

1927-001 Chancery Causes : M.
Isle of Wight County

S. Turner v John W. Turner vs L.

H. Turner v d

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Other SURNAMES: BRACY, Carr,
Nelms, FRYE, Stephenson, Betts,
Persons, Roberts, Edwards,
Andrews, Sebrell, Corbitt, Gay,
[C. S. Betts & Company], Hubbard
[Hubbard Fertilizer Company],
Horne, Gray, Beale, Butler,
Holland,

COMMISSIONER'S OFFICE.

Smithfield, Va., Feb. 18, 1927.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT.

COMMISSIONER'S REPORT:

M. S. Turner and John W. Turner Plaintiffs

Vs: In Chancery.

L. H. Turner, J. T. Nelms, Gurlie
Nelms, Nellie Nelms, his wife,
Maimie Frye and John F. Frye, her
husband Defendants.

TO THE HONORABLE B. D. WHITE, JUDGE OF THE SAID COURT:

The undersigned, E. H. Williams, a Commissioner in Chancery for the Circuit Court of Isle of Wight County, having had referred to him for execution, a decree of your Honor's Court, entered on the 4th day of January, 1926, in a certain cause in Chancery, wherein M. S. Turner and John W. Turner, are plaintiffs and L. H. Turner, J. T. Nelms, Gurlie Nelms, Nellie Nelms, his wife, Maimie Frye and John F. Frye, her husband, are defendants, duly gave notice of his purpose to proceed with the execution of the said decree on the 29th day of January, 1926, at the office of George F. Whitley, in the town of Smithfield, Isle of Wight County, Virginia, in one of the modes prescribed by law, a copy of which said notice is herewith filed, as a part of this report, together with a copy of the decree setting forth the matters of examining and inquiry thereby referred to the said Commissioner:

That pursuant to the directions of the said decree and in conformity with the said notice, your said Commissioner on the 29th day of January, 1926, at the office of George F. Whitley, in the said town of Smithfield, Virginia, took the depositions of J. E. Gray, R. S. Bracy, L. H. Turner and W. F. Beale; that

at taking the said depositions on the said 29th day of January, 1926, there was present Mr. George F. Whitley, Attorney for the Plaintiffs; that the taking of the said depositions was continued and at a later date the witnesses, J. E. Gray, W. F. Beale and L. H. Turner, were re-called and cross-examined by Mr. Q. C. Davis, Jr., Attorney for the defendants J. T. Nelms, Gurlie Nelms, Nellie Nelms, his wife, Maimie Frye and John F. Frye; that on June 18th, 1926, the depositions of A. A. Turner, J. T. Nelms and Mrs. Nancy M. Turner, were taken, at which time there was present Mr. George F. Whitley, Attorney for the Plaintiffs; Mr. Q. C. Davis, Jr., Attorney for J. T. Nelms, et als; and, Mr. John N. Sebrell and Mr. James H. Corbitt, Attorneys for the defendant L. H. Turner; that on the 3rd day of July, 1926, at 607 National Bank of Suffolk Building, in the city of Suffolk, Virginia, the depositions of Annie Stephenson was taken before Inez King, a Notary Public, at which time there was present Mr. James H. Corbitt, Attorney for the defendant L. H. Turner, and Mr. Q. C. Davis, Jr., Attorney for the defendants J. T. Nelms, et als; that on February 4th, 1927, at the office of your said Commissioner, in the town of Smithfield, Virginia, after due notice to all Counsel of record, the depositions of Mr. John Holland and Mr. Bud Butler, were taken, at which time there was present Mr. James H. Corbitt, Attorney for the defendant, L. H. Turner; that all of the said depositions have been reduced to writing, signatures thereto being waived; and the said depositions are herewith filed.

As touching the several matters required to be stated by the said decree, your Commissioner begs to report further:

FIRST: When did Matilda Bracey die? The evidence fails to show with any degree of definiteness the date of Matilda Bracy's death. Mrs. Nancy M. Turner stated that she died in February, but was unalbe to say whether in the year of 1889 or 1890. Matilda Bracy's Will bears date of August 24th, 1886,

and was probated on April 7th, 1890.

Second: Of what real estate Matilda Bracy died, seized and possessed, together with the location and description thereof. The land books at the time of Matilda Bracy's death shows that she was assessed with 271 acres of land; after her death, the said 271 acres is assessed as follows, to-wit: A. J. Turner, 156 acres; Eva R. Turner, 50 acres, Low Tract; and, Milsit Turner, 65 acres, Wiley Turner. A description of the 156 acres in the name of A. J. Turner, is contained in the answer to the 4th inquiry of the said decree. No description of the Low tract of 50 acres ^{of} and/the Wiley Turner tract of 65 acres is attempted, because of the understanding between Counsel that the said tracts of land are not involved in this cause.

Third. Whether Matilda Bracy died testate, and if she did die testate what disposition was made of said real estate by her last Will and Testament? Matilda Bracy died testate, her last Will and Testament bearing date of August 24th, 1886, and was probated April 7th, 1890, and is of record in the Clerk's Office of this Court in Will Book 32, page 502. The said Matilda Bracy by her said last Will and Testament disposed of her real estate as follows, to-wit: To Eva R. Turner, daughter of A. J. Turner, the Low tract of land; to Milsit S. Turner, son of A. J. Turner, the Wiley Turner tract of land; to "A. J. Turner, his life and at his death to his lawful heirs at my death the the balance of my real estate not named above."

Fourth. What portion of said real estate was devised to A. J. Turner, and whether same was devised to him for life or in fee simple, and if devised to him for life to whom said property should go after his death. Where said property is located, together with a description of same. As shown by answer to third inquiry after the devise of the Low tract to Eva R. Turner and the devise of the Wiley Turner tract to Milsit S. Turner, the balance of the real estate of Matilda

Bracy was devised to A. J. Turner for his life with the remainder over to the lawful heirs of A. J. Turner at the death of the said Matilda Bracy. The balance of the said land so devised contains 156 acres, more or less, and lies in Hardy Magisterial District in the County of Isle of Wight, Virginia, and is now bounded by the lands of Jesse Whitley; M. L. Thorne; Peter Bradshaw; J. S. Persons, et als.

In answer to the question as to who ~~was~~ the lawful heirs of A. J. Turner, at the time of the death of Matilda Bracy, your Commissioner finds that the following children of A. J. Turner were living at the death of Matilda Bracy, namely: Eva R. Turner, who is now dead, leaving surviving her, her husband J. T. Nelms, and two children, namely: Gurlie Nelms and Maimie Frye, who was nelms; Annie Turner, now Stephenson; John W. Turner, Mattie Turner, now Carr, M. S. Turner, Nettie Turner, now Carr; and, L. H. Turner. Your Commissioner here calls the attention of the Court to the fact that the great bulk of evidence in this case is in reference to the question as to whether or not the said L. H. Turner was in being at the time of Matilda Bracy's death, and your Commissioner states to the Court that after careful consideration of the evidence on this particular question, your Commissioner finds that the weight of the testimony establishes the fact that the said L. H. Turner was an infant some three or four months of age at the time of the death of Matilda Bracy.

