

1926-001 Chancery Cause: Virginia Wrecking & Salvage Company vs Drey C. Porter &
Isle of Wight County Robert Porter

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Other SURNAMES: Shaffer,
Sharove, Antich, Gibbs,
Rison, Turner, Davis,
Laine, Simpson, Chapman,
Nussman

COMMISSIONER'S OFFICE, ISLE OF WIGHT COUNTY:

M. L. Shaffer and I. B. Sharove,
Trading as Virginia Wrecking &
Salvage Company,..... complainants.

vs) In Chancery

Ivy C. Porter and Robert Porter,
her husband,..... Defendants.

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TO THE HONORABLE BENJAMIN D. WHITE,

JUDGE OF THE CIRCUIT COURT OF THE COUNTY OF

ISLE OF WIGHT, VIRGINIA:

The undersigned, one of the Commissionere of your Honor's Court, to whom has been referred the papers in the above entitled cause, for the execution of a decree entered therein on the 2nd day of April, 1924, respectfully reports to the Court that on the 1st day of July, 1924, in the presence of M. I. Armistead, Attorney for the complainants, and Messrs. Johnson and Stephens, Attorneys for the defendants, at the Commissioner's office at Isle of Wight, Virginia, and on the 1st day of August, 1924, pursuant to an adjournment by consent of all parties, both plaintiffs and defendants, at the office of Geo. F. Whitley, in the town of Smithfield, in the presence of Messrs. Armistead and Lassiter, counsel for the complainants and Messrs. Johnson, Stephens and Andrews, counsel for the defendants, notice of which had been accepted by the Attorneys for the defendants, proceeded to take the testimony of C. E. Davis, Commissioner of Revenue for the County of Isle of Wight, W. E. Laine, Treasurer of the aforesaid County, F. B. Simpson, a resident of said County and merchant, W. H. Chapman, Sheriff of the afore-

said County of Isle of Wight and S. L. Nussman, a Contractor of the City of Suffolk, Virginia, which was reduced to writing and is returned herewith as a part of this record, though not under signatures, signatures being expressly waived by Attorneys for both complainants and defendants, and from such testimony so taken and from the records on file in the Clerk's Office in this Court, particularly the stenographic report made of the trial of this case heretofore had in open Court, is informed and reports as follows:

Q. The value of the tract of land containing seven twelfths ($7/12$) of an acre, which is described in the pleadings, exclusive of the building erected thereon by the plaintiffs?

A. Your Commissioner begs leave to report that from the records on file in the Clerk's Office of your Honor's Court that on the 15th day of March, 1912, S. Isabelle Rison and John W. Rison, Jr., her husband, conveyed unto Ivy C. Porter, the defendant in this suit, the following described real estate, to-wit:" That certain lot or tract of land lying, being and situate in the County of Isle of Wight, near Ferguson's Wharf, containing seven twelfths of an acre and bounded and described as follows:'Beginning on James River at the land of M. L. Marshall and running West along the lands of said M. L. Marshall to a large marked Pine at the "Right of Way" between the said land and the Doyle farm, thence South east along said "Right of Way" to the land of Thomas H. Curtis to a post; thence in a parallel line along the land of said Thomas H. Curtis to James River, to a point opposite the South side of a large Cypress; thence up the River Twenty one (21) Yards to the land of M. L. Marshall, the point of beginning." This being a part of what was formerly

known as the Doyle Farm, then belonging to Mrs. S. Isabelle Rison, the daughter and sole heir of Mrs. Agnes L. Turner.

It appears that the consideration for this tract of land was the sum of Twenty nine dollars and ten cents (\$29.10); it further appears from the records on file in the aforesaid Clerk's Office, to-wit: From the Land Book for the year 1924 that the aforesaid seven twelfths (7/12) of an acre is assessed for taxation at Twenty Dollars (\$20.00), however, in view of the fact that the purchase price was very small and that the valuation placed for the purpose of taxation was also small and further that the evidence submitted both at the trial of this case and before your Commissioner, if said Commissioner remembers correctly, was at variance, yet due to the fact that property adjacent to the lot in question has been developed to a certain extent since the purchase of the aforesaid lot by Ivy C. Porter and further due to the fact that the State Road leading from Petersburg on towards Norfolk, via Burwell's Bay and Smithfield, which has recently been constructed, passes very near to this property; and due further to the fact that Robert E. Porter, the husband of Ivy C. Porter, and the occupant of this land, and one of the defendants to this suit, is a fisherman and has catered to the business of taking out numerous fishing parties from this point, upon which said land he maintains a fisherman's shack and boat for the accomodation of such persons as come to this point for the purpose of spending a day on the River and fishing; and, further due to the fact that this particular strip of land slopes down to the River almost on a level with the River Shore, while the large majority of other river shore property stands out on a high bluff much above the river level, your Commissioner believes and is informed

and respectfully reports to your Honor that in his judgment the purchase price of this property in the year of 1912 as aforestated, nor the valuation placed upon same by the land assessors in the year 1920, for the purpose of taxation, which assessment it bears for the year 1924, neither properly represents the true value of the property as it now stands but on the other hand believes the property to be worth from \$ 250.00 to \$ 325.00.

Q. The value of the building erected on the said tract of land by the said complainants, together with the material thereon for the completion of said building.

A. Your Commissioner begs leave to report that while in the trial of this case he was present and listened attentively to the evidence of both Mr. E. J. Andrews, a Contractor, called to testify on behalf of the complainants (See page 77 of stenographic transcript) as well as the evidence of G. W. Cofer, an undertaker and Contractor, called on behalf of the respondents, who testified at the same time (See page 102 of stenographic transcript) and believes both of these gentlemen, as well as Mr. S. L. Nussman, a Contractor of the City of Suffolk, called to testify on behalf of the respondents also (See evidence attached hereto, page 12) to be thoroughly honest and reliable and while your Commissioner has personally been upon the property in question and made an examination of the land and building, he believes and reports that the statements of those called to testify as to the true value of the building in question are so much at variance with each other, that your said Commissioner is not certain as to the true value of the same and therefore recommends to your Honor that the figures Nineteen Hundred and ninety dollars and thirty cents (\$1930.30) as given

by Mr. Andrews (see page 81 stenographic transcript which represents the value of the building in question as it now stands according to Mr. Andrews' testimony and the figures of Seven Hundred and fifty dollars (\$750.00) which represents the value of the building as it now stands according to the testimony of G. W. Cofer (see page 103 stenographic transcript) and the figures of Eight Hundred seventy nine dollars and thirty five cents (\$879.35), which represents the value of the building as it now stands according to the statement furnished your Commissioner by S. L. Nussman, and which is attached to the evidence and to this report, be added together and the sum total divided by three in order to arrive at an average estimate and the result would be Twelve Hundred and six dollars and forty three cents (\$1206.43), which appears to your Commissioner to be a very reasonable value to place upon the house in question thereby eliminating the question of the value of the material now on hand and unused as well as the cost of completion of the aforesaid building, which said material now on the property unused could be delivered to the plaintiffs in this action as their individual property.

Q. Any liens of records or otherwise binding on the said seven twelfths of an acre in question?

A. Your Commissioner begs leave to report that from an examination of the records in the Clerk's office of your Honor's Court that there are no liens of records in any way binding upon the said tract of land.

Q. Any other matter deemed by the Commissioner important to report and also any matter which any party may especially request him to report; moreover the Court doth hereby authorize, empower and direct said Commissioner to consider the testimony and exhibits taken in

open Court in this cause, which are to be transcribed from stenographic notes taken during the said hearing.

A. Your Commissioner begs leave to report that he was not requested nor does he know of anything of any further importance to report and begs leave to state that the stenographic report made following the trial of this case from evidence submitted during said trial, has been studied carefully and given due consideration, prior to the making of this report.

Respectfully submitted.

R. W. Edwards Jr.
Commissioner in Chancery.

Mr. Armstead: Note.

Land Book 1923, page 16. Land standing in the name of Ivy C. Porter located in Hardy Magisterial District, described as containing seven twelfths of an acre, assessed valuation \$20.00. D. B. 79 page 562, deed S. Isabelle Rison et vir to Ivy C. Porter, dated March 25h, 1912.

Mr. Johnson: Note:

While Books of Assessments and deeds referred to are matters of record to which the Commissioner can have access and may have some bearing upon the value of property yet it must be shown, in order for him to properly determine the value, what the land is used for and its probable earning capacity, which is a true basis of the valuation of any property.

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Charles E. Davis, being duly sworn deposes and says:

Q. What is your name?

A. Charles E. Davis.

Q. Do you occupy any position or office in Isle of Wight County?

A. Commissioner of Revenue.

Q. How long have you been Commissioner of Revenue?

A. Since 1916.

Q. Mr. Davis, in your opinion what is the relative value of land in Isle of Wight County comparing the actual value with the assessed value.

Mr. Johnson: Question objected to because it has been shown that Mr. Davis knows nothing about the property in question and because the law presumes that property is assessed at its fair market value whether it be so assessed or not.

A. They are instructed to assess-

Q. Instructed by whom,

A. The Court, according the statement.

Q. Don't put according to the statement.

Mr. Johnson: The answer of Mr. Davis objected to because it is purely hearsay.

Q. Mr. Davis, are you not experienced in ascertaining the true value of land in Isle of Wight County?

A. No sir, I am not.

Q. Do you, of your own knowledge, know of any particular incidences where the true value of land has been compared with the assessed value of land?

Mr. Johnson: Question objected to because the records as to the comparative value of lands over their assessed value are on file in the Clerk's Office of this Court and are to be regarded as the best testimony on such matters.

A. My farm was assessed, I put it at a sale value of Seven Thousand and assessed it at Thirty five hundred. I can answer that.

Q. Is it not the general rule in this County to assess lands at less than the actual value.

A. That is.

Cross Examination- Mr. Johnson.

Q. Mr. Davis, do you assess land?

A. I do not.

Q. Do you know anything--

A. I beg your pardon, I do not assess land unless it is left off the land books entirely, now.

Q. Have you ever been a land assessor?

A. I have not, not appointed by the Court of Judge.

Q. Are you qualified to pass upon the value of lands all over the County?

A. So far as my office is concerned, the property left off the land books I feel as if I am qualified after making the proper investigation, which I have to do.

Q. Have you ever made any inquiries about this particular piece of property.

A. Absolutely no, this lot. Just referring to the lot.
Mr. Armstead-

Q. Mr. Davis, have you ever assessed, or has the duty of your office called upon you to assess lots in this neighborhood?

Mr. Johnson: Question objected to because the duties imposed upon the Commissioner of Revenue do not require them to assess land, this is done by the land assessors as the statutes provides. It is only in a case where a piece of land is for any reason left off the land book that the law makes it a duty of the Commissioner of Revenue to make such assessment.

Q. I'll amend the question in the following manner: Mr. Davis, during the tenure of your office have the circumstances been that a piece of land lying in Hardy Magisterial District near by or adjacent to the Porter land, in question, necessitated you to assess the land, in accordance with the law?

A. It has.

Mr. Johnson: What tracts of land?

A. The Remick farm, Tom Jones farm, W. W. Gwaltney farm, all of the mineral property in that Magisterial District. All of this property is assessed by the Mineral Land Assessors with the assistance or by the suggestion of the Commissioner of Revenue.

Q. Then the Mineral Land Assessors really did the assessing

and all the Commissioner of Revenue did was to assist when called upon?

A. The Commissioner of Revenue went to the property, saw the property owners and submitted the assessment to the Mineral Land Assessors who afterward reported the same assessment back to the Commissioner of Revenue for assessment of taxes.

Q. Then it appears from your answer that the owners of the property really made the assessment, did he not?

A. No.

Q. I suppose your assessment was made agreeable to the property owner.

A. No not in all incidences.

Q. Name an incidence which was not.

A. W. W. Gwaltney.

Q. What kind of property is the W. W. Gwaltney property?

A. Two farms, the Tom Jones and the Home Place.

Q. Where do they lie?

A. Hardy Magisterial District, on the road from Smithfield to Rushmere, about two thirds of the way to Rushmere.

Q. What kind of road is this?

A. Route # 10, State Highway of Virginia.

Q. Improved or unimproved?

A. Improved at the present time.

Q. Do you know anything about this lot of Ivy C. Porter's?

A. How many lots has Ivy C. Porter, is this the Home Place, if it is the Home Place I do know where it is?

Q. No, not the Home Place.

A. I don't know where located.

Q. Don't know whether it is farm land, sand land or what?

A. I do not.

Mr. Edwards: Have you been down to Capt. Marshall's residence?

A. I have.

Q. How recently?

A. Last summer.

Q. In going to his residence you pass through this property, after you leave the old Doyle Home Place going around and out the gate, the property between the gate and Capt. Marshall's.

Mr. Johnson: Q. Not farm property?

A. No in that hollow.

Mr. Armstead:

Q. Mr. Davis, are you prepared from your experience with land in Isle of Wight County as Commissioner of Revenue and in your private capacity to give an opinion as to the true value of the land without the improvements now made by Mr. Shaffer known as the new cottage?

A. I am not prepared to make a statement because I do not know the value that a party would place on it as a beach for fishing and bathing purposes.

Q. Taking the assessed valuation of land as a unit and with the general rule in the County as to the relation between the assessed valuation and the true valuation, the assessed valuation in the particular case being \$20.00, what would you say the true valuation of that land was?

A. How much land?

Q. Seven Twelfths of an acre at \$20.00.

A. Seven twelfths, I would consider that a low assessment Seven twelfths of an acre appears to me ought to be assessed at about \$50.00.

Q. Assume the valuation is assessed at \$20.00, what would you say from your opinion, bearing in mind the above question,

was the true value of the land without the improvements erected thereon by Mr. Shaffer.

Mr. Johnson: Question objected to because it has been clearly shown that Mr. Davis is not familiar with this piece of land.

A. I don't feel I am capable of putting a value on that property.

Q. Answer the question regarding assessed and true valuation throughout Isle of Wight County, generally, bearing in mind the assessed valuation.

A. I suppose it would bring \$100.00.

Mr. Johnson: Answer objected to because it is mere supposition.

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W. E. Laine being duly sworn deposes and says-

Q. Mr. Laine what position do you hold in Isle of Wight County?

A. County Treasurer.

Q. As such are you familiar with the land in the County?

A. I would say yes.

Q. Are you familiar with the piece of land in question, known as the Ivy C. Porter land?

A. Not with this particular piece or property.

Q. What is the ratio between the assessed value and the actual value of land?

A. Presumably fifty or sixty percent.

Q. Not in any case so far as your knowledge goes as low as ten percent?

A. Well now, there might be some in the County but I can't call to mind right now.

Q. Mr. Laine, in your opinion what would be the value of this land considering first the assessed valuation which is

\$20.00, the general rule in this County, the assessed valuation to the true valuation.

