose name is signed to the writing above bearing date on the first day of September 1915,has acknowledged the same before me in my county aforesaid.

My commission expires on the 14th day of Dec 1917

Given under my hand this 17th day of Sept 1915

D C Thornton
Notary Public.

Virginia: Clerk's Office of the Circuit Court of the County of Isle of Wight September 22 1915, at one O'clock P M this deed was received and with the certificate annexed, admitted to record.

Teste: E. J. Johnson Clerk.

Timothy Hayes, Will.

I, Timothy Hayes, of the County of Isle of Wight, State of Virginia, do make this my last will and testament.

To my wife Lavinia Hayes, during the time that she remains single, I loan my landed estate, farm and all chattel property, the same to be held by her as at present, and to be used in carrying on the farm, under the management of my son C.H. Hayes. At my wifes death or marriage, I give to my son C.H. Hayes, in fee-simple, all landed estate, and farm, as loaned to my wife, provided that said C.H. Hayes shall pay the sum of Eight Hundred ($800.00) Dollars to each of my other children, A.W.Hayes, W.R.Hayes, Lizzie Gardner, and eight hundred dollars to be divided equally between the children of my daughter Zella Holland, deceased.

At the death or marriage of my wife, I direct that all chattel property loaned to my wife shall be sold, and the proceeds of sale divided equally between my children, A.W.Hayes, W.R.Hayes, Lizzie Gardner, and one child share to be divided between the children of my daughter Zella Holland, deceased. Should my wife marry again, then she shall have a childs interest in the proceeds of the sale of the chattel property. It is my intention in making this will, that the children of my daughter Zella Holland shall receive one childs part, they heiring the part that my daughter would have heired, had she been permitted to have lived until after my death.

I further direct that in the event there should be any bonds, notes, or accounts, found in my possession at the time of my death, due to my estate by any of my children, the amount of such indebtedness shall be deducted from that childs part of amount heired.

I hereby appoint my son C.H. Hayes, as my administrator, who after having given the usual bond as required by law, shall shall

take charge and settle my estate.

This will is made and signed by me this 1st day of March, 1907.

his
Timothy X Hayes
mark

Witnesses.

J.L. Harcum

J.D.Johnson

Virginia: Clerk's Office of the Circuit Court of the County of Isle of Wight, March 8th. 1909. The foregoing paper writing, purporting to be the last will and testament of Timothy Hayes, deceased, was this day presented and proved by the oaths of J.L. Harcum and J.D.Johnson, the subscribing witnesses thereto, and oredered to be recorded as the true last will and testament of the said Timothy Hayes, deceased.

Teste,
A.S.Johnson,
Clerk

A Copy,

Teste, T. A Edwards Clerk
By E. Kay Wells D. C.

Will Book 34, page 156.

Timothy Keyes

C.H. Hayes

To)

A. W. Hayes

Received of C.H. Hayes, Six Hundred ($600.00) dollars, it being in full settlement of a sum set out in a certain deed bearing date on the 6th day of March, 1909, between Lavinia Hayes, widow of Timothy Hayes, deceased, and C.H. Hayes, said sum being made a condition precedent, to be performed by the said C.H. Hayes before the vesting of a fee simple title in the said C.H. Hayes to the land in the said deed mentioned and described, I, being the identical A. W. Hayes mentioned in the deed aforesaid.

Witness my hand this 29th day of July, 1922.

A.W.Hayes

Witness R.E.L. Watkins

State of Virginia,

County of Southampton, to-wit;

I, Annie May Coggin, a Notary Public in and for the County aforesaid, State of Virginia, do hereby certify that A. W. Hayes, whose name is signed to the writing above, bearing date on the 29th day of July, 1922, has acknowledged the same before me in my county aforesaid.

My commission expires on the 21st, day of July, 1926.

Given under my hand this 29th day of July, 1922.

Annie May Coggin
Notary Public

Virginia: Clerk's Office of the Circuit Court of the County of Isle of Wight, August 25th, 1922, at 2 o'clock P.M. this receipt was received and with the certificate annexed, admitted to record.

Teste,

R.A. Edwards, Clerk

A Copy,

Teste,

R. A. Edwards, Clerk

By E. Kay Wills D.C.

Fiduciary Book 1, page 459

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

March 7, 1925.

Mr. R. A. Edwards,
Clerk, Circuit Court of Isle of Wight County,
Isle of Wight, Va.

Dear Sir:

I am sending you in the enclosed envelope depositions of C. H. Hayes, to be read as evidence in behalf of the defendants in the suit of C. J. Cutchins v. C. H. Hayes and others.

Yours very truly,

Ella N. Whitehurst

Notary Public.

Serif-
403
Cutchins
75
1 Page

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

R. A. Edwards, Clerk

April 1st 1935.

Mr. [illegible] Nothing, Atty.,

Franklin, Va.

Dear Mr Nothing-,

When you were here if I mistake not, I mentioned to you the fact that the Chancery papers in the case of [illegible]. J. Gutchins Vs. C. B. Hays were not in the office and you told me that you did not know anything about them. I have since located a receipt showing that on May 7th 1933, I delivered these papers to Mr [illegible]. Beale, at his request to be delivered to you-I am now called upon by the Court for these papers in order for him to have them at a hearing to be held in the City of Norfolk very shortly. I am now writing you and Mr Beale both with the request that you see each other and locate these papers if possible and let me know where they are and if you do locate them please let me have them by return mail. Please do not fail to attend to this at once.

Very Respty Yours,

R. E. L. WATKINS
ATTORNEY AT LAW
Commonwealth's Attorney for Southampton County
FRANKLIN, VIRGINIA

April 8th, 1925.

Mr. R.A. Edwards, Clerk,
Isle of Wight, Va.

Dear Mr. Edwards:-

Herewith I return to you the process of John & Whitfield vs Algie Butler and others, with service accepted by Camp Manufacturing Company. Kindly have Mr. Chapman to do the same thing.

I am also inclosing a decree which you will kindly present to the Judge for me.

In Re: Papers C.J. Cutchin vs Hayes, Administrator, I beg to advise that I did have these papers for the purpose of filing an answer for myself as Trustee, but afterwards returned them to the Clerk's Office. The papers ought to be in the hands of Sidney Johnson, J.N. Sebrell,Jr., or Saunders and Hutton as they a long time after I had the papers, were engaged to defend the suit, and in order to file their answers they must have had the papers before them.

Very sincerely,

R. E. L. Watkins

R.E.L. Watkins.

RELW:amc
Enc-2

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

R. A. Edwards, Clerk

October 26th, 1923.

Messrs. J. H. Sebrell Jr.,
A. S. Johnson,
R. E. L. Watkins, (Attorneys)
Saunders & Sutton.,

Gentlemen-,

In re C. J. Cutchins-----Vs. Mays Administrator et als.

The papers in the above chancery cause are not in my office and in order to locate them I am writing each of you to please see if the same are in your office and if so to please foward same to me by return mail and oblige.

My record shows that these papers were delivered to Mr R. E. L. Watkins on 5-7-23 and since that time have never been returned to this office. Mr Watkins states that he hasn't the papers at this time and suggests the above names as parties who have had some connection with the case since it has been pending.

Kindly do me the favor to advise at once if you know of the whereabouts of the same and oblige;

Yours Respty,