Fifth: When did A. J. Turner die, and who are the present owners of the said real estate so devised to him by Matilda Bracy, the interest of each, how they came in possession of same and whether not any of the parties in interest are under the age of twenty one years? A. J. Turner departed this life in the month of August, in the year 1920. That at the death of the said A. J. Turner, by the last Will and Testament of the said Matilda Bracy, deceased, Annie Turner, John W. Turner, Mattie Turner, M. S. Turner, Nettie Turner and L. H. Turner,

became the fee simple owners of a one-seventh interest, each, in the said tract of land of 156 acres by virtue of the devised in the said Will of Matilda Bracy, deceased. That Gurlie Nelms, and Maimie Frye, who was Nelms, at the death of the said A. J. Turner, deceased, became the owners in fee simple of a one-seventh interest, of the said tract of land, by descent from their mother Eva R. Turner, deceased, the said one-seventh interest being subject to the courtesy rights of their father, J. T. Nelms who was the husband of the said Eva R. Turner, who married Nelms. That on March 30th, 1923, Annie O. Stephenson, who was Annie Turner, and J. O. Stephenson, her husband; Mattie S. Carr, who was Turner, and B. H. Carr, her husband; and, Nettie L. Carr, widow, who was Turner, by deed recorded in the Clerk's Office of this Court in D. B. 93, page 535, conveyed their interest in the said 156 acre tract to L. H. Turner, M. S. Turner and John W. Turner. The said 156 acres of land is now owned as follows: M. S. Turner, two-sevenths; John W. Turner, two-sevenths; L. H. Turner, two-sevenths; Gurlie Nelms, one-fourteenth, subject to courtesy of J. T. Nelms; and Maimie Frye, one-fourteenth, subject to the courtesy rights of J. T. Nelms.

All the parties in interest are over the age of twenty-one years.

Sixth: Whether or not there are any liens on said real estate so devised to said A. J. Turner, or on the interest of any part in interest, their dignities and priorities and to whom due. The records show the following liens against the interest of the parties entitled to share of the said tract of 156 acres, namely: L. H. Turner, M. S. Turner, John W. Turner, by their deed bearing date of March 30, 1923, and recorded in the Clerk's Office of this Court, in T. D. B. 94, page 26, conveyed to R. A. Edwards, Trustee, the said 156 acres of land to secure the payment of the sum of \$1350.00, evidenced by three certain bonds for \$450.00, each, of even date with the said deed of trust, bearing no interest, and

payable on or before the settlement of the estate of A. Jack Turner, deceased, or paid before at the option of the said L. H. Turner, M. S. Turner and John W. Turner.

L. H. Turner, by his deed bearing date April 10, 1924, recorded in this Clerk's Office in D. B. 94, page 347, conveys to Marshall Andrews, Trustee, for John N. Sebrell and James H. Corbitt, his interest in 137.14 acres, part of Westry tract of land, and also his interest in 159.7 acres; the said 159.7 acres being the same land known as the 156 acres above mentioned. In trust to secure to John N. Sebrell and James H. Corbitt, the sum of \$300.00, each.

The following judgments are of record: M. S. Turner, vs. John W. Turner, dated 12/23/1925; docketed 12/23/1925; J. D. #5, page 52; \$130.00, with interest from 12/23/1925, until paid and \$7.25 cost.

John L. Gay vs. J. W. Turner, docketed 4/29/1911, J. D. #3, page 130, amount \$27.10, with interest from December 1, 1908, until paid, \$2.50 cost.

C. S. Betts vs. L. H. Turner, dated 11/4/1919, docketed 11/4/1919, in J. D. #4, page 39; amount \$96.50, with interest from December 5, 1917, until paid, \$2.50 cost.

C. S. Betts & Company, vs. John W. Turner, dated 11/4/1919 docketed 11/4/1919, J. D. #4, page 39; amount \$24.35, with interest thereon from 9/18/1917, until paid, \$2.50 cost.

Commonwealth of Virginia, vs. Lennie Turner, dated 5/5/1915 docketed 12/6/1915, J. D. #3, page 191; amount \$20.00, with interest from May 5th, 1915, \$14.50 cost.

Hubbard Fertilizer Company vs. John Turner, Lucy Turner, and J. W. Carr, dated 12/14/1921, docketed 12/14/1921, J. D. #4, page 83; amount \$58.03, with interest from 12/1/1920, until paid, ten percent Attorney fee and \$7.25 cost; subject to credit of \$5.64, as of January 30th, 1922, and credit of \$25.75, no date being mentioned. Fi fa assigned to J. W. Carr. See execution 2/4/1922.

R. A. Horne vs. L. H. Turner, dated 3/5/1923, docketed 3/5/1923, in J. D. #4, page 156; amount \$120.15, with interest from 10/5/1922, until paid. \$3.55 cost.

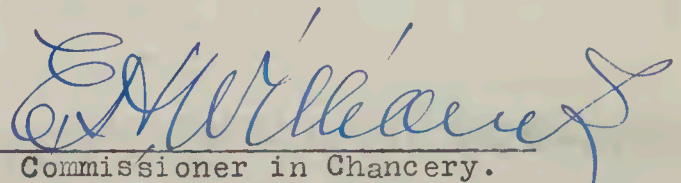
Seventh: The annual and fee simple values of said real estate. The annual value of the said 156 acre tract of land is \$60.00 per year, and the fee simple value thereof is from \$3750.00 to \$4,000.00.

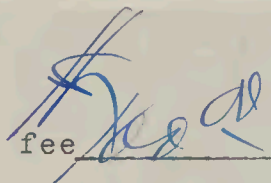
Eighth: Whether not there are any taxes due and unpaid against the said real estate. Delinquent taxes against 334 acres of A. J. Turner's land, as follows: 1921 \$79.01; 1922 \$80.85; 1923 \$80.12; 1924 \$86.36; 1925 \$90.04. Included within the 334 acres upon which the delinquent tax are a charge is the 156 acre tract.

Ninth: Whether partition of the entire real estate so devised to said A. J. Turner, or any distinct or independent part thereof can be conveniently made to advantage. The said tract of 156 acres of land cannot be conveniently divided among the parties in interest and your Commissioner is of the opinion that the interest of those entitled to share therein will be promoted by a sale thereof and a division of the proceeds according to their respective interest.

Tenth: Whether all the necessary and proper parties are properly before the Court. All necessary parties are properly before the Court.

Respectfully submitted.


Commissioner in Chancery.

Commissioner's fee .

Jan. 29.

Turner et al

v.

Turner et als.

Present: E. H. Williams, Commissioner in Chancery
Geo. F. Whitley, Attorney for plaintiffs.

Mr. J. E. Gray being duly sworn deposes as follows:

Mr. Williams:

Q. Mr. Gray, what is your name, age, residence and occupation?

A. J. E. Gray, try to farm a little, sixty four years old, live in Isle of Wight County.

Q. Did you know Matilda Bracy?

A. Yes sir.

Q. How close did you live to her?

A. In a mile and a half, I reckon.

Q. Tell the Court when she died.

A. I couldn't do that, I don't remember.

Q. Haven't you anything in your mind that you can fix near about the time when she died?

A. I don't really know as I do, unless I go to the records I didn't keep no account of it.

Q. What matter in the records would enable you to fix the time?

A. Oh well, I qualified on the estate of Uncle Shady's estate, he died first, she probably lived two or three years after that I don't know how long, I might get at it.

Q. Was Uncle Shady her husband?

A. No, her brother.

Q. Are you familiar with the real estate of which Matilda Bracy died, seized and possessed?

A. Oh yes, I have been in a mile and a half of it all my life and see it occasionally.

Q. How many tracts did she own at the time of her death?

A. There was two tracts, the Westry tract and the Home Place.
The Westry tract I think has been given to Mr. Turner.

Q. Which Mr. Turner?

A. A. J. Turner.

Q. Do you remember what the tract of land was called devised to A. J. Turner?

A. Westry tract of land.

Q. How many acres in that tract?

A. I don't know sir.

Q. How near do you live to that tract now?

A. Two and a half miles or three, something like that.

Q. Can you give me the names of the lands, or of the parties who bound this tract of land?

A. I think Joe Persons, John Roberts and Richard Holland used to be, and John Robertson too, that's about all that hits it.