Mr. Johnson: This question and all foregoing questions objected to because the assessed value of the land and the comparative values are all matters of record and the records are the best evidence.

A. While I don't know, I am not familiar with this particular piece of property from its location as given here today and the condition of the lay of the land as I understand, I would judge that the valuation was plenty high, we have plenty farm lands, tillable land, not assessed more than \$20.00 an asre, for seven twelfths of an acre in this particular case the lot itself, I would say it was plenty high.

Q. Mr. Laine, what is the value in your own opinion, the true value?

A. I don't know because I don't know just where this lot is except from references made here, I know where the Porter Home place is but I don't know this.

Mr. Johnson:

Q. Mr. Laine: You have no knowledge, or sufficient knowledge of this particular land to fix any valuation upon it?

A. Nothing, except the fact that it lays near the River, ~~nothing~~ more than a general idea in comparing the location with other improved land in the County, that was my only idea in making the statement I did.

Q. You don't know of the improvements or whether unimproved?

A. No. I haven't been down Marshalls in two or three years. Russell has been doing the collecting and I haven't been down there certainly since the buildings were begun.

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Hearing adjourned to some further date, agreed between both plaintiffs' counsel and defendants'.

NUSSMAN AND COX
GENERAL CONTRACTORS
 6TH FLOOR NATL. BANK BLDG.
 SUFFOLK, VIRGINIA

July 1st, 1924.

Mr. James H. Corbitt
 Suffolk, Va.

Dear Sir:-

We submit the following estimate on house near Rushmere.

153 lin. ft. 6"x 6" -(built up of 2 x 6 etc. any length)	459 ft.		
40 pcs. 2 x 8-10	533 "		
20 " 2 x 8-12	320 "		
47 " 2 x 8-10	629 "		
46 " 2 x 6-12	552 "		
103 " 2 x 4-10	687 "		
100 " 2 x 4-9	600 "		
700 lin. ft. 2 x 4, plate	467 "		
120 " " 2 x 4, attie stud	80 "		
20 pcs. 2 x 6-20 spliced	400 "		
20 " 2 x 6-18 "	756 "		
42 " 2 x 6-12	504 "		
3,000 ft. 7/8" sheathing, edge 3 1/2" & up	3000		
	<u>8985 ft.</u>	@11.00,	\$98.84
1828 ft. 6" German Siding	1828 "	@15.00	27.42
8 pcs. 7/8"x 4"x 12' corner board	32 "	@20.00	.64
384 lin. ft. 7/8"x 6" base board	192 "	@20.00	3.84
1450 ft. flooring	<u>1450 "</u>	@20.00	29.00
	3502 ft.		
24 rolls roofing		@ 2.25	30.00
12 single windows 10 x 15-12 lt.		@ 3.00	30.00
3 twin " " " "		@ 6.00	18.00
1 front door, 3'4"x 6'6"		@ 5.00	5.00
1 twin(single sash opening) 10 x 15-6 lt.		@ 3.00	3.00
1 transom 3'4" x 22"		@ 1.00	1.00
1 rear door outside		@ 4.50	4.50
6 inside doors & frames		@ 4.50	27.00
4600 ft. Beaver Board		@15.00	69.00
980 ft. 7/8" flooring, (for porch)		@20.00	19.60
600 lin. ft. 2"x 8" Joist	800 ft.	@11.00	8.80
99 " " 4"x 8" plate (of 2 x 8 D4S)	247 "	@11.00	2.72
2 porch post 6"x 6"-7'	42 "	@15.00	.62
60 lin. ft. 10"x 10" (piers)	500 "	@11.00	5.50
" " " 6" x 6" "	180 "	@11.00	1.98
0 pcs. 3/4"x 10'x 3'6"	29 "	@20.00	.58
Labor on 15265 ft. @2.00			305.30
" " 4600 ft. Beaver Board @1.50 per 100 ft.			69.00
24 sqs. roofing @ 75¢			18.00
			<u>\$779.35</u>
Boat hire & drayage			100.00
			<u>\$879.35</u>

Yours truly
S. L. Nussman

Present for the defendants Messrs. Johnson & Stephens
and Mr. Marshall Andrews.

For the plaintiff Messrs. Lassiter & Armistead.

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Appearing as counsel for Ivy C. Porter and R. E. Porter,
A. S. Johnson and A. E. S. Stephens who protest this
hearing because of the absence of J. H. Corbitt, who is
senior counsel in this case and whose case it is, Messrs
Johnson and Stephens being associated with Mr. Corbitt
in the case.

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F. B. Simpson being duly sworn deposes as follows:

Q. By Mr. Johnson: Please state your name, age, residence
and occupation.

A. F. B. Simpson, forty eight, druggist, Smithfield.

Q. Are you acquainted with the lot of land on the James
River owned by Ivy C. Porter and upon which has
been constructed or partly constructed a house which
is part of the subject of this controversy?

A. I don't know exactly what land, Mr. Johnson, where
the killing was; I was down there then and looked
around, wasn't looking at the land particularly.

Q. The piece of land is a piece of seven twelfths of
an acre, and is a piece of land that you have just
mentioned, and which has been used for fishing pur-
poses for some time, please state, if you will, what
you think the value of that lot of land is for the
purpose for which it is used?

A. Well, I don't know what purpose it is used for.

Q. Fishing purposes.

A. I didn't notice, looked like an out let to the River, didn't seem to be any house down there, looked like a boat setting up there for a house; I don't know whether there were any trees or sand or what.

Q. The piece of land extending from the River up to the back of the house which has been recently constructed

A. Seems to me there are people more familiar with that land than I am, who can give a better idea than I, am I the only witness here? I never was there before in my life. If the piece of land is the only way of getting to the river it would be worth considerable to him, if there is any other way of getting to the river it wouldn't be worth so much.

Q. How much would it be worth to get to the river?

Mr. Armistead: We object on the ground that the witness is not shown to be acquainted with the valuation of land in that neighborhood and further that it has not been shown that this piece of land is the only piece of land forming an out let from the river to the highway;

Mr. Lassiter: and further that it is not a question of what this piece of land might be worth to somebody else who wanted to get to the River but the value of the piece of land as it stands.

Q. Answer what it is worth.

A. Does he own the house back there?

Q. No.

A. Used to get to the river?

Q. Just the lot of land.

A. You all asked me something I don't know what to say, if the land is used for cultivation it is all together different; I don't imagine it is worth much; but if he lives there and wanted to get to the river that way it would be worth considerable.

Q. How much?

A. Land and house both; if you couldn't get to the river it wouldn't be any good for fishing purposes.

Q. Do you own any land on the James River?

A. Yes.

Q. Where?

A. Morgarts.

Q. How far from this property?

A. Three miles, about, that.

Q. What is the character of your lot, high or low land?

A. High.

Q. What do you consider the value of your lot, how large is it?

A. Two hundred feet deep and fifty five front.

Q. What is the value exclusive of buildings thereon?

A. I paid around--

Mr. Armistead: We object on the ground that it is not shown that the lot in question is used for the same purposes or so similarly situated as a comparison of the value would prove to be a true criterion in the value of the lot the subject of this litigation.

A. My lot, I think I paid Four hundred and fifty five dollars for it.

Q. When?

A. Three or four years ago.

Q. Is it of any less value now?

A. No, I wouldn't take that for it.

Q. Is there a lot of land close to your lot very similar in character in regard to elevation and the river, to the lot we are talking about now, lot known as the County landing?

A. Yes.

Q. If you owned seven twelfths of an acre at the County landing, what would you consider it worth for fishing

business?

A. And that the only way of getting to the river?

Mr. Lassiter: We object to the line of examination in inquiry here as to a piece of land valuable as the only way of getting to the river for this witness has repeatedly asked the counsel for defendant if that is what he meant by his question.

Mr. Armistead: And further the lot of land subject in question is not shown to be in the same neighborhood where the lot of land the subject of this litigation and for that reason a comparison of the value would not prove beneficiary in arriving at the value of the land the subject of litigation.

Counsel for defendants state that all of this land is on the James River front.

Mr. Armistead: We object to this.

Q. Seven twelfths of an acre of land near your lot known as the County landing, if you owned it and were a fisherman, what would you take for it or what would you consider it worth?

A. And that my living?

Q. Yes.

A. My capital?

Q. What would you think it would be worth?

A. That would depend on how much business I had.

Q. Put some valuation on it.

A. I would judge the land would be worth about two hundred and fifty, I imagine.

Mr. Lassiter: Q. Two Hundred and fifty an acre?

A. Lot.

Q. Mr. Johnson: Did you notice when you were down there whether the land on each side of this lot was high or low?

A. Looked like a valley, I never paid much attention to it.

Cross Examination by Mr. Armistead:

Q. Mr. Simpson, isn't your house and lot situated in the neighborhood or near by the resort known as Morgarts Beach?

A. Yes.

Q. Please state what kind of a resort is Morgarts Beach.

A. Summer resort, place to go down and live in the summer.

Q. Would not land lying adjacent to your property known as Morgarts Beach or in that neighborhood be more valuable than land located at the other place where there is no resort?

A. I wouldn't think so, if I had a lot next door and had my drug business on it I would consider it more valuable than where my residence was on.

Q. State whether not land located in a vicinity of a City or near a resort which is frequently visited by people wouldn't be more valuable than a lot of land situated in an isolated neighborhood?

A. Depends.

Mr. Johnson: We object as it has not been shown that this neighborhood is isolated.

A. I shouldn't think so, if a man had this piece of land with a place of business on it; take for incidence a man that had a country store the land there would be worth more than a place there was not^e store, that is if you make a living there.

Q. State whether not you are a fisherman.

A. No.

Q. Then you are not prepared to say the value of this land to a fisherman?

A. If you are making a living at it I would consider the capital.

Q. Then you answer this question as to the value of the land to Porter, he being a fisherman, is merely speculative and

conjectural, no basis on account of experience?

A. I imagine his business is run like other public places of business and is worth to him as much as to any man where he is making a living.

Q. Mr. Lassiter: Did you not state that the value of this land would depend on the amount of Porter's business?

A. No.

Q. I understood you to say in the direct examination that it would depend on the amount of the business he could do,

A. I don't think I made this statement but I suppose it would be considered.

Q. Do you think every acre of land in Isle of Wight County fronting on the James River is worth Five Hundred Dollars an acre?

A. Oh, no.

Q. Any acre of land fronting on the James River?

A. Yes.

Q. My! Used as a fishery?

A. Yes.

Q. Is there any reason that you know of why every acre of land that could be used as a fishery could be worth as much as this seven twelfths of an acre?

A. If a man has a good business established I don't see why it wouldn't be worth as much. If I had a fishing business I would put it at that.

Q. How much business did Mr. Porter do?

A. I have no idea.

Q. Say what you think Mr. Porter's business would be worth at auction.

A. I don't know anything about the value of land down there according to your idea.

Mr. Johnson: Re Cross Examination.

Q. Is it not true that some land on the James River is worth

More than others, some on a bluff and some more accessible to the river.

A. I don't know, my land is on the bluff; that depends on the business, whether on the bluff or in the hollow. For fishing it would be easier to get to the river from the hollow.

Q. Is this piece of land close to a good highway as is this piece of land?

A. No.

Q. Wouldn't that have something to do with it ?

A. I would be willing to pay twice as much.

Q. How near is this particular piece of land to an improved highway?

A. I imagine one and a half miles, I don't know; you ought to have the measurements.

Q. It would be more valuable at one half that at one mile would it not?

Mr. Armistead: We object to this question as being leading.

Q. I should think so.

No further questions- And this deponent saith not.

Mr. W. H. Chapman being duly sworn deposes as follows:

Mr. Johnson:

Q. Please state your name age residence and occupation.

A. W. H. Chapman, forty four, Isle of Wight County and Sheriff.

Q. Do you own some land in Isle of Wight County.

A. Yes.

Q. Are you acquainted with the tract of land on the James River known as the Ivy C. Porter lot, lying between the lot of Wooley and Marshall's.

A. I know where it is located but do not know what the boundaries are.

Q. The records give the area as seven twelfths of an acre, do you know the general shape?

A. I can't say that I do.

Q. Do you know where the back line and front lines are?

A. I know the back line is the river side

Q. Back line is back of the new house partly constructed, then you know the shape of the land?

A. If side lines are straight.

Q. What would consider the value of this land?

Mr. Armistead: We Object as the witness is not qualified as an expert, nor is it shown that he is familiar with the value of lands in that neighborhood.

Q. You are generally familiar with the value of lands in Isle of Wight County?

A. Generally speaking. I think so.

Q. Do you think you are fairly well familiar with the lands on the James River front?

A. No, I can't say that I am.

Q. Can you place a value on that lot?

A. As I have stated I am not familiar with the prices of land fronting on James River, I never priced a piece in my life. Therefore it would be right hard for me to say what this land would be worth. However, I think it would be worth more than the land immediately adjoining which faces James River for reasons that it is more accessible to the river, somewhat in a bottom, for the purposes for which it is used.

Q. State as best you can what you think is the value of this land for the purposes for which it is used.

A. It would be right hard to do, I think in an off hand way, for a man making a living it would be right valuable to a fisherman, and to roughly estimate it I would say four or five hundred to a man making a living there.

Q. Is there any low land situated as this piece is for several hundred yards on each side as you know.

A. No, not situated as this. No road running down there as I understand it.

Q. How far is this from an improved highway?

A. I would judge two thirds of a mile.

Q. You have been down there several times?

A. Yes. Never thought about how far, off hand I would say two thirds of a mile.

Q. You are fairly well acquainted with this land?

A. I have been down there a number of times.

Q. Would you consider the valuation, for the purposes for which it is used, worth as much as ^{property} one fourth or one half of mile or property near Morgarts Beach Hotel?

A. For the purposes for which it is used, I would think so.

Mr. Armistead: Cross Examination:

Q. Land within one fourth or a half mile of Morgarts Beach for fishing purposes?

A. Yes.

Q. Are you familiar with the relative and true value of land in Isle of Wight in comparison to the assessed valuation in Isle of Wight County?

A. Some what.

Mr. Johnson: Object to the question because the records are the best evidence and further that the question is immaterial and irrelevant and further that the records filed in the Clerk's Office are better than any individual.

Q. What is the ratio or proportion between the true value of land and the assessed value of land in Isle of Wight?

A. I think the assessed value about sixty percent.

Q. Sixty percent ?

A. Sixty percent of the true value.

Mr. Johnson: Same objection. Latter question and answer.

Q. Mr. Chapman, now state your opinion as to what you think this lot of land, exclusive of buildings, which is the subject matter of litigation, would bring at public auction.