Q. Does your description cover the description of one hundred and fifty acres of which is described as being bound by the lands of Jesse Whitley, known as the Mathew Turner place, the lands formerly belonging to Henry Thorne, Peter Bradshaw and others?

A. Same land, yes sir. That this suit is on.

Q. What is a fair cash rental value of this tract of land of one hundred and fifty acres?

A. Rental, you mean to rent out, I walked over it last Saturday morning and I said then and I say now, there are no buildings, I don't think it would rent over forty or fifty dollars. That's what I said then and I say now.

Q. What is a fair cash value for the land in the event it were to be sold?

A. I thought probably if a man wanted the lumber, there's some lumber on it, the land and lumber would bring about

four thousand, or something like it.

Q. Can you give me the names of the children of Mr. A. J. Turner living at the time of the death of Matilda Bracy?

A. I think there was one married Nelms, Eva R. Turner, married J. T. Nelms, Annie Turner, married Stephenson,

Q. She dead now? A. Yes.

Q. Next?

A. John W. Turner; Mattie Turner, who married Carr; M. S. Turner; Nettie Turner, who married Jesse Carr; and L. H. Turner.

Q. Are you sure that all of these were living at the time of the death of Matilda Bracy?

A. I think so.

Q. Now please state to the Court whether not partition in kind can be made among the several parties entitled to share in the said land or whether it would be more advantageous to sell the entire tract and make a division of the proceeds?

A. So far as that I don't know which would be best.

Q. Do you think the land lays in such a way that it could be divided into ten parts?

A. Why, I don't think they could do that not to be agreeable, it wouldn't be no advantage to none of them, it would be a disadvantage I think.

Q. Then the only way to divide it would be to sell it and divide the money?

A. I think so.

Q. Don't you know so.

A. Know so.

Q. Give me a full description of all of the land that A. J. Turner owned at the time of his death, whether that that he had a life interest in or that which he was seized in fee simple?

A. He owned a tract of one hundred thirty seven acres or a hundred and fifty acres, which is a part of the Westry tract, described as follows, by the Home Place, Charlie Robertson, Surry Lumber Company, M. S. Turner, Jesse Whitley, J. E. Bradshaw.

Mr. Whitley:

Q. He owned this in fee simple?

A. Yes.

Q. You have already described the one hundred and fifty four acre tract of land known as the Home Place?

A. Yes sir.

Q. Do you know what land Matilda Bracy owned at the time of her death?

A. She owned the Home Place, which contains one hundred fifty nine and three fourths acres and she owned a tract of land which she left to M. S. Turner.

Q. Is this all of the land which she owned at her death?

A. I think so.

Q. Described the land left to M. S. Turner.

A. The land she left M. S. Turner joins J. E. Gray, Jesse Whitley, W. E. Garrison and one of the Thorne boys, M. L. I think, that about gets that.

Q. Will you describe the tract of land which Matilda Bracy owned at the time of her death and which she willed to A. J. Turner for life?

A. I have described that just while ago one hundred and fifty nine and three fourths acres.

Q. Then if I understand it, Mr. Gray, after Matilda Bracy willed to M. S. Turner the tract of land above mentioned by you, the remainder of the land owned by her constitutes the one hundred and fifty nine acre tract?

A. That's right.

Q. In which A. J. Turner had a life interest and about which this suit is brought?

A. Yes sir.

And further this deponent saith not-

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Mr. R. S. Bracy being duly sworn deposes and says:

Mr. Williams:

Q. Mr. Bracy what is your name, age, residence and occupation?

A. Born in 1870, April 15th, fifty six, R. S. Bracy, live near Zuni, never been over forty miles from home in my life been to Norfolk that's far as I been, occupation farmer.

Q. Did you know Matilda Bracy?

A. Yes sir.

Q. How far did you live from her?

A. A half mile farther nthan Mr. Gray.

Q. How far from her?

A. Three miles.

Q. When did she die?

A. I don't know.

Q. About when?

A. I have no idea.

Q. Did you know the land that she owned during her life time of which she died, seized and possessed?

A. I don't know one tract from the other, I been there two or three times but I can't keep them in my head, on rainy days I go hunting.

Q. How many tracts did she have?

A. I think two of them, far as knowing one from the other I don't know.

Q. What two?

A. Westry tract and Home Place.

Q. How many acres in the Westry tract?

A. I don't even know, I never asked no questions.

Q. Is that the tract that was willed to Mr. A. J. Turner for life?

A. Westry tract, I think so; no, the other one for life he sold the Westry tract.

Q. You mean he sold part of the Westry tract.

A. Part of it.

Q. He owned other part of the Westry tract, at the time of his death, in fee simple?

A. Yes sir.

Q. Do you know when A. J. Turner died?

A. I don't remember now.

Q. What is the value of the Home Place?

A. I think the place would bring about four thousand, lumber, land and all. We were walking over it.

Q. When did you go over this?

A. Last Saturday.

Q. What would it rent for?

A. Forty or fifty dollars, I wouldn't give over that to come from my house to tend it.

Q. Would you say that this tract of land of one hundred and fifty to one hundred and fifty nine acres, could be advantageously divided into ten parts or would it be better to sell the land and divide the proceeds?

A. Sell it if you didn't get but ten cents for it and divide the money, what good would it be cut up and divided among all them children, better get ten cents and divide that up. I'd do that if I had interest in it. Keep the land pay taxes on it for nothing, if I didn't get but a penny I'd take mine and go head.

Q. Could part of it be advantageously partitioned in kind and the residue sold to an advantage, I mean by that could some of the shares be laid off and divided in kind and the balance of the land be sold at public auction, the proceeds

to be divided between the other heirs.

A. Might be.

Q. You don't think it could?

A. I don't think it could.

And further this deponent saith not-

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Mr. Bracy re-called:

Q. Do you remember whether Lennie Turner was living at the time of the death of Matilda Bracy or not.

A. I think about all of them was living. I used to go there when I was a boy and all of them was around there. I' been here fifty five years. He was a little boy, Nellie and Shay were all small children.

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L. H. Turner being duly sworn deposes as follows:

Mr. Whitley:

Q. What is your name, age, residence and occupation?

A. L. H. Turner.

Q. Your age?

A. Blessed it I know.

Q. What year were you born?

A. I don't know that. Some say I was born one year and some another, there's no way for me to tell 'cept the Bible and Nelms got that. Some says 1891 some 1888.

Q. It is very important for us to know when you were born.

A. Isle of Wight County, farmer.

Q. Give the names of your brothers and sisters living at the death of Matilda Bracy.

A. Eva R. Turner, Annie Turner, John Turner, Mattie Turner, Shay Turner and Nettie Turner and L. H. Turner.

Q. How many are now dead.

A. One, Eva R. Turner.

Q. Was she married at the time of her death?

A. Yes sir.

Q. To whom?

A. J. T. Nelms.

Q. Did she leave any children?

A. Gurlie Lee and Maimie Nelms, who is now Maimie Frye.

Q. Are they now twenty one?

A. Yes sir.

Q. Who is Nellie Nelms?

A. That's Gurlie's wife.

Q. Annie Stephenson, is she now living?

A. Yes sir.

Q. Who did she marry?

A. J. O. Stephenson.

Q. Who bought their interests in the land?

A. In the Westry tract, John, Shay and myself bought their interest.

Q. How many of these parties have sold their interest in the one hundred and fifty four acre tract or Home tract?

A. Three.

Q. Who are they?

A. Annie Stephenson, Mattie Carr and Nettie Carr.

Q. To whom did they sell?

A. John W. Turner, L. H. Turner and M. S. Turner.

Q. How many of these heirs sold their interest in the one hundred and thirty seven acre tract?

A. Annie Stephenson, J. W. Turner, M. S. Turner, Nettie Turner, Mattie Carr.

Q. To whom did they sell?

A. L. H. Turner.

Q. Are all of the parties in interest in this land, both tracts, over the age of twenty one years.

A. Yes sir.

Q. How old is Nettie Turner?

A. I couldn't tell you, I just don't know the ages, I'd rather some of the older ones say;

Q. Do you know the age of any of your brothers and sisters?

A. I couldn't tell you to save my life.

Q. Will you describe the lands owned by your father at the time of his death, both that in which he had a life estate and owned in fee simple?

A. The Home place contains one hundred and fifty nine acres, joins Pete Bradshaw, Willie Gray, M. L. Thorne, Jesse Whitley, the Westry tract and J. E. Bradshaw.

Q. The other tract.

A. Tract of land contains one hundred and thirty seven acres known as the Westry tract, or the balance of the Westry tract, bounded by J. E. Bradshaw, C. C. Robertson, Surry Lumber Company, Jesse Whitley, M. S. Turner and the Home Plantation, of Shady Bracy.

Q. What is the Home Plantation of Shady Bracy?

A. He give the land to his sister as the Home Plantation.

Q. Who lives on the tract now?

A. No buildings on it now.

Q. Who owns it?

A. John, Shay and myself bought out the three interests and Nelms owns a seventh interest.

Q. Now, I want you to tell me the different tracts of land owned by Matilda Bracy at the time of her death, together with the location and description of each tract.

A. Mills Bracy bought up several different tracts of land twenty five acres, fifty acres, and forty five acres; and he owned land near Kenny Chapman's Mill Pond he didn't give away under his will; and the different tracts he owned at this time don't describe the bounds to them and in making his will to, Shady Bracy he gave him the Westry tract of land, the Home Plantation and all other of his real estate

if there should be any. Shady Bracy gave to Matilda Bracy all of his real estate except the Westry tract of land- for me to sit here and tell you the different tracts she owned, I can't do that.

Q. Come down to how much Matilda Brach owned at the time of her death.

A. I can tell you two tracts. How much she owned I can't tell you, Mills Bracy owned tracts he never mentioned in his will and neither did Shady, nobody knows where it is.

Q. I want you to tell me what land Matilda Bracy owned at the time of her death, how many tracts and describe each.

A. I couldn't do that, I can tell you the two the records show. She should be in possession of some that haven't been located. I have the wills in my pocket here.

A. Let me see them.

Q. What relation is Matilda Bracy to Mill Bracy?

A. Daughter.

And further this deponent saith not-

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W. F. Beale being duly sworn deposes as follows:

Mr. Williams:

Q. What is your name, age, residence and occupation?

A. W. F. Beale, thirty four, live in Isle of Wight County, farmer.

Q. Are you familiar with the one hundred and fifty acre tract of land devised to A. J. Turner for life?

A. I went over it Saturday, that's all I know the value of it.

Q. What will it rent for per year.

A. I would say fifty or sixty dollars in the condition it is in now.

Q. What is its fee simple value?

A. Whole business- Thirty seven hundred and fifty dollars.

Q. Does the land lay in such shape that it could be advantageously partitioned into ten parts?

A. No sir.

Q. Does the land lay in such shape that any distinct part can be conveniently divided in kind?

A. No, no I don't think so.

Q. Can the land be divided advantageously in five parts.

A. Well, I don't think so, I am sure not.

And further this deponent saith not.

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Taken Apr 12.
1926.

Depositions- Turner v. Turner-

Continued from Jan. 30th. 1926.

Mr. Gray being duly sworn deposes and says as follows:

Cross Examination by Mr. Q. C. Davis.

Q. Mr. Gray on your direct examination, or in the testimony that you gave here a while back you stated that you were familiar with the real estate of which Matilda Bracy died, seized and possessed, would you mind stating again what lands that you recollect that she died, seized and possessed of?

A. What lands? Why the lands is right there Mr. Davis, she died and seized of, right there now.

Q. That don't tell us anything, do you know any of the tracts their boundaries and acreage?

A. I don't, I do know there is a Westry tract and Home Place, all I know anything of. Far as the acres I don't really know how many acres.

Q. You don't mean to state that Matilda Bracy died, seized and possessed of the Westry tract of land?

A. No, the Westry tract was given to Jack Turner, A. J. Turner, before Aunt Tilda and Uncle Shay died.

Q. That eliminates that tract.

A. The Westry tract is off from the Home Place.

Q. See if you get the question, what we want to know is this, what lands that this lady, named Matilda Bracy, owned at the time of her death?

A. At the time of her death, she didn't own anything outside the Home Place, that I know of.

Q. What was that called?

A. Shay Bracy tract of land.

Q. How many acres did that contain?

A. I really don't know how many acres it contained.

Q. You don't know the size of the place.

A. Oh yes, I have been there several times, I stayed there from October 6th'til Christmas.

Q. About what size?

A. A hundred and fifty or hundred and sixty acres.

Q. At the time of her death were there any buildings of any kind or description on this place or tract you refer to?

A. Yes.

Q. You lived there at the time of her death?

A. At the time of her death I think Jack lived there.

Q. When you say Jack who do you mean?

A. A. J. Turner. Yes.

Q. Was he married at that time.

A. Yes.

Q. Living with his family there?

A. Yes.

Q. How long had he been living there at the time of her death?

A. I don't exactly remember; when Uncle Shay died he left Aunt Tildy right by herself. I lived there from the 6th of October til Christmas.

Q. You say that A. J. Turner and family lived there when she died. Will you please state what children were living of A. J. Turner's at the time Matilda Bracy died?

A. At the time she died. why I think there was John-

Q. As you remember, not as you think, but as you know and recollect not what you think.

A. Well so far as that I think all of them was living- there was John, Lennie, Shay.

Q. Who is Lennie?

A. L. H. Turner, Lennie H. Turner. He was right there when she died. Annie and Evy, Mattie. Let me see now, and Miss Nettie, I think that is about all- Shay.

Q. Now you mention Eva?

A. Eva R., that is Mr. Nelms' wife.

Q. J. T. Nelms' wife? A. Yes sir.

Q. Could you state approximately the age of Eva at that time?

A. No sir.

Q. You know which was the oldest of these children?

A. I don't but I think John or Mr. Nelms' wife, one of these two, don't remember exactly now.

Q. Could you state about what size Eva Turner was at that time?

A. She was just a spare built woman, wasn't very large.

Q. At the time of Matilda Bracy's death?

A. I reckon she was grown at the time Aunt Tildy died, pretty near.

Q. Could you state with some degree of accuracy the average, or the size of L. H. Turner, the one you refer to as Lennie?

A. I don't remember exactly, he was just a small boy I think.

Q. Say five, six or seven?

A. I reckon something like that, I don't remember exactly.

Q. Can you state about how tall Lennie was at her death?

A. I don't remember that.

Q. Have you absolutely any recollection at all about Lennie at the time of Matilda Bracy's death?

A. I used to see him once and a while.

Q. At the time of her death? A. Yes sir.

Q. At the time of her death as a matter of fact, I have been cautioning you in asking this question, Mr. L. H. Turner, known as Lennie was not born at the time of the death of Matilda Bracy?

A. I don't remember exactly, I didn't keep no record.

Q. After making that statement, will you state now positively that Lennie H. Turner was living and was in being at the time of the death of Matilda Bracy?

A. I really couldn't say, I certainly thought Lennie was a small boy at her death.

Q. You thought but you wouldn't be willing to state on oath that he was living at her death?

A. No sir.

Q. Do you know the date of the death of Matilda Bracy?

A. Why, I didn't keep no record, 'course I remember when she died but I don't remember the date.

Q. Don't remember the year? A. No sir.

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Q. If I should tell you that the will of Matilda Bracy was probated on April 7th, 1890, in Isle of Wight County, Va., would you dispute that?