A. I haven't any idea.

Q. Have you any idea that it would bring as much at public auction as four or five hundred?

A. I have just stated that I haven't any idea what it would bring at public auction.

Q. Then your opinion you expressed that it might be worth four or five hundred to an individual becomes speculative to whether an individual makes that much money.

A. Yes.

Mr. Johnson: Re Cross.

Q. The assessed value of all lands that you are acquainted with in Isle of Wight, or does the assessed value of all lands you are acquainted with bear the same ratio to its true value?

A. No.

Q. You don't know what this land is assessed at?

A. No.

Q. Don't know whether it is assessed at ten, twenty or a hundred dollars or its real value?

A. No.

Q. Mr. Chapman regardless of the assessed value when you stated just now for the purposes which the land is used, how much would you say it is worth?

A. Probably four or five hundred.

Q. Four or five hundred best you can put according to your judgment.

Mr. Armistead: Object to question as leading.

Q. Your estimate is regardless of assessed value?

A. It will make the record too long. I look at it this way the man has a family of ten children he was caring for his family by running this business from this place; therefore I would think it was worth a great deal to him certainly as much as I have estimated. I don't think it would be worth anything to me to make my living.

Q. Worth anything if you were a fisherman?

A. I would think so.

Mr. Lassiter:

Q. If you didn't know Capt. Porter or anything about his family and merely seen the land how would you arrive at a valuation?

A. It would be a hard matter.

Q. Mr. Johnson: Wouldn't it be worth as much to you as any other person fishing?

A. Yes. If I was a fisherman, Capt. Porter seemed to have made good I don't know that I could, I see no reason why I couldn't.

Q. Consider it more valuable than either lot immediately adjoining?

A. I do.

Q. Why?

A. More accessible to the river, there's a road down there, public road or private.

Q. Mr. Armistead: Is this the only piece of land on the James River in Isle of Wight County which is as accessible to the river and road?

A. No.

Q. Is it impossible to obtain a piece of land in Isle of Wight County equally as accessible to the river and road for less than five hundred dollars?

A. I don't know of any place at the present.

Q. Have you bought any land on the James River?

A. N
o.

Q. Do you think that this land is assessed at less than twenty percent of its true value?

A. I haven't any idea what it is assessed at.

Q. The record in the Clerk's Office shows the land assessed at \$20.00, do you think that this assessment was made in regard to its true value, not in regard to the peculiar value to Capt. Porter?

A. I haven't any idea, how it was assessed.

Mr. Johnson:

Q. Are you fairly well familiar with the method of land assessing?

A. No.

Q. Do you know whether not or do you not know that the land assessor didn't go upon all the lands in Isle of Wight County personally and view the lands?

Mr. Armistead: We object to this cross examining-

Mr. Lassiter: The law requires the assessor to go upon the land. Commissioner is very familiar with this.

Stand aside-

And further this deponent saith not.

S. L. Nussman being duly sworn deposes as follows:

Mr. Marshall Andrews:

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

A. S. L. Nussman, forty six, contractor, live in Suffolk.

Q. How many years experience have you had as a contractor?

A. Twelve years.

Q. Twelve, have you ever been on the tract of land known as the Ivy C. Porter land, on the James River near Rushmere?

A. Yes.

Q. When?

A. I don't know the date, one Sunday, I don't know.

Q. Recently or not?

A. Yes.

Q. Within the last month or two?

A. About six weeks ago.

Q. Why did you go there?

A. I went down at Mr. Corbitt's request to look over a building that was under construction or partly constructed.

Q. Who went with you?

A. Mr. Corbitt, Stallings and Johnson.

Q. Who is Mr. Stallings?

A. A contractor. Suffolk, Va.

Q. Are you in business connection or is he a competitor?

A. Competitor of mine,

Q. I submit to you, supposed to be an estimate of valuation of property, house built at the rear of the lot there, I ask you if that is your report and to be your estimate?

A. Yes.

Q. Was Mr. Stallings with you when you made the estimate?

A. Yes.

Q. Made together?

A. Yes.

Q. Jointly, Mr. Stallings not being here you adopt this as your estimate?

A. Yes.

Q. What was the general condition of this house, was it completed or would it require some work to finish it?

A. In my judgment it will require right much work to complete it.

Q. Would you say how far advanced, would you say two thirds or three fourths, or would you like to make such a statement?

A. Not knowing just what they were going to have when finished I don't know.

Q. Don't know what kind of a house they wanted so don't answer that question. What character of material was in the house?

A. Second handed material.

Q. Are you familiar with second handed material?

A. Yes.

Q. Of what grade second hand material?

A. Well, in my judgment this building was put up out of thumb building, in use considerable time then and was not of the best grade when built.

Q. Not of the first grade when building was first built, then torn down and re built. How about the windows, any windows?

A. No.

Q. Completed the frames or were they not?

A. The frames in after a fashion. There were places you could see through from the outside of the house.

Q. As a contractor would you say this house was well constructed or poorly constructed?

A. Well, there is not much chance of anybody taking second handed stuff and making job?

Q. That is a good job?

A. You can get something.

Q. Then you don't think this being a second handed stuff that it is a good building because it is hard to make a good building out of second handed material?

A. Anything but a good building.

Q. How about the ceilings in the house, did you examine them?

A. Yes.

Q. What condition, sealed or not?

A. With the exception of a few out of two inch material double.

Q. Think it will last as long as average house?

Mr. Armistead: We object question leading; suggesting answer by your question.

A. Cealing would last as long as wood post sitting on the ground.

Mr. Johnson:

Q. How long would you estimate that to be?

A. Well, I wouldn't give over five years at the outside, for sap posts right off sitting on the ground.

Q. Are the joice posts spliced.

A. Yes.

Q. All splices occur here?

A. Not in all cases.

Q. What sort of shape were the window frames put in?

A. What do you mean by that question?

Q. What character of workmanship?

A. I couldn't answer that definitely.

Q. Why?

A. For the simple reason a good mechanic couldn't make a job out of poor material.

Q. What is the character of weather boarding in the house?

A. Box grade.

Q. What is box grade?

A. After you get below the third or fourth grade it is called box.

Q. Did you or did you not notice split weather boarding or holes in the side of the house?

A. I did.

Q. Could those holes be repaired by taking out an occasional piece of weather boarding and slipping a piece in or not?

A. Some could be repaired that way.

Q. How about the rest?

A. You wouldn't improve the house by taking out a few pieces of weather boarding to any extent appreciable.

Q. The window sash, how were they?

A. The puddie in some worn out.

Q. Glass in all?

A. No.

Q. Did those broken glasses bear evidence of having been broken since the construction of the house?

A. I didn't see any broken glass.

Q. Were there screens in some?

A. Yes.

Q. Screens in all windows?

A. I think not.

Q. This estimate you have here which has been placed in evidence, is as I understand it an estimate of the value of material and workmanship in that building?

A. Yes.

Q. Total \$875.85, total value of material and workmanship in the building?

A. Yes.

Mr. Lassiter, Cross Examination:

Q. How many times did you go there to examine this?

A. One time.

Q. On Sunday?

A. Yes.

Q. How long were you there?

A. We were there about three hours, I judge.

Q. What are the dimensions of the building?

A. The building to my recollection is 38 or probably a few inches and the depth I couldn't say exactly, I don't remember.

Q. Thirty eight feet and a few inches wide and you do not know the depth?

A. No, I don't remember, we measured it.

Q. What elevation?

A. You mean above ground?

Q. Yes, I would think, the house was three and a half feet off the ground.

Q. How much above the sills?

A. I couldn't tell you now because it has been some time since I measured it I judge about nine feet.

Q. Did it have an attic?

A. Yes.

Q. Space in the attic for rooms?

A. Yes.

Q. Did you go inside the house?

A. Yes.

Q. How did you arrive at the figures in your statement under file as to the quantity of lumber?

A. By measuring the house.

Q. Outside dimensions?

A. Rooms too.

Q. Didn't make an attempt to measure in detail?

A. Took tape line got the width and length of each room.

Q. Did the house have a sub floor?

A. Not that I know of, I didn't examine that.

Q. Did you make a drawing or diagram of the house after going over the building?

A. A rough sketch to figure by.

Q. Have you that with you?

A. No, I didn't bring it with me.

Q. I suppose it has been shown in this case that it is claimed that the owner of the land agreed with the plaintiff to have this cottage erected out of material to be gotten from Camp Lee near Petersburg?

A. Yes.

Q. You would have expected a house put up under the circumstances to be put up out of second handed material?

A. Yes.

Q. Are you familiar with the character of material the Government used at C ^{amp} Lee?

A. To a certain extent I am.

Q. From what you know it is the kind you would expect?

A. I think so, yes.

Q. You are not estimating the cost of construction, that this house is being built by a man whose place of business is at Petersburg, and taking into consideration that all the material is to be brought down by truck to this place or do you think that the estimate you have made is a fair one?

A. Yes.

Q. I notice in your figures or estimate, figures on water transportation?

A. Yes.

Q. Can you transport this material by motor truck as easy as you could by water?

A. I don't think so, I am not familiar with what you can hire trucks for in Petersburg or Camp Lee.

Q. Did you estimate that the builder had to contend with this?

A. Well, if I was moving lumber from Camp Lee I wouldn't haul it very far with a truck.

Q. You didn't answer my question, suppose the house was put up out of material brought from Camp Lee by truck, I am now asking, supposing that, would you take that into consideration in making the figures.

A. No.

Q. Would it not cost a great deal more brought by water than by truck?

A. Well, I couldn't say what it would cost to move it by truck.

Q. Would it cost more?

A. No, I don't think so. I didn't figure on that end.

Q. It has been testified by Mr. Andrews, a reputable builder at Petersburg that this house has a sub floor, that being true, wouldn't you see it?

A. No.

Q. In one of the rear rooms it was testified that there was a lot of building material, did you find that?

A. I didn't go in, I looked through the window.

Q. I thought you said you went in?

A. One room was locked up.

Q. You didn't examine the value of the material on the ground?

A. I looked at it.

Q. Through the window.

A. I didn't have to look through the window to see it on the ground.

Q. In the room?

A. You said on the ground.

Q. I thought contractors spoke of material not used as on the ground.

A. I thought you said the room.

Q. I used the word ground as on the premises. Did you examine the material on the premises not put in the house.

A. Yes.

Q. Estimate the value?

A. Didn't put a value on it.

Q. Did you know how much material was left in the room at the time the building operation was stopped? It was testified in this case that after the building operation suspended and the plaintiffs were no longer looking after it a great deal of this material was destroyed and stolen, if that be true, not saying it is true, that would make some difference in the amount?

A. Depends on the value of the part stolen.

Q. I am not asking you to agree that it was destroyed or stolen--

Mr. Andrews: I object, the value of the house as it stands.

Q. If we were wrongfully stopped from building this house wouldn't you take into consideration the money in there?

Q. I am asking him to take into consideration the things in there. Mr. Nussman if you had been contractor and left material there would you regard this as a part of your investment in the enterprise?

A. If I had left material there.

Q. You have taken contracts similar to this when material has been part of the investment.

A. Certainly.

Mr. Armistead-

Q. Mr. Nussman you have handed in a detailed report as to the amount of timber in this house, state whether not there is a porch on this house, if so the size of the porch?

A. Porch on this house.

Q. If has been shown by other evidence in this case that this porch is ten by thirty nine one way and ten by forty five another, will you please compute the amount of flooring necessary to floor a porch that size.

A. No sub floor under the porch?

A. No.

A. (Figures) 1050.

Q. Did you make allowances for fittings?

A. Made allowances.

Q. How much?

A. One fourth.

Q. Add one fourth.

A. I have added that.

Q. How many?

A. 1050.

Q. The size of the house is shown to be thirty nine by thirty six feet, how many feet will it take to floor thirty nine by thirty six?

A. 1755.

Q. Add the two together, Mr. Nussman, as to tell how many

feet it will take to floor the house including the porch.

A. 2805.

Q. In your figures here did you show the exact amount in the house?

A. Tried to.

Q. Measuring the house?

A. Measuring the rooms.

Q. According to your figures there estimating the size of the house and size of the porch you find how many feet of flooring?

A. From the size you gave me- 2805.

Q. What does rift pine flooring sell for?

A. Second handed?

Q. Take the new first, Spring and summer of 1923.

A. There are different grades of rift pine.

Q. Three inch.

A. I judge new would be \$75.00.

Q. Second handed?

A. Any second handed lumber would n't any sell over \$25.00, depnded on where you can find a customer to buy it.

Q. Where have you had experience in Suffolk or Isle of Wight?

A. Some in Suffolk and some in Newport News.

Q. Not familiar with it in Isle of Wight and Petersburg?

A. Never worked second handed lumber either place.

Q. Did you examine the down stairs of the house?

A. Yes.

Q. Did you examine the porch?

A. Yes.

Q. There are more than a thousand feet more than shown in your estimate . How do you get that. I would like for you to build me a house. I may need one soon.

A. I figured this by the figures you gave me to multiply.

- Q. The material varies with that of Mr. Andrews measurements?
- A. I don't know about, difference between what you gave me and what I figured.
- Q. Where did you get the value of this material?
- A. I figured the material on what I had bought same stuff for.
- Q. When this year?
- A. I haven't bought any this year.
- Q. 1919?
- A. In the summer of 1920.
- Q. Is this of written record that you paid for lumber in 1920?
- A. I had a bill for it.
- Q. 1921?
- A. No.
- Q. 1922?
- A. No.
- Q. 1923?
- A. No.
- Q. And you figured on material bought in 1920?
- A. After a building has stood any length of time outside it wouldn't be worth any more if it stood four or five years longer.
- Q. This is on a basis of 1920?
- A. Basis of what I figured the lumber worth?
- Q. How did you get at the figures?
- A. I would answer that by asking you how would you?
- Q. I am not on the stand you can ask me questions later.
- A. By the general worth of lumber.
- Q. Are you a lumber buyer or seller?
- A. I buy- in contract business.
- Q. When did you last put up a house?
- A. To day.
- Q. How big was it?
- A. I think about ninety five by sixty four feet.
- Q. Then going back on the flooring your estimate of 1450 feet

flooring is for a much smaller house than the house the size of which I gave you the dimensions?

A. Yes.

Q. The size of the house in question, or if the dimensions of the house in question are as I have stated to you to be then your estimate is erroneous?

A. That estimate is correct according to the house over yonder near Rushmere.

Q. 1450 feet and if your house covered the space your figures that you gave me then that amount of flooring wouldn't cover it. We'll probably get you to measure it again. I may want you to build a house.