A. No sir, I don't

Q. With that date in mind, now can you state positively that Matilda Bracy has been dead thirty six years?

A. Thirty six years, I don't exactly remember, I didn't keep no record of it, I was there.

Q. Are you familiar with the provisions contained in the last will and testament of Matilda Bracy, which was dated August 24, 1886, and probated April 7, 1890?

A. No, I was not there when the will was made.

Q. Are you familiar with the provisions in the will, how she disposed of the property?

A. No sir. I heard she made a will.

Q. And you don't know of your own knowledge anything about whether not she in her will devised any tracts of land to people?

A. No, I don't know anything about that, never see the will, as I know of.

Q. Subsequently, or after the death of Matilda Bracy, do you recollect how long Mr. A. J. Turner and family resided at the Home Place where she died?

A. At the Home Place, I really don't they stayed there several years, and then Jack built across the road in front of the Home Place, he built a new house in front of the old place, I don't remember how many years.

Q. And on whose land and what was the name of the tract of land he built the house on you refer to?

A. Well, I really don't know about that, I thought it was known as the home tract of land.

Q. Your impression and belief, as one living all of your life, near and in the vicinity of the tract of land on which Matilda Bracy died, was that the land upon which he, Mr. A. J. Turner, built a house some few years after Matilda Bracy's death was part of the old home place?

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A. Yes, I didn't know the difference.

Q. Do you know the difference now?

A. No sir. I know the Westry tract and Home tract-

Q. When you say old Home Place you mean the place Matildy Bracy died and now the Westry tract?

A. No, she didn't own the Westry tract.

Q. And your belief and impression that the house which A. J. Turner built, when he built, was on the old Matilda Bracy tract of land?

A. Yes sir, I did.

Q. Where do you reside now?

A. At the place that I was born.

Q. What is that known as?

A. Edward Gray place.

Q. What do you understand, Mr. Gray, as the tract of land which you state is one hundred and fifty to sixty acres, that was left as you say by Matilda Bracy to A. J. Turner, for his life and at ^{his} ~~Matilda-Bracy's~~-death to the heirs of A. J. Turner at her death?

A. That was the old Home place, Mr. Davis, that was left to Jack his life, he had done sold the Westry tract of land.

Q. Give the boundaries of this Home Place.

A. This old Home Place adjoined Jesse Whitley, one of the Thorne boys, adjoins the piece left M. S. Turner, and it did hit me 'til I sold the field on the Tar road to the Surry Lumber Company, it hit me there.

Q. What do you call the Tar road?

A. The road leads from Zuni, just this side of my house.

Q. At the time of Matilda Bracy's death was the road known as the Tar road, that now runs by the A. J. Turner house where he lived when he died? Was it in existence?

A. Yes.

Q. Then as you understand it the Home Tract was on both sides of the road?

A. So far as I know.

Q. The house that Jack Turner built after the death of Matilda Bracy was built on the opposite side of the Tar road from where the old home place or residence was?

A. Yes.

Q. And he built that house after the old dwelling burned down on the Matilda Bracy place?

A. Built it before it burned, I think the house they lived in was built before the old house burned.

Q. Can you state whether not Eva Turner was married to J. T. Helms at the time Jack Turner built this house across the Tar road?

A. Whether they were married or not, I think so, Mr. Davis, before Jack built the house across the Tar road.

Q. Can you recollect who built the house?

A. No, I really don't remember.

Q. You stated a while ago that Mr. A. J. Turner had sold or disposed of the Westry tract?

A. Yes, a part of the Westry tract, I think he sold to John Roberts, one hundred acres or more a part of the Westry tract.

Q. And sold somebody else some?

A. Somebody else, I don't know as he sold it.

Q. Do you know Joe Person, and did you know that A. J. Turner and his wife had conveyed it at one time, the whole tract of land to Mr. Joe Persons?

A. Yes.

Q. Did you know that Joe Persons in turn, on the same day, or the following day, conveyed back to Mr. Turner the Westry tract save eleven acres, reserving eleven acres to himself.

A. Eleven acres to himself, yes.

Q. You knew that?

A. Yes sir. in fact I heard it.

Q. Did you know whether not A. J. Turner, in his life time, conveyed away all of the Westry tract of land?

A. Conveyed all of it, he might, I don't know about that.

Q. Do you know whether or not he died seized and possessed of any of the Westry tract of land?

A. I really don't.

Q. Are you familiar with the Westry tract of land and can you give its location and boundaries?

A. No sir, not as good as the Home Place, the Westry tract is across the Tar Road and it has been some time since I 've been over there, I have been there a few times but very seldom.

Q. Are you familiar with the location of what is known as the Wyley Turner tract that was devised or willed to M. S. Turner by Matilda Bracy?

A. Yes, my land and his joins a quarter of a mile.

Q. Does the Wyley Turner tract of land adjoin the Matilda Bracy home tract?

A. Yes it joins that on one corner.

Q. In what general direction is that?

A. Jesse Whitley separates that, between the home place and where Shay lives, joins on the East you might say.

Q. Did you know that Matilda Bracy had devised by her will a tract of land to Eva R. Turner, or Eva R. Helms, A. J. Turner's daughter?

A. No, I didn't know anything about that.

Q. Ever hear tell of it?

A. I heard something about it, so far as where the land is I don't know a thing about it.

Q. Did you know that the first item or devise in Matilda Bracy's will was a devise of the Low Tract of land to Eva R. Turner, daughter of A. J. Turner?

A. I didn't know anything about that.

Q. Did you ever know of a Low tract in that section?

A. No, I don't say it want there.

Q. Did you ever know of any people in that community, living or dead, by the name of Low?

A. No, I know some in Southampton County.

Q. When were you born?

A. June 2nd, '61.

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Q. Did you ever hear of a man by the name of Levi Low and Moron his wife?

A. No sir.

Q. The date of a deed of Levi Low and wife to Mills Bracy was 1837, did you ever hear of him?

A. Yes.

Q. Did you ever know or hear of a tract of land conveyed by Sophie L. Low, Josiah Low and wife, Levi Low and wife, Elizabeth Low, and John Low to Mills Bracy, known as the Low tract of land?

A. I don't know anything about it, I am too young for that.

Q. Do you know or can you designate the tract of land known as the Wyley Turner Plantation in the will of Mills Bracy, and where it came from?

A. Came from? Why I reckon that farm Jesse Whitley now owns which used to be the old man Mat Turner place but so far as where it came from I don't know.

Q. Did you know that during A. J. Turner's life time from the date of the probate of Matilda Bracy's will until his death he paid taxes in the name of Eva R. Nelms or Turner on the Low tract of land in this County?

A. Mr. Turner paid taxes on it, I don't know anything at all about him paying taxes, I never known where the Low tract was.

Q. Did you know that the Low tract of land stood upon the land books in that magisterial district, in which you live, has been on the land books in the name of Eva R. Turner since the death or the probate of the will of Matilda Bracy?

A. I don't know about that, old timey people called different places by different names, old original names, I don't know anything about where it was.

Q. Did you know A. A. Turner generally known as Gus Turner?

A. Yes.

Q. You know when he lived and worked for A. J. Turner?

A. Yes, I don't remember the date but I remember when he lived there.

Q. Did you know that A. A. or Gus Turner lived with A. J.

Turner and worked for him while A. J. Turner was living with Matilda Bracy during her live time at the old place.

A. Yes sir.

Q. Did you know that Gus Turner was living and working for A. J. Turner at the time that A. J. Turner was building the house you mentioned in your testimony a few minutes ago, can you recollect that F. A. Edwards was the carpenter that built the house?

A. Gus? yes I recollect.

Q. Did you ever hear A. J. Turner state that when he built the house he built it upon his daughter's land?

A. I don't know.

Q. You know he was building on her land when he was building it?

A. I don't know it, I don't know whose land it was .

Q. And you understand Mr. Gray to the best of your knowledge and belief that the house that A. J. Turner built was built on the old home place, or part of the old home place and Matilda Bracy land?

A. That is what I thought.

Q. And not on the Westry tract?

A. I didn't think so.

Q. What land adjoins the Matilda Bracy home place? on the North?

A. The land known as the Pope place and Charlie Robertson.

Q. And generally on the West what lands adjoin the old home place?

A. On the West I think Shay is on the West.

Q. And who else? A. I don't know exactly.

Q. On the East? A. On the East lets see, Peter Bradshaw.

Q. Anybody else? A. Peter Bradshaw and Charlie Robertson.

Q. How about on the South? A. On the South adjoins one of the Thorne boys.

Q. Now if I would state to you Mr. Gray, that the records disclose that Mr. L. H. Turner, or Lennie Harrison Turner, was born September 12, 1891, would you dispute that date?

A. Why, I don't remember, I don't dispute because I don't remember.

Q. Can you associate that date as being subsequent or after the death of Matilda Bracy or before her death?

A. Why I don't remember exactly about that.

Q. You knew Mr. Geo. J. Britt?

A. Yes sir.

Q. The records seem to show that he was a subscribing witness to the will of Matilda Bracy, the three witnesses were J. B. Britt, first do you know him?

A. Yes.

Q. Joseph S. Persons, second, Geo. J. Britt, third, L. H. Whitley fourth, do you remember L. H. Whitley?

A. Yes sir.

Q. Mr. Geo. J. Britt is some older than you are?

A. I really don't know, I reckon he is.

Q. If he stated in the spring of 1921 that he was 61 years old, would you dispute that?

A. 1921, now 1926, no I don't dispute that, I really don't know his age exactly.

Q. Has he lived in the vicinity of Matilda Bracy home tract?

A. Yes up to a few years ago he moved close to Windsor.

Q. Up to that time he was familiar with this tract of land?

A. Yes, I don't see why he should not be, he didn't live far from it.

Q. If there were a Low tract, a Westry tract, a Wyley Turner tract and Matilda Bracy home tract he would have practically as much information about the location as any one around there at the time he lived there?

A. I can't say that, I never known no Low tract.

Q. I am asking about him.

A. I don't know about him.

Q. You are a very good friend of M. S. Turner?

A. I try to be a friend to everybody.

Q. You live near him?

A. I try to be a friend to everybody.

Q. The fact of the matter he is a debtor of yours is he not?

A. Who?

Q. Shay Turner. Have you loaned him any money?

A. No sir.

Q. If Mr. Geo. J. Britt would testify that the Low tract of land was situated or located on both sides of the Tar road and that it adjoined the Matilda Bracy home place on the South and adjoined the Pope place on the North and that the house built by A. J. Turner was built on the Low tract of land and not on the Matilda Bracy home tract, what would you say to that?

A. What would I say, I don't know whose land it was built on I know when it was built.

Q. Do you know from whom A. J. Turner acquired the Westry tract of land?

A. From who he required that, from Uncle Shay, it was willed to him by Uncle Shay.

Q. You don't mean willed you mean deeded or conveyed?

A. Deeded to him by Uncle Shay.

Q. In fact A. J. Turner lived as a boy with Shadrack Bracy, he was brother of Matilda Bracy, and they were daughter and son of Mills Bracy?

A. Yes sir.

Q. Do you know how long M. S. Turner, known as Shay Turner, has been in possession of the tract of land known as the Wyley Turner tract, he received under will of Matilda Bracy?

A. I think it was willed to him the same time the will was made.

Q. How long has he been in possession of it?

A. Ever since the will was made.

Q. Do you know how old Shay was at the time of Matilda Bracy's death?

A. No, course he has not been there since then, because he was not large enough, a few years not many after her death, I don't remember exactly when he went there.

Q. You don't know how old Shay is?

A. I reckon forty, close about it.

Q. Did I understand you to say you didn't know the size or acreage of the Wyley Turner tract?

A. No sir.

Q. Did you ever hear anyone lay claim to the tract of land that the house is on built by A. J. Turner, as being a part of the Westry tract and that they wanted to claim it as a part of the Westry tract.

A. I don't know, I heard so much I probably might have heard that too.

Q. Who did you hear claim it?

A. I couldn't tell you.

Q. Persons or Roberts?

A. I couldn't tell you it's been such a stir over it.

Q. That's true, do you know the contentions of M. S. Turner and John Turner with reference to that particular piece of land?

A. No, I don't know.

Q. Do they claim that it is the Westry tract of Matilda Bracy tract or part of the Low tract or Pope tract or part of the old home place as you contend.

A. I think they claim it is a part of the Westry tract.

Q. Part of the Westry tract?

A. I think so.

Q. In your testimony you think it is a part of the home tract?

A. I don't know.

Q. You stated so in your testimony.

A. I said the 150 or 160 acres in the home place.

Q. You stated previously in your testimony that where Jack Turner built this house was a part of the Matilda Home tract.

A. I don't know whether it is or not.

Q. Do you want to retract your former statement.

A. Yes.

Q. You don't know; do you know what constitutes the home place, or are you simply giving us a sort of general uncertain notion about it. What is the home tract?

A. Why the home tract-

Q. You said the land upon which the house was built by Jack Turner now you say you don't know.

A. I don't know which tract it was but the Westry tract came to

A. J. Turner, Aunt Tildy and Uncle Shay lived on the home tract, she heired the home place from Uncle Shay, as far as either tract I don't know.

Q. As a matter of fact your knowledge is not specific enough to be of much value, only in sort of a general way?

A. Well, that's alright, I been knowing it all my life.

Mr. Geo. F. Whitley:

Q. Mr. Gray it appears from the testimony which you gave some weeks ago and your testimony today that you are somewhat mixed up as to what constitutes the home place, or the tract of land which was left to A. J. Turner for life, with remainder to his heirs as provided in the will and the other tracts of land. I want to see if I can't straighten this testimony out, I understand that you lived on this 150 acre tract called the home place, and the tract left to A. J. Turner for life, that you lived on this tract with Matilda Bracy?

A. No I stayed with her nights, Uncle Shay died and was buried and from the 6th of October til Christmas I simply stayed there nights, she didn't have anyone with her.

Q. You stayed and looked after her; she was living on the 150 acre tract?

A. Yes, at the old place.

Q. At the old place. Now, then you went upon this land some weeks ago, on a Saturday with W. F. Beale and Bracy for the purpose of estimating its value, did you not?

A. Yes sir.

Q. Did you notice a ditch running across the field dividing, representing a dividing line between this home place from the land on which a house was built by A. J. Turner?

A. Yes sir.

Q. C. Davis: Counsel for the defendants J. T. Nelms and Gurlie Nelms and Mary A. Frye, objects to the question on the ground that it is highly leading and asks that it be stricken out.

Q. Mr. Gray will you give us the dividing line between the 156 acre tract, which was given A. J. Turner for life and the tract of land

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on which the house was built by A. J. Turner.

Q. C. Davis: I think the proper question should be, does he know whether not there exists any dividing line.

E. H. Williams, Commissioner:

Q. Can you give the boundaries, or can you go on the land and go around the boundaries of the home tract of Matilda Bracy?

A. Can I do it, yes if either of you come over there I can go with you.

Q. Describe the boundaries.

A. I don't know exactly, to get at it, it corners on Jesse Whitley's crosses the field to the head of this ditch and from the head of the ditch crosses the tar road to the red house up to Charlie Robertson's line, then I know the balance of it, I can take either one of you through there where the lines is.