A. You never proved a mistake yet.

Q. Then the question of sheathing, house 39 by 36 hip roof, how much sheathing would it take to sheath the house that size, shown here that the house has two stories, the room on first floor nine feet two inches and up stairs seven feet six inches top sill to expansion ten feet six inches; compute the number of feet to sheath a house this size.

A. Without making a diagram.

Q. Measuring from the top to bottom joice.

A. Measuring the length of rafters.

Q. What is the length of rafters. Did you take the measurements from inside or outside?

A. I measured the rooms first then measured the outside afterwards.

Q. The length of rafters- apex roof- then you went on and measured from the inside.

A. Inside down, ridge to the plate.

Q. What size roof would three thousand feet of seven eighths sheathing cover, can you compute that?

A. Cover a building thirty square.

Q. You testified to Mr. Lassiter that you didn't know that there was a sub floor down there?

A. I didn't notice it.

Q. In making the estimate you didn't consider the sub floor?

A. No,

Q. That's a mistake.

A. In regard to sub floor it is if a sub floor is there.

Q. What did the labor cost to complete that building?

A. I couldn't tell without figuring it up.

Q. Can't make an estimate, would it cost five hundred.

A. That is according to what condition you left it in when finished.

Q. Such condition as the present condition would now indicate.

A. Condition wouldn't indicate whether to be painted or not..

Q. Paint and calcimine in the room if you look close enough, I was down there and saw it the other day! Answer that question.

A. I couldn't answer that question without figuring it up whether it cost two hundred and fifty or four hundred and fifty.

Q. Would it cost as much as Two hundred and fifty?

A. I think it would.

Q. Think it would, might cost more.

A. I don't know according to what you are going to do with it.

Q. Did you consider it seventy five percent complete when you made the statement?

A. Detail statement, what.

Q. Did you consider the house seventy five percent complete.

A. Walls to be stipped?

Q. Yes walls stipped.

Q. According to your estimate of labor , how did you get the boat hire and drayage.

Mr. Johnson, we object-- value of the house now.

Q. Where do you figure the lumber to be hauled from?

A. Camp Lee.

Q. Boat hire to haul from Camp Lee?

A. I think so.

Q. Have you ever hauled from Camp Lee to Rushmere?

A. No.

Q. Where did you get the prices from?

A. Estimated.

Q. You estimated it? In making the estimate did you consider whether not there were any docking facilities to load and unload the lumber or to haul to Rushmere?

A. I consider some not so far from Camp Lee.

Q. How far?

A. I would judge three or four miles.

Q. Then the lumber would have to be hauled three or four miles would it not? What would be the cost of hauling the lumber per thousand four miles to a dock, what can you haul lumber from Camp Lee four miles to the River per thousand, do you know?

A. I judge a dollar a thousand.

Q. Did you make that estimate when you figures?

A. I have forgotten the amount figured on truck hire, I figured something like \$2.50 truck and boat hire.

Q. Take boat hire first-

A. I didn't figure separately.

Q. One dollar per thousand to haul from Camp Lee to Hopewell to the river what would it cost per thousand to load it on a boat?

A. I was going to unload truck right on boat, I wouldn't handle it twice.

Q. Ever haul any by truck?

A. Yes.

Q. Do you know the cost of hauling lumber to Hopewell and to Rushmere?

A. I don't know.

Q. How far is it by river?

A. I don't know.

Q. Ever hauled any that way?

A. No.

Q. You made another estimate from Hopewell to Rushmere the boat hire.

A. I based this on my best judgment what it would cost.

Q. What would you think it would cost to haul lumber fifty miles, per thousand, by truck? Ever haul any by truck?

A. I don't think I have.

Q. The estimate of boat hire and drayage is a guess then.

A. Not necessarily.

Q. You haven't had any experience?

A. I was not figuring on hauling that fifty miles.

Q. The Court will take judicial notice that is about fifty miles from Camp Lee to Surry and from Surry to Rushmere twelve, the Court will estimate from maps, etc. Then you didn't know how far it had to be hauled when you made this estimate?

A. I didn't know how far by truck.

Q. Didn't know how far.

A. Didn't know to the mile.

Q. Consequently you didn't figure it being a distance of forty five to fifty miles?

A. I didn't figure hauling from Camp Lee to Rushmere on truck.

Q. Did your estimate show how far it had to be hauled?

A. From Camp Lee to Hopewell.

Q. Figured one dollar a thousand from Hopewell to Rushmere?

A. I figured on about two dollars and a half.

Q. What did you think it would cost to haul by boat from Hopewell to Rushmere?

A. I think a dollar would cover that.

- Q. Any wharf at Rushmere on which to unload lumber.
- A. You could unload that on a lighter.
- Q. Have you hauled and unloaded from a lighter to a building?
- A. Have to come in shore on lighter.
- Q. Couldn't come to the building?
- A. The distance would be very short.
- Q. Carpenters don't generally carry lumber three hundred and fifty feet do they?
- A. No.
- Q. Then you would have to haul it, what would it cost to unload the lumber from the boat to the shore, answer that.
- A. Unload it from a lighter to the shore. 25¢ a thousand.
- Q. Ever had any unloaded at 25¢?
- A. I think so.
- Q. At Rushmere?
- A. No.
- Q. How deep is it, how close can you get to shore?
- A. I don't know.
- Q. How would you get it from Hopewell to Rushmere, use a lighter.
- A. By getting a barge and towing it down.
- Q. By a lighter?
- A. I was not figuring on a lighter, a sloop, gas boat or launch.
- Q. And rent a lighter to take it ashore.
- A. Unless you came on on high water.
- Q. Do you know you can come in close enough on high water to unload it on the shore?
- A. I think so.
- Q. How deep is it?
- A. Very shallow.
- Q. Ever been swimming here?
- A. No.
- Q. Ever been fishing here?

A. No. I asked a man around there.

Q. Asked whether not a sloop could get to land or not?

A. Yes.

Q. Your whole estimate is based on assumption. Have you ever rented a lighter?

A. You could build a lighter, to float lumber in and wouldn't have to rent it.

Q. What would it cost to build a lighter suitable?

A. Ten dollars.

Q. How big a lighter could you build for \$10.00?

A. Large enough to float the lumber in.

Q. How large would be necessary ?

A. That depends on how much you bring in on one trip.

Q. According to your figures how big did you contemplate building ?

A. I didn't contemplate building any. Wouldn't have to construct a lighter to unload lumber off a sail boat, or gas boat.

Q. In making the examination of the house you testified very minutely by statements here in direct examination by counsel for respondents, did you examine behind the beaver board the studdings of the building?

A. Behind the beaver boarding, didn't remove them.

Q. So you don't know the quality of the studding?

A. Only where the beaver boards were not on.

Q. What grade of lumber were these?

A. Pine lumber.

Q. Rotten?

A. No.

Q. How far were the studdings put apart?

A. Sixteen in some places others two feet.

Q. How did you estimate that when you say you didn't look

or didn't pull the beaver boards from it.

A. You didn't have to to seen where the nail went through.

Q. Did they skip studdings?

A. Yes, by sounding the beaver boarding.

Q. You went around sounding all?

A. No sir.

Q. Did you know whether they put braces by beaver boards?

A. Pearlings put in.

Q. Did you make an estimate of the pearlings?

A. It is there.

Q. Show it to me.

A. Two by four general.

Q. How many studdings in that building, thirty six feet wide by thirty nine, 18 inches apart would it take to stud that building?

A. You have it right there.

Q. Tell me from across there, you just figured it out.

A. Can't figure by giving out side dimensions.

Q. Take out side dimensions.

A. Give me the size.

Q. Thirty six by thirty nine, how many pieces or studing will it take.

A. A hundred pieces.

Q. On the front and back of building ten feet from the joice to the top place, how many feet ten feet long.

A. Studdings, one hundred in what you gave me.

Q. Those studdings if they were ten feet long how many lineal feet?

A. A thousand.

Q. And you don't know the size of the building you figured on?

A. I figured on the building over there.

Q. You figured as you would build it?

A. Yes.

Q. Then you assume to tell us that this statement represents the exact amount of lumber in that house.

A. With the exception of the sub floor.

Q. Yet can't tell the size of the house.

A. I thought you had the size here.

Q. Have you included in the statement the porch screens?

A. You can see whether they are there or not.

Q. Screen wire.

A. No sir. Porch is not screened.

Q. Did you notice any there?

A. Some under the floor there.

Q. Was the porch partly screened?

A. Screened at.

Q. Didn't consider that?

A. If it ain't made a job of it ain't no better than not done at all, there were a few screens on the front porch didn't come to the floor not to the top.

Mr. Johnson:

Q. The actual measurements of rooms?

A. Yes.

Q. Estimate upon the measurements made?

A. Yes.

Q. Anyone assist you?

A. Mr. Stallings.

Q. What experience had Mr. Stallings?

Mr. Armistead: We object can't testify for another man.

A. Well, he was associated with his father when I started and I think had been two or three years at that time, it has been between thirteen and fifteen years, certainly longer than 12.

Mr. Armistead:

Q. Was this done gratis or were you paid for this work?

A. Gratis.

Q. Received nothing? A. Not a cent.

Mr. Johnson: Mr. Chapman recalled.

Q. How far is it from Marshall's wharf to this building?

A. From the building?

Q. Lot.

A. Where the building or right around the beach?

Q. How far from this building?

A. I suppose 100 , 125 or 250 yards.

Q. Think lumber could be unloaded on Marshall's wharf?

A. I never examined that, I don't know.

#420
Va. Wrecking & Salvage Co.
95 } Cy.
J. C. Carter & als.
(9)

Commonwealth
Report.

Filed. Aug-18th 1924.

COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF THE COUNTY OF ISLE OF WIGHT:

I hereby command you that you make known unto Ivy C. Porter and Robert Porter, her husband, that at the office of Geo. F. Whitley, in the town of Smithfield, Virginia, on Friday, August 1st, 1924, at 7:30 o'clock, P. M., before me, the undersigned Commissioner of the Circuit Court of the County of Isle of Wight, that the taking of evidence required under a decree entered by the Circuit Court of the County of Isle of Wight on the 2nd day of April, 1924, in the Chancery cause of Virginia Wrecking & Salvage Company, plaintiff and Ivy C. Porter and R. E. Porter, defendants, will be had, the taking of which was heretofore adjourned from the first day of July, 1924, at Isle of Wight Courthouse.

Given under my hand this the 22nd day of July, 1924, as Commissioner in Chancery of the Circuit Court of of the County of Isle of Wight.

R. A. Edmunds
Commissioner.

Va. Wrecking & Salvage Co

Vs. Notice Of Taking Deposi-
tions.

Ivey C. Porter et als.

2nd sitting.

We hereby accept
legal and sufficient
service of the within
notice.

John M. Stephens
Counsel for respondents.

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

To R. E. Porter and Ivey C. Porter;

Take notice that I the undersigned have decided upon Tuesday July 1st 1924 at Eleven Oclock A. M. of that day to proceed to execute a decree entered in the Circuit Court of the County of Isle Of Wight, Virginia on the 2nd day of April 1924, in the chancery cause of M. L. Shaffer and I. D. Sharove, trading as Virginia Wrecking and Salvage Company against R. E. Porter and Ivey C. Porter docket number 420, in which one of the Commissioners of this Court is required to ascertain and report as follows;

1st. The value of the tract of land containing seven twelfths of an acre, which is described in the pleadings, exclusive of the buildings erected thereon by the plaintiffs.

2nd. The value of the building erected on the said tract of land by the said plaintiff's, together with the material thereon for the completion of said building.

3rd. Any liens of record, or otherwise, binding on said land.

4th. Any other matter deemed, by the Commissioner, important to report, and also any matter which any party may especially request him to report.

All of which he the said Commissioner will on the date and at the hour above named take and report to the Court from witness and records which will be before him at that time.

Given under my hand this the 21st day of June 1924.

R. A. Edmister
Commissioner In Chancery For The Circuit
Court of the County of Isle Of Wight; Va.

We hereby accept legal
and sufficient service of
the within notice of
commissioners hearing.

Johnson & Stephens
Counsel for respondents.

June 22, 1924.

THE COMMONWEALTH OF VIRGINIA.

To the Sheriff of the County of Isle of Wight:

WE COMMAND YOU to summon

E. B. Poole *E. S. Wooley*
Nathan Wooley *M. L. Marshall* *G. Wesley*
Coper *W. C. Wilson*

to appear before the Judge of our Circuit Court of the County of Isle of Wight, at the courthouse thereof, on the 1 day of April, 1924, to testify and the truth to say in behalf of the defendant

in a certain controversy in our said court, before the said Judge depending and undetermined between

The Wrecking & Salvage Co, plaintiff and

Jay C. Porter et al, defendant.
R. A. Edwards

And have there this writ. Witness, ~~A. S.~~ **JOHNSON**, Clerk of our said court, at the courthouse, the 27 day of March, 1924

R. A. Edwards Clerk

NOTE—APPEAR BEFORE THE CLERK AND CLAIM YOUR ATTENDANCE.

Jay C. Ray Wells
D. C.

Original

CONTROVERSY

U. Wrecking & Salvage Co

----- } SUBPOENA
FOR
WITNESS

Wm C. Porter et al

CIRCUIT COURT
OF
ISLE OF WIGHT COUNTY

the 1 day of April 1924

Sheriff's Lie's Chg. to Johnson & Stephens.

Executed the within subpoenas, this the 27th day of March, 1924,
as herein directed. In isle of Wight Co.

W. W. Chapman, Sheriff.

THE COMMONWEALTH OF VIRGINIA.

Sergeant City of Petersburg
To the ~~Sheriff~~ of the ~~County of Isle of Wight~~.

WE COMMAND YOU to summon *Mr. Edw. Eigenbaum*,

H. P. Stratton, Jno. Watts

to appear before the Judge of our Circuit Court of the County of Isle of Wight, at the
courthouse thereof, on the *1* day of *April*, 1924, at *10 A. M.* to testify and the
truth to say in behalf of the *defendant*

in a certain controversy in
our said court, before the said Judge depending and undetermined between

Va. Wrecking & Salvage Co., plaintiff and

Joy S. Porter et al., defendant.
R. A. Edwards

And have there this writ. Witness, ~~A. S. JOHNSON~~, Clerk of our said court, at the
courthouse, the *26* day of *March*, 1924

R. A. Edwards Clerk

NOTE—APPEAR BEFORE THE CLERK AND CLAIM YOUR ATTENDANCE.

By E. Kay Wills
D.S.