Q. The house that Turner built within that boundary that you mention?

A. The house he built is across the road ain't over 150 or 200 yards from the line, three hundred yards would take the house in.

Q. Does the 150 acre tract cross the tar road?

A. I don't know, I don't think so there is a ditch there.

Q. If you can't tell whether it crosses the road how can you say you are familiar with the land?

A. I am familiar with it but I don't know one tract from the other. I know the land Uncle Shay possessed during his life time.

Geo. F. Whitley:

Q. You said something about a ditch being the dividing line, will tell me where that ditch runs - from and to.

A. Where it runs from and to. Why I think there is a branch there close to the fence, at the end of this ditch a white oak, this here ditch goes right along across the field to the woods fence and that ditch strikes a branch near the fence, the branch goes down the ditch and this line turns a little to the left or right and goes out to the road.

Q. Then does this ditch divide the 156 acre tract from the land on which A. J. Turner built the house?

A. That's what they tell me.

Did
Q. They always tell you that was the line ?

A. Yes.

Q. You have been living there seventy five years?

A. Sixty five.

Q. So you have understood that the ditch is the dividing line?

A. Yes.

Q. When you went on this piece of land, 156 acres, to assess its value-

A. I tried to-

Q. And see its condition that you took all the land from this ditch back the other way as constituting the 156 acre tract, and when you assessed the value on the land did you assess the value on the land on which A. J. Turner built the house?

A. No sir.

Q. If that is so your testimony as to the 156 acres is wrong?

Q. C. Davis: I want to object to that line of questioning because it is leading and because it is attempting to correct on part of the Counsel for the complainant the testimony in chief of this witness and also testimony on cross examination and it is more or less a summary of idea of Counsel.

Q. What direction does this ditch run, North, South East or West?

A. I think it kinder runs North and East, something like that.

Q. Which direction does the road run, the tar road?

A. I should say that the tar road runs kinder North and East.

Q. Which side of the road is the ditch on?

A. Ditch is on the right hand side.

Q. East, West, North or South?

A. South, as you went down the road, I can't tell you where East or North is here.

Q. C. Davis; re-cross examination.

Q. Mr. Gray, if there is actually a Low tract of land in existence, and since you have stated under oath that you don't know what tract of land A. J. Turner built his house upon, would you be willing to state under oath that the tract of land that the house is on that A. J. Turner built and the land across the

the road from it to the South on the tar road up to and adjoining this ditch is not the Low tract of land, as willed to Eva R. Turner, by the will of Matilda Bracy?

A. Low tract, I never known anything about the Low tract.

Q. Do you know whether not the house that A. J. Turner built is on the 156 acres tract of land?

A. Is on the 156 acres, they say not.

Q. Don't you know?

A. The line divides it and cuts the house off from the old home tract.

Q. Then if I understand it the land that the house is on built by A. J. Turner is on one side of the ditch and the 156 acres on the other side.

A. Yes sir.

Geo. F. Whitley:

Q. When you went over on this property to look at its condition and for the purpose of valuing same you went with W. F. Beale and Bracy did you not?

A. Yes.

Q. State whether not you pointed out to Beale and Bracy the dividing line between the home place or the 156 acre tract and the other tract.

A. Yes, pointed it out to them.

Q. Where was it?

A. At the oak at the head of the ditch and then across the field next to the school house, used to be.

Q. Did you tell them that was the line?

A. Yes.

Q. Then on one side of the line is 156 acres?

A. Yes.

Q. The other, on which A. J. Turner built house and lived?

A. Yes sir.

Q. How long have you known the dividing line?

A. Ever since I was large enough to recollect.

Q. Why was it this morning you told Mr. Davis that was all the property?

A. I just want thinking what I was talking about, something else on my mind.

Q. C. Davis:

Q. Can you give the Commissioner some information with reference to the value of the timber, that is on the tract of land that you know?

A. Timber?

Q. On the Bracy Home Place?

A. Well, I about estimated the timber to be worth something like \$2500.00 or \$3000.00.

Q. And the land without the timber?

A. I put that at about \$1000.00, the land and lumber about \$4000.00.

Q. Since the death of Mr. A. J. Turner has this land or any part of it been in cultivation?

A. Oh yes sir.

Q. Please state who cultivated it?

A. The boys been cultivating the land.

Q. What boys do you mean?

A. Turner boys, Lennie and John.

Q. And Shay?

A. Shay might have cultivated the land once or twice.

Q. How much land is taken in cultivation in this 150 or 160 acre tract or how much is tillable?

A. I reckon some 25 or 30 acres, there is pine bushes grown up on part of it.

Q. How much has been cultivated since his death ?

A. I reckon some thirty or more acres.

Q. What's the usual crop grown there?

A. Corn and peanuts.

Q. Could you say what the average crop would be on that acreage?

A. I couldn't say.

Q. What would the average acre of peanuts yield the average year?

A. The average year, a portion of that land I don't think the average would be much over twenty bushels to the acre.

Q. In corn?

A. Well, it just depends on what is done to it, it would be very small if it want right smart fertilizer used.

Q. Mr. Gray, since Mr. A. J. Turner's death what timber has been cut and removed?

A. What timber cut and removed, I don't know as much been cut.

Q. You say you lived right near there, say if you know.

A. I don't know.

Q. And who cut the timber on the Home Place?

A. I don't know as any has been cut since Jack died.

Q. Some has been cut on the other place on which the house is located that Jack built?

A. Yes sir.

Q. Who rents the place this year, who tends the place and cultivates the land on the Home Place this year.

A. I haven't been there.

Q. Who last year?

A. Lennie, I think.

Q. Year before?

A. Probably Lennie and Bunyan Carr.

Q. Who the year following A. J. Turner's death?

A. I don't remember.

And further this deponent saith not-

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Mr. W. F. Beale being duly sworn deposes and says:

Cross Examination by Q. C. Davis:

Q. Mr. Beale you have testified that you went over the 150 acre tract of land devised to A. J. Turner for life on some Saturday, with whom did you go over that tract of land?

A. J. E. Gray, R. S. Bracy, we were the three appointed, Shay and John Turner.

Q. Gray and who else?

A. R. S. Bracy.

Q. You are familiar, I understand, with this land?

A. Yes sir.

Q. Do you recollect how much land is tillable?

A. I would say twenty five acres, that is in order to cultivate now as it is.

Q. Some of it has grown up?

A. Yes.

Q. The balance in timber?

A. Yes.

Q. How much is in timber?

A. Five or six acres, probably might be a few more.

Q. What is the character of the timber?

A. Mostly pine.

Q. And you are familiar with ^{the land to tell} one tract from another ?

A. No, no, no more than what they showed me.

Q. Those that you mentioned were the ones who showed you?

A. Yes.

Q. Who?

A. J. E. Gray and Bracy.

Q. Was he, Mr. Gray, any more enlightening on that occasion than he is illuminating this morning?

A. I am pretty sure he was, I want by what he said all the balance said the same thing.

Q. In other words he was better on the ground that he was here?

A. He was alright.

Q. You placed the fee simple value at \$3750.00, is that your

estimation?

A. Yes.

Q. In arriving at that estimate how did you value the timber?

A. Well, I valued the timber about \$2500.00, or probably \$2750.00 then the land some where around \$1000.00.

Q. That would give you how much an acre?

A. That would give me - some where about thirty acres inside the fence which could be cultivated, course I said thirty acres, that would be thirty three and a third dollars an acre\$, that is for the open land, a thousand dollars for the open land.