Original

CONTROVERSY

Ja. Waeching & Salvage Co

s } SUBPOENA
FOR
WITNESS

Joy C. Porter et al

CIRCUIT COURT
OF
ISLE OF WIGHT COUNTY

the 1 day of April, 1924

EXECUTED

In the City of Petersburg, V

on Feb 27 1924 by delivering

copy of the within ~~Summons~~

Eddie. Eigenbunn +
Mrs. Watts + H. P. Shatto. in Person

W. J. Andrews City. Sgt
By E. B. Palace & Dept. Sgt

THE COMMONWEALTH OF VIRGINIA.

Prince George
To the Sheriff of the County of ~~Isle of Wight~~:

WE COMMAND YOU to summon

Benjamin Bailey
Prince George, Va

to appear before the Judge of our Circuit Court of the County of Isle of Wight, at the courthouse thereof, on the 1st day of April 1924, at 10 A.M., to testify and the truth to say in behalf of the plaintiff

----- in a certain controversy in our said court, before the said Judge depending and undetermined between -----

Va. Wrecking & Salvage Co, plaintiff and -----

Joy C. Porter et al, defendant.
R. A. Edwards

And have there this writ. Witness, A. S. JOHNSON, Clerk of our said court, at the courthouse, the 20 day of March 1924

R. A. Edwards Clerk

NOTE—APPEAR BEFORE THE CLERK AND CLAIM YOUR ATTENDANCE.

By E. Kay Wilks
S.C.

original

CONTROVERSY

Ja. Wrecking & Salvage Co

v. ----- } SUBPOENA
FOR
WITNESS

by C. Porter et als

CIRCUIT COURT
OF
ISLE OF WIGHT COUNTY

the 1st day of April, 1924
~~Executed in the Co.~~
of Prince George on 22nd
day of March 1924 by
delivering a true copy
of the within Summons
to J B Barling as person
W. E. Bissman clerk

THE COMMONWEALTH OF VIRGINIA.

To the Sheriff of the County of Isle of Wight:

WE COMMAND YOU to summon Tom Gwaltney
Rushmore Va

to appear before the Judge of our Circuit Court of the County of Isle of Wight, at the
courthouse thereof, on the 1st day of April 1924 at 10^{A.M.}, to testify and the
truth to say in behalf of the Plaintiff

in a certain controversy in
our said court, before the said Judge depending and undetermined between

Va Wrecking & Salvage Co., plaintiff and
Joy C. Porter et als, defendant.

And have there this writ. Witness, R. A. Edwards
A. S. JOHNSON, Clerk of our said court, at the
courthouse, the 20 day of March 1924

R. A. Edwards Clerk

NOTE—APPEAR BEFORE THE CLERK AND CLAIM YOUR ATTENDANCE.

Joy C. Porter et als
D. S.

Tom Swallney

CONTROVERSY

Va. Wrecking & Salvage Co

v } SUBPOENA
FOR
WITNESS

Jay C. Foster & Co

CIRCUIT COURT
OF
ISLE OF WIGHT COUNTY

the 1 day of April 1914

Witnessed by Chas J. Swallney

THE COMMONWEALTH OF VIRGINIA.

To the Sheriff of the County of ^{Chesterfield} ~~Isle of Wight~~:

WE COMMAND YOU to summon ^{W. C. Gibbs, E. J. Andrews}
^{and Mrs. Antmch} Petersburg, Va., T. # 3

to appear before the Judge of our Circuit Court of the County of Isle of Wight, at the
courthouse thereof, on the 1 day of April, 1924, at ^{10 A.M.}, to testify and the
truth to say in behalf of the Plaintiff

in a certain controversy in
our said court, before the said Judge depending and undetermined between

Va. Wrecking and Salvage Co., plaintiff and
Joy C. Porter et al, defendant.

And have there this writ. Witness, ^{R. A. Edwards} ~~A. S. JOHNSON~~, Clerk of our said court, at the
courthouse, the 20 day of March, 1924

R. A. Edwards Clerk

NOTE—APPEAR BEFORE THE CLERK AND CLAIM YOUR ATTENDANCE.

By E. Ray ^{Wells}
E. C.

Presented in Chesterfield County on the within named W.E. Gibbs
and Gus Andrews, by going to their several places of abode, which is
in said County, and finding them there, but finding their
wives, I delivered to the wives of the said W.E. Gibbs and Gus
Andrews, in person, each a true copy of the within summons
and explained to them, the purport of said summons. The
27th day of March 1924. And in the within named E.J. Andrews
by delivering to him in person, a true copy of the within sum-
mons the 27th day of March 1924.

W.E. Gibbs Sheriff of
Chesterfield Co.

Sheriff fee paid. }

W. E. Gibbs E. J.
Andrews and

CONTROVERSY

Ja. Wrecking & S. Co

✓ } SUBPOENA
FOR
WITNESS

Joy C. Porter et al

CIRCUIT COURT
OF
ISLE OF WIGHT COUNTY

the 1st day of April 1924

COMMONWEALTH OF VIRGINIA:

TO THE SHERIFF OF ISLE OF WIGHT COUNTY—Greeting:

We command you that you summon Ivey C. Porter and Robert Porter.,

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 November, 1923, to answer a bill
in chancery exhibited against them in our said Court by

M. L. Shaffer, and I. D. Sharove, trading as Virginia Wrecking and
Salvage Company.,

And have then and there this writ.

Witness, R. A. Edwards, Clerk of our said Court, at the Court-
house, this 31st day of October, 1923, and in
the 148th, year of the Commonwealth.

Lasiter & Armstead p.q.

R. A. Edwards Clerk.

Va Wrecking & Salvage Co

~~Virginia~~ Chancery No.

Ivey C. Partin et al

ORIGINAL SUBPOENA.

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

192

Returned, entered and filed.

Teste:

Clerk

To 2nd Nov. — Rules.

Sanctor & Crumstead
Atty's

stpt fee paid. 100

I executed the within sub this the 31 day of
Oct. 1923 by copying a true
copy of the same Ivey C. Partin in person
in the County of Isle of Wight

H. H. Chapman

Sheriff of Isle of Wight Co

I executed the within sub this the 31 day of
Oct. 1923 by copying a true
copy of the same in Rock, Partin in person
in the County of Isle of Wight

H. H. Chapman, Sheriff

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

M. L. Shaffer and
I. D. Sharove, partners trading
Virginia Wrecking and Salvage Co.
Complainants.

v.) Chancery No. _____

Ivey C. Porter and
Robert Porter, her husband,
Defendants.

ANSWER TO BILL.

The joint and several answer of Ivy C. Porter and Robert Porter, her husband, the defendants to a bill of complaint of M. L. Shaffer and I. D. Sharove, partners trading as Virginia Wrecking and Salvage Co., filed against them in the Circuit Court of the County of Isle of Wight, State of Virginia.

These respondents, now and at all times hereafter reserving and saving unto themselves, and each of them, the benefit and advantage of exception or otherwise, that can or may be had to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereto, or to so much thereof as these respondents are advised it is necessary or material for them to answer, or for either of them to answer,, answering say:

1. That the respondent, Ivy C. Porter, answers and says that she admits she is the owner of the 7/12 acre lot of land situated on James River, in the County of Isle of Wight, and having certain riparian rights attached thereto; and the other respondent, Robert Porter, the husband of the said Ivy C. Porter, admits, also, that he conducts, in or on James River, from the shore of the aforesaid lot of land, a certain fishing business.

2. These respondents answering further say: that during the Fall of the year 1922 the said M. L. Shaffer, one of the complaints, made several trips to the lot of respondent, Ivy C. Porter, for the purpose of engaging in fishing, for sport. And they further say that whilst on one of the aforesaid trips he, said Shaffer, upon his own initiative, and not at the suggestion or sollicita-

tion of these respondents, or either of them, suggested to the said Robert Porter, in the presence of said Ivy C. Porter, the wife of the said Robert Porter, that they, the said Porters and Shaffer, build a house upon the lot of land belonging to the said Ivy C. Porter and engage in the business of lodging fishing parties, and persons, coming to this part of James River to fish, or for vacation. These suggestions, these respondents say, were only tentative and did not, at that time, take any definite form. These respondents say that during the early part of the Spring of 1923, the said M. L. Shaffer came once more to the place of business of these respondents, as aforesaid, this time renewing, in general, the proposition relative to their jointly engaging in the business of lodging persons and parties coming to this point to fish or on vacation. That the proposition of the said Shaffer, in a general way, was to the effect that he, the said Shaffer, being in a position, because of the material he owned from the wreckage of Camp Lee, could erect a building on the lot of land aforesaid, at a very small cost, and from which they could realize a considerable sum of money by renting rooms to persons and parties who desired to come to this point to fish or spend vacation. Respondents neither agreed nor disagreed that the proposition submitted would be satisfactory to them, but suggested that such proposition be reduced to writing and presented to them for consideration; that these respondents are untutored in such matters, uneducated and unaccustomed to dealing with people except for the necessities of life; that the said Shaffer appeared to them, insofar as they could perceive, a good friend, and they had no disposition to doubt the proposition submitted by him to be a good one; that they did not intend to enter into any agreement, without having it reduced to writing, or to permit any building to be erected upon the said land, by any person, for any purpose; that notwithstanding the fact that no writing had been prepared the said Shaffer hauled material upon the lot of land aforesaid and begun the construction of a building, and was, again, many times, requested by respondents, to reduce the proposition aforesaid, and which he had verbally submitted, to writing, which he did not do and never has done.

3. These respondents further answering, say that construction of the said building haveing been commenced, they again called to the attention of the said M. L. Shaffer the fact that no written agreement had been made or executed, and that the existence of such an agreement was absolutely necessary, advising him that they were ready and willing to execute the necessary and proper agreement upon its being drafted and presented to them, based upon the verbal proposition submitted, or as they understood the same to be. Thereupon the said Shaffer drew up, or had drawn up, and presented to respondents, a lease whereby respondents were to let to the said M. L. Shaffer and I. D. Sharove, partners trading as the Virginia Wrecking & Salvage Co., the said 7/12 acre tract of land, for a period of twenty five years, at the annual rental of two dollars. This writing being in no particular in conformity with any proposition that had been submitted by said Shaffer, at any time, and respondents being not aware of any agreement whereby the original proposition submitted was to be changed or altered, or substituted, and being informed by said Shaffer that he and his associate would not execute any other contract or agreement, they, respondents, flatly refused to sign any such agreement or contract leasing the said lot of land for a period of twenty five years for two dollars a year. Because of the refusal of respondents to enter into such a contract or agreement, Shaffer, or complainants, promptly discontinued work upon the house. Respondents, subsequent to such refusal, and on the 19th. day of October, 1923, notified said Shaffer, through his attorney, Mr. M. I. Armistead, by letter, that the building must be removed from the premises of respondents within thirty days from the date of notice. Notwithstanding such notice the building has not been removed from the premises, and no attempt has been made to remove the same therefrom, and it still is standing thereupon in a partly completed condition.

4. These respondents answering further, say: that they absolutely deny any agreement on their part, or on the part of

either of them, to execute the hereinbefore described lease to complainants, or either of them: that as between the parties there had been no mention of the execution of such a lease, or any lease, and the first knowledge these respondents had of such a proposal, was upon the presentation of same by the said Shaffer, for their execution. And they say, further, that the allegation in the complainant's bill, charging them with having agreed to execute any such lease, or any lease, is a gross misrepresentation of the facts relating thereto, and absolutely untrue.

5. These respondents further answering charge and that the said Shaffer, nor the said Sharove, nor any one for them or either of them, have acted in good faith; that the said Shaffer is guilty of making to these respondents gross and unjustifiable misrepresentations of the facts; that he, the said Shaffer, conveyed to these respondents certain statements, represented by him as having been made by several reputable citizens of the city of Petersburg, Virginia, expressing their desire to rent the building to be put upon the said lot of land in question, at high and profitable figures, but that, in fact, these statements were not made by the parties to whom attributed, or by any other parties, as these respondents believe and aver, but were false and fraudulent statements, made by the said Shaffer in furtherance of his desire and device on the part of the said Shaffer, or the complainants herein, to commit a gross fraud upon respondents.

6. These respondents charge further that no trust of any sort, character or description, exists here for the benefit of complainants or either of them; and they further say that said Shaffer, or complainants, are guilty of an attempt to practice upon them a gross fraud; that in furtherance of their illegal and fraudulent purpose they misrepresented and falsified

either of them, to execute the hereinbefore described lease
to the complainants

the facts to these respondents, attempting to use and practice upon respondents other fraudulent, illegal and false devices and artifices.

7. These respondents answering further, say: that the allegation in the bill of complaint, charging them with not acting in good faith toward complainants, and having connived and designed, surreptitiously to defeat and defraud them is without foundation or truth, and they deny it as being absolutely false, and de-clare that they have acted in good faith toward complainants, or said Shaffer, all the time.

8. These respondents answer and say, further, that they deny, absolutely and without reservation, that they, or either of them, caused or necessitated the making of any alteration or addition to the building in question.

9. These respondents answer further and say that as to the truth of the allegation in the bill of complaint that the total cost to them of constructing the house, as it now stands, was two thousand dollars, they are not informed, and demand strict proof as to such statement.

10. Respondents further charge that complainants have not acted in good faith toward them, and that are guilty of an attempt to perpetrate a gross fraud upon them by taking advantage of the confidence reposed in said Shaffer by respondents; and further charge that complainants have not come into equity with clean hands, and should, therefore, be repelled with the total costs incurred by all parties to this suit, inflicted upon them.

And now having fully answered complainant's bill, these respondents pray hence to be dismissed with their reasonable costs in this behalf by them expended.

And they will ever pray etc.

James H. Corbitt
Johnson & Stephens } for defts.

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

Va. Wrecking and Salvage Co.

v). Chancery No. 420

Ivy C. Porter et al.

Answer.

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

Mar. 12 1924
Lucia

Jesto, R & Eason Clerk

A. S. JOHNSON
ATTORNEY AT LAW
ISLE OF WIGHT, C. H., VA.

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

M. L. Shaffer and
I. D. Sharove, partners trading as
Virginia Wrecking & Salvage Company,
Complainants.

v.

Ivey C. Porter and
Robert Porter, her husband,
Defendants.

PLEA OF THE STATUTE OF
PAROL AGREEMENT

The plea of Ivey C. Porter and Robert Porter to the bill of complaint of M. L. Shaffer and I. D. Sharove, partners trading as Virginia Wrecking & Salvage Company.

The said defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in manner and form as therein set forth, for plea nevertheless, to said bill, do plead and aver:

That neither of these defendants, nor anyone by either of them authorized did ever sign any contract or agreement in writing, for making and executing any sale or conveyance to the complainants of the land and premises in the bill mentioned and described, or of any interest therein, or to any such effect, or any memoranda or note in writing of any such agreement.

Wherefore, the said defendants pray judgment, whether they shall be compelled to make any other or further answer to the said bill, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

Johnson & Stephens
James H. Berlitt

p.d.

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

M. L. Shaffer and I. D.
Sharove, partners trading as
Virginia Wrecking & Salvage
Company,

v. 420

Ivey C. Porter and Robert
Porter, her husband.

PLEA OF THE STATUTE
OF
PAROL AGREEMENT

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

Mar. 12 1924
Filed.
Teste, D. A. Evans Clerk.

LAW OFFICES OF
JAMES H. CORBITT
SUFFOLK, VIRGINIA

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

M. L. Shaffer and
I. D. Sharove, partners trading as
Virginia Wrecking & Salvage Company,
Complainants.

v.

Ivey C. Porter and
Robert Porter, her husband,
Defendants.

DEMURRER TO BILL.

The demurrer of Ivey C. Porter and Robert Porter to the bill of complaint of M. L. Shaffer and I. D. Sharove, partners trading as Virginia Wrecking & Salvage Company.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' bill contained to be true in such manner and form as the same are therein and thereby set forth and alleged, do demur to the said bill and say that the same is not sufficient in law, and for cause of demurrer show:

That it appears from the said bill that neither of these defendants, nor anyone by either of them authorized, did ever sign any contract or agreement in writing, for making and executing any sale or conveyance to the complainants of the land and premises in the bill mentioned and described, or of any interest therein, or to any such effect, or any memoranda or note in writing of any such agreement.

That the circumstances related in the said bill show that no constructive trust, or any other trust, has been created binding upon the defendants, or upon either of them, and that a court of equity has no power to grant the relief prayed for or any other

relief.

That the said bill shows on its face that the complainants, if they have any remedy at all, have a plain, adequate, efficient and complete remedy in a court of law, and that a court of equity has no jurisdiction in this case.

Wherefore, and for divers other causes of demurrer appearing in the said bill, these defendants do demur thereto, and they pray the judgment of this Honorable Court, whether they, or either of them, shall be compelled to make any further or other answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

Johnson T. Stephens
James T. Corlitt } p.d.

5
VIRGINIA:
IN THE CIRCUIT COURT
OF ISLE OF WIGHT COUNTY.

M. L. Shaffer and I. D.
Sharove, partners trading as
Virginia Wrecking & Salvage
Company,

v.

Ivey C. Porter and Robert
Porter, her husband.

DEMURRER TO BILL

VIRGINIA:

In the Circuit Court of Isle of Wight County:

M.L.Shaffer and
I.D.Sharove, partners trading as
Virginia Wrecking & Salvage Company Complainants

VS: BILL OF COMPLAINT

Ivey C.Porter and
Robert Porter, her husband Defendants

To: The HONORABLE B.D. WHITE,
Judge of the said Court - In Chancery Sitting:-

Your complainants, M.L.Shaffer and I.D.Sharove, partners trading as Virginia Wrecking & Salvage Company, of Petersburg, Virginia, have been engaged for some time in buying from the United States Government and wrecking certain buildings at Camp Lee, in Prince George County, Virginia; that, during the summer of 1922, the said M.L.Shaffer went on several fishing trips at Wooley's Fisheries on the James River, in Isle of Wight County, Virginia, at which place Captain Robert Porter, one of the defendants herein, owns and operates a boat for hire to people who go there for the fishing; that the said Ivey C.Porter, wife of the said Robert Porter, owns a piece of land adjoining the said Wooley's Fisheries having riparian rights on the James River containing about seven-twelfths (7/12) of an acre; that the said Ivey C.Porter and Robert Porter reside at the village of Rushmere, about a mile from said Wooley's Fisheries; that during the fishing trips above mentioned in 1922, the said Robert Porter suggested to the said Shaffer that he and his wife could get a great deal of business if they had a building on the land of the said Ivey C.Porter for the accommodation of fishermen. He further suggested that said Shaffer was engaged in the business of wrecking Camp Lee and that he and his associates were in a position to put up such a building cheaper than any one else he knew of; that on several occasions this proposition was discussed by the said Robert Porter and Ivey C.Porter, his wife, with the said M.L.Shaffer;

that the said defendants stated that such a cottage as the one they had in mind could be rented out for two dollars a night a person to parties of fishermen and that even a four room cottage would be large enough to start with; that said Shaffer suggested that it would be agreeable to him and his associates to put up a larger cottage and reserve two rooms for their own use, the residue to be rented out and the rents divided fifty-fifty between the Porters and the Virginia Wrecking & Salvage Company; that nothing came of these tentative conversations during 1922, but that on, to-wit, the 14th day of April, 1923, the said Shaffer being again on the boat of the said Robert Porter on a fishing trip, the said Robert Porter urged him to arrange at once for the construction of the proposed building and then suggested, in the presence of ^{the said} Ivey C. Porter, that they would lease the land to the said complainants for a term of twenty-five years if they so desired for a nominal fee of two dollars a year; that the said Ivey C. Porter agreed to this proposition; that on, to-wit, the 21st day of April, 1923, the said Shaffer, accompanied by his wife and by Gus Antich, a contractor, and _____ Gibbs, a carpenter, went again to the property above-mentioned of the said Ivey C. Porter where they met the said Ivey C. Porter and the said Robert Porter; that the said defendants then and there again urged the said Shaffer to start promptly with the building of the said cottage and agreed that, if at any time he desired to sell the same, they would take it off his hands at the cost to him and his associates; that on this occasion the said Ivey C. Porter assisted in the location of the proposed building on the land aforesaid; that shortly thereafter, to-wit, during the following week, the said plaintiffs began the erection on the said land of a cottage containing eleven rooms; that such a building ordinarily would cost the owner to construct about thirty-five hundred dollars but that the actual cost to the said complainants for labor and materials was only about two thousand dollars; that after the work of construction of the said building was well under way, the said Ivey C. Porter desired certain alterations to be made to the said building, in this, that she caused a dining room to be added, making the eleventh

room, thereby necessitating certain alterations in the hall of said building so as to secure the location of a double window in said dining room; that said Ivey C. Porter then and there stated that she expected to buy the said building; that the relations existing between the said M.L. Shaffer, representing the Virginia Wrecking & Salvage Company, and the said Ivey C. Porter and Robert Porter were of the friendliest character, and the materials and labor were furnished by your complainants and the said building erected owing to the trust and confidence which the said complainants reposed in the said defendants.

Your complainants are informed, believe and therefore charge that the trust and confidence so reposed in the defendants by the complainants were misplaced, for the reason that before the said building could be completed, it came to their knowledge that the said defendants intended to secure possession of the said building without regard to their promises, so made as aforesaid to the said complainants; that thereupon your complainants sought to secure from the said defendants an agreement in writing setting out the rights of the parties in accordance with the verbal arrangements already made, but the said defendants refused to execute such an agreement in writing; that thereupon the said complainants caused work on the said building to be stopped on, to-wit, the 3rd day of September, 1923, the said building being then and there nearly completed, and the said complainants then and there called upon the said defendants to buy and pay for the said materials and labor on the basis of the actual cost to the said complainants, the sum of two thousand dollars (\$2000.00), which said defendants refused to do; that said complainants, in order to avoid the expense of litigation, then offered to sell the said building to the said defendants for the sum of fifteen hundred dollars (\$1500.00) which the said defendants refused to pay; that said defendants thereupon offered to pay to the said complainants the sum of one thousand dollars (\$1000.00) for the building aforesaid, and, upon the refusal of said complainants to accept such a great loss, the said defendants notified M.I. Armistead, one of the attorneys for the complainants, on, to-wit, the 25th of

October, 1923, that the said building must be removed from the said premises within thirty days.

✓ Your complainants are informed, believe and therefore charge that, under the circumstances heretofore related, a constructive trust has been created binding upon the said Ivey C. Porter and the said Robert Porter in favor of your complainants, and that it is against equity that the building aforesaid, representing materials and labor belonging to the said complainants of the value of, to-wit, two thousand dollars (\$2000.00), should be retained by them or either of them, and that equity will declare a trust in order that it may lay its hands on the thing in dispute and wrest it from the possession of the wrong doer.

✓ In Tender Consideration Whereof, and for as much as your complainants are without remedy, ~~safe~~ in a court of conscience where matters of this sort are alone and properly cognizable, your complainants pray that the said Ivey C. Porter and Robert Porter ^{made} may be parties defendant to this bill and required to answer the same, but not under oath, the oath being hereby specially waived; that the said building, so erected as aforesaid by your complainants, together with the said parcel of land containing seven-twelfths (7/12) of an acre, now standing in the name of the said Ivey C. Porter be sold by a Commissioner of this Court; that out of the proceeds of sale shall first be paid the costs incident to this proceeding, and then shall be paid to your complainants the sum of two thousand dollars (\$2000.) with lawful interest thereon from the 3rd day of September, 1923, until paid, and that the residue, if any, shall be paid to the said Ivey C. Porter; that proper process may be issued, and that your complainants may have all such other, further and general relief as the nature of their case may require and as to equity shall seem meet. And your complainants will ever pray, etc.

Charles T. Lassiter
Merrin I. Armistead f.c.

Charles T. Lassiter)
Merrin I. Armistead) for the complainants

STATE OF VIRGINIA)
 : To-wit:
CITY OF PETERSBURG)

I, Mabel Hatchett, a Notary Public in and for the city of Petersburg, and the State of Virginia, do hereby certify that M.L. Shaffer, one of the complainants mentioned in the foregoing bill, personally appeared before me, in my city aforesaid, and made oath that the statements therein contained, made of his own knowledge, are true, and that the statements therein contained, made upon information derived from others, he believes to be true.

Given under my hand this 30th day of October, 1923.

Mabel Hatchett
Notary Public

4
VIRGINIA:

In the Circuit Court of Isle of
Wight County:-

M.L.Shaffer and
I.D.Sharove, partners trading as
Virginia Wrecking & Salvage Co.
Complainants

vs: Bill of Complaint

Ivey C.Porter and
Robert Porter, her husband

November 21st, 1923, -Second Nov.
Rules 1923.
Process returned executed.
Bill filed. Decree Nisi;

1st December rules 1923. Dec. 5th, 23.
Defendant not appearing bill taken
for confessed and cause set down
for hearing;

CHARLES T. LASSITER

ATTORNEYS AT LAW
ROOMS 7 TO 12 LEIGH BUILDING
PETERSBURG, VA.

No.

Know all Men by These Presents: That we **Ivy C. Porter**

principal ,

and

Jacob C. Thomas

surety ,

are held and firmly bound unto the Commonwealth of Virginia in the just and full sum of **three hundred**

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

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

IN TESTIMONY WHEREOF, The said **Ivy C. Porter**

principal ,

and the said

Jacob C. Thomas

surety ,

have hereunto set their hands and affixed their seals this, the

26th

day of

January

A. D. 1925.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the above bound **Ivy C. Porter** shall perform and ~~satisfy~~ any judgment, decree or order, entered by the Supreme Court of Appeals of the State of Virginia, in the chancery cause upon which a supersedeas has been awarded from the judgment of the Circuit Court of the County of Isle of Wight, State of Virginia, in the suit of M.L. Shaffer and I. D. Sharove, partners trading as Virginia Wrecking and Salvage Company against **Ivy C. Porter** and **Robert E. Porter**

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

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

A. D. 19 .

Ivy C. Porter.....[SEAL]

J. C. Thomas.....[SEAL]

.....[SEAL]

....., Witnesses.

.....[SEAL]

Virginia: In the Clerk's Office of the Circuit Court of the County of Isle of Wight the **26th**

day of **January, 1925** , this bond was duly executed and acknowledged by the obligors to the same and ordered to be recorded.

A Copy,

Teste, *R. A. Edwards*

R. A. Edwards.....Clerk.

13

Va. Wrecking & Sailing Co.

vs.

B.E. Parton & Co.

copy of bond
to appeal

July 22, 1924.

Mr. M. I. Armistead,
Attorney at Law,
Surry, Va.

Re: Va. Wrecking & Salvage Co.
vs. R. E. Porter.

Dear Sir:

Replying to yours of July 14th, as well as to the many other letters that I have received concerning the above case, will state that my delay in answering your letter was occasioned by my waiting to hear from Mr. Marshall Andrews, of Suffolk, and his reply to my letter necessitated my waiting a reply from Mr. Lassiter, however, I believe I now have all the correspondence before me and in view of the fact that Mr. Corbitt, chief counsel for the defendants in this case, who is now absent from the States, and who was not present on the first day of the taking of depositions in this matter and has made no request of me to defer the completion of same until his return, that I shall proceed to complete the taking of the depositions and the making of my report to Court. In arriving at this conclusion I do not wish to take advantage of anyone, nor do I feel that I am when there remains three Attorneys for the defendants, either one of whom is capable of protecting their clients rights and all of whom I presume can make it convenient to be present. If Mr. Corbitt was sick or in any other way unavoidably detained from appearing at this hearing and had requested a continuance I should most assuredly stand ready and willing to grant the same.

Now, in reply to that part of Mr. Lassiter's letter in which he expresses himself as being of the opinion that sufficient evidence has already been taken in this case, I wish to state that I have not at anytime expressed a desire to hear additional evidence; however, Attorneys for the defense request that they be allowed to introduce additional evidence and certainly it is that I have no objection to having every particle of evidence available from persons supposed to be informed as to the value of the property in question.

I have set Friday, August 1st, 1924, at 7:30 P.M., in the town of Smithfield, at the office of Geo. F. Whitley, as the date for the completion of the taking of testimony and my reason for making it the hour as mentioned is on account of certain witnesses coming from Suffolk who cannot come in the day time, all of which was understood at the last hearing we had at the Courthouse.

Very respectfully,

RAE-jj

R. A. Eason

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

July 22, 1924.

Mr. R. A. Edwards, Clerk,

Isle of Wight C. H., Va.

Dear Mr. Edwards:

In re: Virginia Wrecking & Salvage Co.
v.
Porter, et al.

Mr. Lassiter advises me that he can see no reason why the evidence in this case cannot be taken at once. If it is your disposition to finish the taking of the evidence before Mr. Corbitt's return, I shall be glad if you will advise me the date of the hearing. I think Mr. Corbitt should be present, but if that cannot be, I should like to have the opportunity of attending myself.

Very truly,

MA/K

Marshall Andrews

June 21st, 1924.

Jas. H. Corbitt, Esq.,
Attorney-at-Law,
Suffolk, Virginia.

Dear Jim:

Virginia Wrecking & Salvage Co.
Re: vs:
Porter et al

Your letter of the 18th instant in the above matter has been unanswered because I have just returned from a three days session of the Circuit Court of Dinwiddie where I was trying two railroad damage suits.

I am leaving tomorrow, Sunday, for New York to attend the National Democratic Convention. I expect to be home Sunday night, June 29th, and have a case at Dinwiddie Court House June 30th at ten o'clock.

I am sending carbon copy of this letter to Mr. Edwards, the Special Commissioner, to Mr. Armistead, my associate, and to the Virginia Wrecking & Salvage Company. If, upon my return home, I find that Mr. Edwards has set July 1st at Isle of Wight for beginning the investigation required of him by the decree, I will arrange to get there but I doubt very much if I can get there before eleven o'clock.

If July 1st will not suit Mr. Edwards, I wish to state that I have other engagements for July 5th, 7th, 10th, 11th, 17th, 18th, 19th and 22nd.

Very truly yours,

Charles T. Lassiter
H

CTL/mh

July 21st, 1924.

Marshall Andrews, Esq.,
c/o Jas. H. Corbitt, Esq.,
Suffolk, Virginia.

Dear Mr. Andrews: Re: Virginia Wrecking & Salvage Co.
 vs: Porter et al

I have your letter of the 19th instant. It is very important for the interest of our clients that this matter be disposed of. I have been trying to get Mr. R. A. Edwards to let me know upon what points he desires further evidence than the evidence taken in court. I see no reason why this evidence cannot be taken at once.

I am sending a carbon copy of this letter to Mr. Edwards and also to Mr. Armistead.

Very truly yours,

(Signed) Charles T. Lassiter
H

CTL/mh

July 19, 1924.

Mr. Charles T. Lassiter,
Attorney at Law,
Petersburg, Va.

Dear Sir:

In re: Virginia Wrecking & Salvage Co.
v.
Porter, et al.

Mr. R. A. Edwards, of Isle of Wight Court-House, advises me that Mr. Armistead is endeavoring to set a date to take further testimony in this matter. Mr. Corbitt is in Europe with the American Bar Association and will not return until the latter part of August. It is Mr. Corbitt's case and Messrs. Johnson & Stephens are associate counsel. The only thing I have done in the case is to prepare the argument on the demurrer, and I am not familiar with the details. I should like for you to get Mr. Armistead to agree to let the matter stand as it is until Mr. Corbitt's return.

I must reply to Mr. Edwards' letter and I shall be glad if you will let me know about this matter at your earliest convenience.

Very truly,

HA/X

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

July 19, 1924.

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

Dear Sir:

In re: Virginia Wrecking & Salvage Co.
v.
Porter, et als.

I have your letter of July 17th with
reference to the above matter.

I am enclosing a copy of a letter which I have
written to Mr. Lassiter. I should appreciate it very
much if you will wait until I receive a reply to this
letter from Mr. Lassiter. If we cannot reach an agree-
ment to postpone the matter, I shall so advise you and
then you can set the matter down for hearing.

Very truly,

Marshall Andrews

MA/K

July 15th, 1924.

Virginia Wrecking & Salvage Co.
re: vs:
Porter et al

M.I. Armistead, Esq.,
Attorney-at-Law,
Surry Court House, Va.

My dear Mr. Armistead:

I have just received your letter of the 14th instant enclosing copy of your letter to Mr. R.A. Edwards, the Commissioner to whom Judge White referred this matter.

I entirely agree with your letter. I believe the Supreme Court of Appeals in this state has ruled that where there are several counsel on one side in a case, the Court will not grant a continuance because of the absence of one of counsel.

I do not know on what points Mr. Edwards desires further light nor do I imagine that he will know until he has read the transcript of the evidence taken before Judge White. I am sending him a carbon copy of this letter so that as soon as he can do so, he can notify you and myself, as well as counsel on the other side, on what points he desires further light, and, as you suggest, set a day for a hearing before him as Commissioner after ten days notice. At this time, I am engaged for the 17th, 18th, 19th, 22nd, 24th, 25th and 26th of July. None of those dates would be available as they would not be dates for which one could give ten days notice. Any day beginning with Monday, July 28th, will suit me at this time and, if I am notified promptly, I will reserve the date. Evidently it is a denial of our clients' rights not to have a prompt determination of this matter.

Very truly yours,

Charles T. Lurrite

CTL/mh

MERIWETHER I. ARMISTEAD
ATTORNEY-AT-LAW
SURRY C. H., VIRGINIA

July 14th, 1924.

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

In re: Virginia Wrecking & Salvage Co.
v. Robert B. Porter et als.

My dear Mr. Edwards:

I am in receipt of a letter from Mr. Lassiter, my associate in the above suit, and he states that he does not see why it is necessary to introduce any more evidence in the above case, as the evidence taken in open court was so full. He requested me to ascertain from you what it is that you wish further information about. Of course, if you wish further light, we will try to furnish it. I will be pleased to hear from you in answer to the above, as we are very anxious to finish this suit.

Mr. Johnson advises me that he is only an associate in the case, and for that reason he is unable to agree on a day for it is necessary that it be agreeable to Mr. Corbitt; but as this matter has been dragging for some time, I urge that an early date be set for the further hearing of evidence before you.

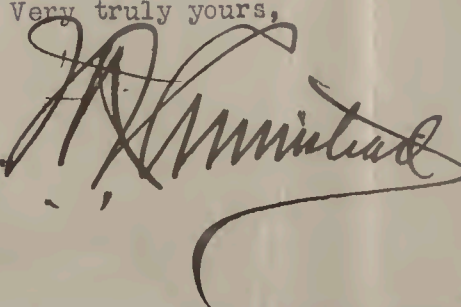
I suggest that you correspond with Mr. Andrews, Mr. Corbitt's associate, and fix a date for the further hearing of evidence on matters material to the decree, and I urge that the date be in the near future. Mr. Johnson advises me that Mr. Corbitt is now in Europe and that it is impossible for a hearing to be had in his absence. As the respondents are represented by four able lawyers, I feel that all of their rights can and will be ably presented by any three of them. I have no desire to cause any hardship, yet in fairness to my client I am unable to assent to a further delay. Multiplicity of attorneys often work hardship on clients and the history of this case is ample authority for the position that there will be difficulty in the future to arrange a date suitable to all.

Therefore, I suggest that you exercise your prerogative and set a day for the further hearing of this matter and give all attorneys interested ten days notice of the date.

Thanking you for your kindnesses in the past, I am

Very truly yours,

Copies to
J. H. Corbitt, Johnson
& Stevens, & Mr. Lassiter.



LAW OFFICES OF
CHARLES T. LASSITER
7-12 LEIGH BUILDING

PETERSBURG, VA., June 16th, 1924.

R.A. Edwards, Esq.,
Clerk Isle of Wight,
Isle of Wight Court House, Va.

Dear Mr. Edwards:

Mr. M.B. Cogbill, the stenographer who took down the evidence in the case of Virginia Wrecking & Salvage Company vs Porter et al, tells me that he has already sent you the exhibits in this case and is to-day sending you the transcript of the testimony which the decree directed you to take into consideration in forming your report to the Judge.

Will you please let me know what date you will set for taking further evidence in this matter. In that connection, permit me to say that the last of this week and the date of Monday, June 30th, are already engaged so far as I am concerned and during the week beginning June 23rd, I expect to be in New York in attendance, as a delegate, upon the Democratic National Convention. I have no engagements at this time for the first nine days of July except July 7th. After that I expect to be engaged in court on the 10th, 11th, 17th, 18th and 19th. I am sending a carbon copy of this letter to Mr. J.H. Corbitt, of counsel for the defendants, with a request that he will also let you know on what days he is unengaged.

Thanking you for your attention to this matter,
I am,

Very truly yours,

Charles T. Lassiter

CTL/mh

June 18, 1924.

Mr. Charles T. Lassiter,
Attorney at Law,
Petersburg, Va.

Dear Charlie:

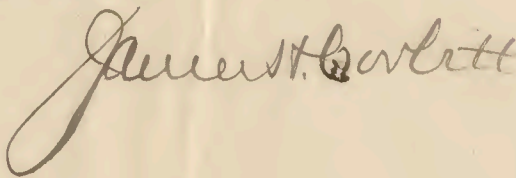
In re: Virginia Wrecking & Salvage Co.
v.
Ivy C. Porter and husband.

I have your letter of the 16th instant.

Tuesday, July 1st, at Isle of Wight Court House,
is about the only day I can at this time name. I am
sending a copy of this letter to Messrs. Johnson & Stephens
and Mr. R. A. Edwards, Clerk, to know if that date will
suit them for the hearing the commissioner is supposed to
have.

Very truly,

JHC/E



cc - Mess. Johnson & Stephens.

Mr. R. A. Edwards, Clerk.

LAW OFFICES OF
CHARLES T. LASSITER
7-12 LEIGH BUILDING

PETERSBURG, VA., March 18, 1924.

Clerk Circuit Court Isle of Wight,
Isle of Wight Court House, Va.

Dear Sir:

In the case of Virginia Wrecking & Salvage
Company versus Porter et als, set for trial by Judge
White on Tuesday, April 1st, please issue summons ad-
dressed to the county of Chesterfield for the follow-
ing witnesses:

W.E.Gibbs, R.F.D.3, Petersburg, Virginia, ✓
Gus Antich, R.F.D.3, Petersburg, Virginia, ✓
E.J.Andrews, R.F.D.1, Ettrick, Virginia, ✓

and to the Sheriff of Prince George County for Benjamin
Bailey, Prince George, Virginia, and to the Sheriff of
Isle of Wight County for

Tom Gwaltney, Rushmere, Virginia,

to appear at Isle of Wight Court House on Tuesday,
April 1st, at ten o'clock A.M. as witnesses for the
plaintiff in the above mentioned suit.

Thanking you for your attention to this matter,

I am,

Very truly yours,

Charles T. Lassiter

CTL/mh

P.S. I am enclosing three checks to be
sent with the summons to the sheriffs of
Chesterfield, Prince George and Isle of
Wight.
C.T.L.

all mailed
3/20/24

Dep ~~\$~~ 10⁰⁰ c

Pd ~~\$~~ 100 c

VIRGINIA:

In the Circuit Court of Isle of Wight County:

M.L.Shaffer and
I.D.Sharove, partners trading as
Virginia Wrecking & Salvage Company Complainants

vs:

Ivey C.Porter and
Robert Porter, her husband Defendants

Memorandum of Lis Pendens

I, M.L.Shaffer, one of the complainants in the suit hereinafter mentioned, do hereby file in the Clerk's office of the Circuit Court of Isle of Wight County, Virginia, under section 6469 of the Code of Virginia, this memorandum of lis pendens bearing date on the 30th day of October, 1923, for admission to record in said clerk's office:

(1) The title of the cause is:-

M.L.Shaffer and I.D.Sharove, partners
trading as Virginia Wrecking & Salvage
Company

vs:

Ivey C.Porter and
Robert Porter, her husband.

- (2) The general object thereof is to have the Court declare a constructive trust and to order that a certain tract of land in Isle of Wight County, containing seven-twelfths of an acre, now standing in the name of Ivey C.Porter on the said books of said county, together with a certain eleven room cottage (frame) building thereon, erected by the said complainants, be sold, and for the payment out of the proceeds thereof to the said complainants of the sum of two thousand dollars (\$2000.00).
- (3) The cause is pending in the Circuit Court of Isle of Wight County, Virginia.
- (4) The amount of the ~~claim~~ asserted by the complainants is two thousand dollars (\$2000.00).
- (5) The description of the property is as follows: A parcel of land in Isle of Wight County, Virginia, containing seven-twelfths of an acre, fronting on the James River, near Wooley's Fisheries, and bounded by the property of Curtis and Marshall.

(6) The name of the person whose property is intended to be affected is Ivey C. Porter.

Given under my hand and seal this 30th day of October, 1923.

M. L. Shaffer (SEAL)

STATE OF VIRGINIA)
: To-wit:
CITY OF PETERSBURG)

This day personally appeared before me, Mabel Hatchett, a Notary Public in and for the city aforesaid, in the state of Virginia, in my said city, M. L. Shaffer, whose name is signed to the foregoing writing, bearing date on the 30th day of October, 1923, and acknowledged the same before me.

My commission expires on the 1st day of October, 1927.

Given under my hand this 30th day of October, 1923.

Mabel Hatchett
Notary Public

I, R. A. Edmunds, Clerk of the Circuit Court of the county of Isle of Wight, Virginia, pursuant to section 6469 of the Virginia Code, do hereby authenticate the foregoing memorandum of lis pendens, and I do hereby certify that on the 31st day of October, 1923, suit was instituted and is now pending by M. L. Shaffer and I. D. Sharove, partners trading as Virginia Wrecking & Salvage Company, vs. Ivey C. Porter and Robert Porter, her husband, in the aforesaid court, whose title, general object, amount of the claim asserted, description of the property affected as well as the name of the person whose property is intended to be affected are as above set forth in this memorandum.

R. A. Edmunds
Clerk

VIRGINIA: Clerks office of the Circuit Court of the County of
Isle of Wight October 31st, 1923, at 10:30 O'clock AM.
See index was received and with the certificate annexed, admitted
to record.

Teste R. A. Edmunds Clerk.

VIRGINIA:

In the Circuit Court of the
County of Isle of Wight

M.L.Shaffer and
I.D.Sharove, partners trading as
Virginia Wrecking & Salvage Company
Complainants

vs: Memorandum of Lis Pendens

Ivey C.Porter and
Robert Porter, her husband
Defendants

EXAMINED AND CONFIRMED

Book 95,

Page 77.

VIRGINIA:

In the Circuit Court of Isle of Wight County:

M.L.Shaffer and
I.D.Sharove, partners trading as
Virginia Wrecking & Salvage Company

.....

Complainants

vs:

MEMORANDUM OF SUIT

Ivey C.Porter and
Robert Porter, her husband

.....

Defendants

To the Clerk of the said County:

Please issue process in chancery in favor of M.L.Shaffer
and I.D.Sharove, trading as Virginia Wrecking & Salvage Company,
complainants, vs. Ivey C.Porter and Robert Porter, her husband,
defendants, to the ^{second} ~~first~~ Rules in November, 1923.

Very respectfully,

Charles T. Lassiter

of counsel

1
VIRGINIA:

In the Circuit Court of the
County of Isle of Wight

M.L.Shaffer and
I.D.Sharove, partners trading as
Virginia Wrecking & Salvage Co.
Complainants

vs: Memorandum of Suit

Ivey C.Porter and
Robert Porter, her husband

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

October 31 1923

Filed

Teste, R. A. Egan Clerk.

VIRGINIA:

SPECIAL

In the ~~Supreme~~ Court of Appeals, held at the Library Building

in the City of Richmond on Thursday the 27th day of May, 1926.

Ivey C. Porter and Robert Porter, her husband

Appellants

against

M. L. Shaffer and I. D. Sharove, partner trading
as Virginia Wrecking and Salvage Company

Appellees

Upon an appeal from and supersedeas to a decree pronounced
by the circuit court of Isle of Wight county on the 3rd day
of November, 1924.

This day came again the parties, by counsel, and the court having
maturely considered the transcript of the record of the decree afore-
said and arguments of counsel, is of opinion, for reasons stated in writing
and filed with the record, that the said decree is erroneous. It is there-
fore adjudged, ordered and decreed that the same be reversed and annulled,
and that the appellants recover of the appellees their costs by them expend-
ed about the prosecution of their appeal and supersedeas aforesaid here.

And this court proceeding to enter such decree as to it seems right
and proper, doth adjudge and order that the complainants' bill be and the
same is hereby dismissed, but without prejudice to the complainants to pro-
ceed in a court of law to enforce such rights as they may be entitled to,
and that the defendants recover of the complainants their costs by them ex-
pended in the said circuit court.

Which is ordered to be certified to the said circuit court.

A Copy,

Teste , C. C.

(over)

6/15/26

Appellants' costs:

Writ tax-----	6.50
Printing and clerk-----	311.15
Transcript ~~of~~ ^{photocopies} -----	157.97
Attorney's fee-----	20.00
Clerk's small fees-----	2.59
	<u>\$498.21</u>

~~XX COPY XXX~~

Teste: Alvares, C. C.

Book 8
Page 334

VIRGINIA: Clerk's office of the Circuit Court of the County of
Isle of Wight June 15, 1926, at 11 O'clock A. M.
This ~~deed~~ ^{order} was received and with the certificate annexed, admitted
to record.

Teste: B. A. Edwards SGI

By E. Kay Wills
D.C.

VIRGINIA:

*In the Supreme Court of Appeals, held at
the Library Building in the City of
Richmond, on Friday the 9th
day of January, 1925.*

Upon the petition of Ivey C. Porter and Roberty Porter, her husband,
an appeal is allowed and a supersedeas is awarded to a decree pronounced by
the circuit court of Isle of Wight county on the 3rd day of November, 1924,
in a certain cause then therein depending wherein M. L. Shaffer and I. D. Shaf-
fer, partners trading as Virginia Wrecking & Salvage Company complainants and
the said petitioners were defendants, upon the petitioners, or either of them
or some one for them entering into bond with sufficient security before the
clerk of the said circuit court in the penalty of three hundred dollars, and
with condition as the law directs.

A Copy,

Teste: *W. A. E. E. E.* C.C.

Jan. 26th, 1925.

*Bond taken, paid - and certificate sent to
Clerk of Circuit Court of Appeals.*

*R. A. E. E. E.
Clerk*

12
V^a Meeking & Sabage C.

26 Court of Appeals order

R. E. Partin et al.

Liquid.

VIRGINIA:

In the Circuit Court of Isle of Wight County:

M.L. SHAFER and I.B. SHAROVE, trading as
VIRGINIA WRECKING and SALVAGE COMPANY Complainants

vs: Note for Decree

IVEY C. PORTER and
ROBERT PORTER Defendants

This cause came on this day to be further heard upon the papers formerly read; upon the report of R.A. Edwards, Commissioner in Chancery, filed on the ____ day of August, 1924, together with the depositions attached thereto, and upon the exceptions to said report ^{heretofore} filed on the ____ day of August, 1924, by counsel for the complainants, and was argued by counsel.

Upon Consideration Whereof, it appearing to the Court that a constructive trust existed banding upon the defendants in favor of the complainants, as set out in the bill, and that through inadvertence it was stated in the decree entered in this cause on April 2nd, 1924, that a partnership existed between the complainants and the respondents in regard to the property described in the pleadings, the Court doth adjudge, order and decree that so much of the said decree of April 2nd, 1924, as refers to the relation of the parties as that of a partnership, be and is hereby altered in accordance with the facts.

And the Court being of the opinion that the value of the land described in the pleadings as belonging to the defendant, Ivey C. Porter, is Two Hundred and fifty Dollars (\$250.00), and that the value of the building erected thereon and of the building material left on said premises by the complainants is Three Hundred and two dollars (\$302.00), the Court doth further adjudge, order and decree that M. J. Armstrong and A. S. Johnson, who are hereby appointed

Special Commissioners for the purpose, either one of whom may act, proceed to advertise the said land and building and building material for sale at public auction on the premises upon the following terms, to-wit: One third in cash, and the remainder

in four equal installments, payable in one and two years after the date of sale, with interest from said date, the same to be secured by a mortgage on the premises to be sold. after having advertised the said sale in a newspaper published in the City of Petersburg for at least one week and by hand bills posted at four or more public places in the County of Isle of Wight and out of the proceeds of such sale shall first be paid the costs of this suit and then shall be paid to the attorneys of record for the complainants the sum of the purchase price of the property dollars (the sum of the purchase price of the property), and the residue, if any, shall be paid to the attorneys of record for the said Ivey C. Porter, but before the said Special Commissioners and under Special Commissioners, shall proceed to act in this decree, they shall enter into a bond, conditioned as the law directs in the penalty of Fifteen Hundred dollars (the sum of fifteen hundred), with security satisfactory to the Clerk of this Court, and the said Commissioners shall report to Court.

And the defendants having indicated their intention to appeal to the Supreme Court of the State of Virginia, from the decision of this Court, it is ordered that execution of this decree be suspended for sixty days from this date.

These have the wife's mortgage and are for satisfaction from the property value and adding the policy of insurance to the specific commission to go to additional amount for the deferred payments. The mortgage on the sale shall be kept until the specific commission is paid. The court will pay for said of the amount of his bid, and should be paid out to them said specific. Commissioners shall not be allowed to take more time to place proceeds of said sale to their property.

"
M L Shaffer, 1880
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J C Poter 1880

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Book 8
page 237

VIRGINIA,

In the Circuit Court of the County of Isle of Wight.

M. L. Shaffer & I. D. Sharove, trading as the Virginia Wrecking and
Salvage Co. Complainants.

v.)
notes for decree

R. E. Porter and Ivy C. Porter Respondents.

This cause came on this day to be heard upon the bill properly matured at rules, execution of process on the defendants, upon motion of the defendants, by counsel, first obtained they are permitted to file a demurrer, ~~and amended demurrer~~, special plea and answer, and was argued by counsel; whereupon the court doth overrule the said demurrer and reject said special plea, *to which ruling of the court the defendants, by counsel, replied.* Then this cause came on to be heard upon the bill and answer, and upon the testimony of witnesses, taken ~~ore tenus~~ *in open Court*, for the complainants and respondents, and exhibits filed with said testimony, and was argued by counsel:

UPON CONSIDERATION WHEREOF, it appearing to the court that a partnership existed between the complainants and the respondents in regard to the property, described in the pleadings, and for cause shown the relation of the relationship of partners being no longer practicable, ~~it~~ desirable, or agreeable to the parties hereto,

THE COURT DOTH ADJUDGE, ORDER AND DECREE that this partnership be, and the same is hereby dissolved; and this cause is referred to one of the Commissioners of this court to inquire into, ascertain and report to this court, the following:

1. The value of the tract of land containing 7/12 of an acre, which is described in the pleadings, excluding of the building erected thereon by the plaintiff.
2. The value of the building erected on the said tract

of land by the said complainants, together with the material thereon for the completion of said building.

3. Any liens of records, or otherwise, binding on said land.

4. Any other matter deemed by the Commissioner, important to report, and also any matter which any party may specially request him to report.

Moreover, the Court doth hereby authorize, empower, and direct said Commissioner to consider the testimony and exhibits taken ^{open} ~~are taken~~ in Court in this cause, which are to be transcribed from stenographic notes during said hearing, ^{which testimony is taken in Court and} ~~to the entering of which~~

~~And the Court doth reserve, etc.~~

order, and the referring of this cause to a Commissioner, the defendant, by counsel, duly excepted.

And the Court doth reserve, etc.

M. L. Shaffer and J. D. Sharove
trading as the Virginia Wreck-
ing & Salvage Co. Complainants

v.) note for decree

R. E. Porter and Ivy C. Porter
Respondents

NE Long seen this decree
Charles J. Jarriser

Attorney
Counsel for Complainants

James H. Carlitt
John W. Stephens
Counsel for respondents.

Book

of land by the said complainants, together with the
entirety thereof for the completion of said building.

Handwritten notes and signatures in the right margin, including "D. J. Jarriser" and "James H. Carlitt".

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

M. L. Shaffer and I. D. Sharove,
partners trading as Virginia
Wrecking & Salvage Company,.....Complainants.

v) Chancery. No. _____

Ivey C. Porter and Robert
Porter, her husband,.....Defendants.

This day came the defendants, Ivey C. Porter and
Robert Porter, her husband, by counsel, and moved the court
to be permitted to file their answer to the bill of complaint,
which leave is granted, and the answer, thereupon, filed.

Virginia Wrecking & S. Co.,

v) Chancery. No. _____

Ivey C. Porter et al..

Decree permitting answer to
be filed.

Enter this April 1st. 1924.

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

M. L. Shaffer and I. D. Sharove,
partners trading as Virginia
Wrecking & Salvage Company,.....Complainants.

v) Chancery. No. _____

Ivey C. Porter and Robert
Porter, her husband,.....Defendants.

This day came the defendants, Ivey C. Porter and
Robert Porter, her husband, by counsel, and moved the court
for permission to file their plea of the Statute of Parol
Agreement, and which leave is granted, and the plea filed
in pursuance thereto.

Virginia Wrecking & Salvage
Company

v) Chancery. No. _____

Ivey C. Porter et al.

Decree, permitting filing
of plea of the statute of
Parol agreements.

Enter this April 1st.1924.
_____.

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

M. L. Shaffer and I. D. Sharove,
partners trading as Virginia
Wrecking & Salvage Company, ...Complainants.

v) Chancery. No. _____

Ivy C. Porter and Robert Porter,
her husband, ...Defendants.

This day came the defendants, Ivy C. Porter and
Robert Porter, her husband, and asked leave to file their
demurrer to the bill of complaint in this cause, and which
leave is granted, and the demurrer filed in pursuance thereto.

Virginia Wrecking & S. Co.

v) Chancery. No. _____

Ivey C. Porter et al.

Decree permitting demurrer
to bill of complaint to be
filed.

Enter this April 1st: 1924.

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ISLE OF WIGHT, VA., June 1st, 192 6

M Virginia Wrecking & Salvage Company., Petersburg, Va. (Complainants)

Re-Va. Wreckng & Slvg., Co-Vs. Ivey C. Porter et als.
Cy-Circuit Court Isle Of Wight County.

TO R. A. EDWARDS, DR.
CLERK OF THE CIRCUIT COURT
Of Isle Of Wight County

Prompt settlements of accounts rendered insures prompt attention to future work.

Writ tax on suit,	1 50
Taxed atty's fee	15 00
Clerks fees -	10 95
Sheriff's fees,	8 00
Witnesses fees and mileage,	26 42
Clerk for issuing subpoenas, entering witness attnd	8 60
Clerk for making up record in case to Court Appls	12 50
To R. A. Edwards, Commissioner In Chancery for	
making report etc.,	75 00

157.97

CLERK'S OFFICE
CIRCUIT COURT OF ISLE OF WIGHT COUNTY
ISLE OF WIGHT, VIRGINIA

R. A. EDWARDS, CLERK

June 1st, 1926.

Mr. H. Stuart Jones, Clerk.,
Court Of Appeals,
Richmond, Va.

My dear Sir-,

In re Va-Wrecking & Salvage Co-Vs. Ivey C. Porter et als.

Upon advice of Counsel in the above case that the same had been finally disposed of by your Court, and being of the opinion that I had not rendered you statement of the costs in the lower Court, I therefore hand you herein detailed statement of the costs as taxed in order that the same may be included by you when taxing cost etc.

I remain Very Respty Yours,

R. A. Edwards

Wald

11. 11. 0.

Memo of Costs.

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

M. L. Shaffer & I. D. Sharove, trading as the
Virginia Wrecking & Salvage Company - - - - - Complainants.

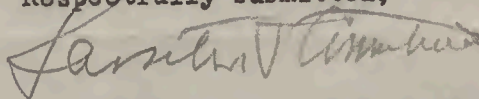
v.) Complainant's exceptions to Comr's report.

Ivy C. Porter and Robert Porter, her husband, - - - - - Respondents.

Comes now the said complainants and excepts to the report of
R. A. Edwards, Commissioner, filed herein on the 18th day of August, 1924, and
states the following as their grounds of exceptions:

- First: Because the said report does not report the true value of the tract of land but, in answer to said inquiry files an argument in support of, and gives, his individual opinion as to the value of the said land; and, the said Commissioner does not report a definite valuation of the said land, but on the contrary states and reports an uncertain and indefinite valuation.
- Second: Because the uncertain and indefinite valuation, as reported by the said Commissioner, is erroneous and is greatly in excess of the true value of the said land; the true value of the land being only seventy-five dollars (\$75.00).
- Third: Because such reported valuation is unsupported by proper evidence, and was ascertained and based upon improper evidence.
- Fourth: Because the said Commissioner reports and states the value of the building at only twelve hundred, six dollars and forty-three cents (\$1206.43), which valuation is erroneous and greatly less than its real and true value; its real and true value being nineteen hundred, eighty-six dollars and thirty-eight cents (\$1986.38).
- Fifth: Because the valuation of the building, as reported by the Commissioner, was improperly ascertained.

Respectfully submitted,



Counsels for Complainants.

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Virginia Wrecking & Salvage
Company - - - - - Complainants

v.) Exceptions to Comr's report, by
Complainants.

Ivy C. Porter et als.-- Respondents.

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Filed Aug 28-1924

N.A. Edwards clk

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5.2

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72 60 521

Va. Wrecking & Salvage Co vs Porter
April 1, 1924

for. debt.
summons
issued 3/27/24

✓ E. B. Pook

✓ G. S. Woolley

✓ Nathan Woolley

✓ M. L. Marshall

✓ G. W. Ashby

✓ W. P. Wilson

C. E. A. 50-5

N. K. 50-

Scrap 300-

Chop 300-

W. 300-

176

400

2/

30

1/2

H. P. Eigenbrun
John Strallen
Watts

For Dept in Shabrook & Porter
Sgt City of Peabody.

April 1, 1924

Summons Delivered to A S J. 3/26/24.

~~12.45~~

~~white~~

~~A 7 7 Pierce & And C. Reddy~~

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$$\begin{array}{r} 8200 \\ 2050 \\ \hline 6150 \end{array}$$

Va. Marking 500
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Part.

Fr. Com. Rpt.

Stenography Rpt.
in photo - See

file in large

envelope in wall
of room