Q. You valued the other with the land and timber?

A. Yes.

Q. How far do you live from this particular location?

A. About two miles along the road.

Q. Did you hear anything about the Westry tract?

A. Well, I don't know anything about the Westry tract.

Q. Know anything about the Wyley Turner tract?

A. No more than what they told me, I am not familiar with these different tracts.

Q. Did you ever hear of a Low tract?

A. No, no.

Q. Did anybody ever mention it to you that it was in dispute or litigation?

A. I have heard about it.

Q. You don't know any more about the Low tract than any other?

A. No.

Geo. F. Whitley:

Q. Was Mr. Gray positive about the lines dividing this tract or bounding it?

A. Yes he was positive about these lines, every now and then I'd ask how far and which way, and we went right across the field like the line went.

E. H. Williams:

Q. Are there any trees with marks on them?

A. Mr. Gray started at a corner of Jesse Whitley's fence running in an Easterly direction to an oak tree, about twenty yards on the north side of this ditch?

Q. Any-marks on this tree?

A. Old marks, chopped you know and then running right across the field back of the old school house to the road then to a swamp in a southerly direction, after striking a pine tree at the road.

Q. Was the oak tree the only tree with marks?

A. Yes, I told you we didn't start right on the line they told me where the lines were.

Q. You didn't see any monuments or anything that would mark the line outside the tree?

A. No.

Q. The road you refer to is that the tar road?

A. Yes sir.

Q. C. Davis:

Q. Does this property come to the tar road?

A. No.

Q. What has it to do with the property coming to the tar road?

A. I said the line runs across the field near the Windsor road, near the Red house.

Q. To the road?

A. Back of the school house.

Q. Comes to the tar road?

A. I know it comes out to a little branch up there just the other side next to the Windsor road that's what they told me, next to the swamp, on the south side of the ditch.

Geo. F. Whitley:

Q. Was the little swamp beyond the school house? A. Yes.

Q. The line comes out near the tar road? A. Yes.

Q. Any of it on the tar road? A. Not what I know as the tar road.

Q. C. Davis:

Q. Mr. Beale, after viewing this property as shown to you by the gentlemen you mentioned, in your opinion is this property

advantageously susceptible to partition, what I mean would it be more advantageous to divide this piece of land into equal parts among the heirs or better to have it sold and divide the proceeds?

A. My opinion it would be better to have it sold.

And further this deponent saith not-

-----oOo-----

L. H. Turner being duly sworn deposes and says:

Q. C. Davis:

Q. I believe your name is L. H. Turner?

A. Yes.

Q. What do the initials stand for?

A. Lennie Harrison.

Q. And you are the son of A. J. Turner?

A. Yes.

Q. In your examination in chief in response to a question Mr. Whitley asked, "What year were you born in," you reply was that you didn't know.

A. I don't.

Q. You know you are living that's about as strong as you can go. Are there any younger brothers or sisters than yourself?

A. No.

Q. You are the youngest child?

A. Yes.

Q. Mr. Gray said he didn't know who was the oldest, would you mind stating the oldest child of your father that you know?

A. I couldn't do that I just don't know.

Q. You don't know the oldest?

A. I do remember I am the youngest, all the rest were larger.

Q. Did you know Eva R. in her life time?

A. Yes.

Q. Before she married J. T. Nelms?

A. Yes.

Q. Do you remember when she died?

A. Yes.

Q. Do you know whether not she was older than your living brothers and sisters.

A. That I do not.

Q. Whether older than Shay or John?

A. So far as I know I do not know, come down to swearing I don't know.

Q. Every brother and sister knows how they come along, that is general common knowledge, of your general common knowledge was she the oldest, or younger than you.

A. She was the oldest.

Q. Were you an enlisted man in the U. S. Army during the World's War?

A. I was.

Q. Where was your local draft board?

A. Where was it, Zuni. I think.

Q. You registered at Zuni?

A. Yes.

Q. You registered with?

A. R. A. Horne.

Q. In registering you gave the date and year of your birth?

A. I did.

Q. You recollect what you gave?

A. September 12, 1891.

Q. Was the age you gave at that time made of record?

A. Yes.

Q. Where did you get your age and date of birth you gave when you registered, who gave it to you?

A. It was a general rumor among the family, some say 1888, 1889
1890 and 1891.

Q. You gave it as September 12, 1891.

A. I didn't say, some people say I was born that year some say
earlier than that.

Q. You mean to tell the Court you didn't get your age from your
mother?

A. I do, I never asked her my age in my life until about a
month ago, something like that.

Q. Does she know?

A. Yes, she says she does, she told me ~~kn~~ longer than this morn-
ing she couldn't remember the year I was born, but she knows
when Matilda Bracy died and she remembers distinctly that I
was a baby at the time of her death.

Q. So you don't know where you got September 12, 1891?

A. I wouldn't say any special person.

Q. It was no particular advantage to make yourself younger by
giving the youngest date rather than giving the oldest date
you were alleged to have been born?

A. It would not make any particular difference in registering.

Q. You didn't gain anything by giving 1891, nor you wouldn't
have gained by giving 1888?

A. I wouldn't.

Q. You selected this latest date for what reason?

A. I didn't have any reason, I have signed other contracts fifteen
and twenty years ago over and under 1891.

Q. Are you interested in the subject matter of this litigation,
this tract of land, the Bracy home place, your interest is
what?

A. My interest.

Q. At the time of the institution of this suit?

A. A two sevenths.

Q. And how did you arrive at that.

A. One reason because I believe what they say that I was born
at the time of Matilda Bracy's death.

- Q. That gives you a one seventh.
- A. I have consulted several lawyers and they said I didn't have to be born at Matilda Bracy's death to be an heir; you told Judge White you only claimed a one seventh interest in that land. I have most any kind of a reason.
- Q. You said a two sevenths. I know you claim a one seventh as an heir.
- A. I bought a right.
- Q. Whose rights?
- A. Two brothers and myself, Mattie S., Annie S. Stephenson and Nettie L. Carr.
- Q. Then I understand the acquired interest of three sisters?
- A. Yes.
- Q. Whatever rights they had in the property?
- A. Yes.
- Q. Is your interest, if any you have, or any the interest of any other parties in this tract of land encumbered?
- A. I don't know.
- Q. Are there Deeds of Trust against your interest or other parties?
- A. I gave a Deed of Trust, I disremember which tract it was on, I don't know whether it included both tracts or not.
- Q. To whom? Your sisters?
- A. Yes.
- Q. You have made some little exhaustive legal investigation into the title of this tract of land personally?
- A. Yes sir. I've been investigating five years.
- Q. You have examined the records in the Clerk's Office of the Circuit Court of Isle of Wight County, have you not?
- A. Yes.
- Q. You are pretty familiar with running down titles to property?
- A. I feel like I know this by heart.
- Q. And possess that legal knowledge sufficient to intelligently pass upon conveyances from one person to another?
- A. Yes sir.
- Q. You don't lay claim to any specific legal technical qualificat-

ion, do you?

A. No sir.

Q. I will display your technique in answer to one of my friend's questions. This question was propounded to you, "Now I want you to tell me the different tracts of land owned by Matilda Bracy at the time of her death, together with the location and description of each tract". Of course if you were born at the time she died your knowledge would be rather meager or rather from hearsay or scrutiny of the records in the Clerk's Office.

A. That's where I obtained most of my knowledge, from the Clerk's Office.

Q. You stated in response to another question again asking what lands Matilda Bracy owned at the time of her death, you couldn't do that, you could tell what the records show. You stated that you had in your pocket some wills-

A. Yes.

Q. Are you familiar with the provisions contained in Matilda Bracy's will, which will the substance of this suit is predicated on?

A. Yes.

Q. You recollect the first item in that will?

A. Yes sir.

Q. You recollect the second item in that will?

A. Yes sir.

Q. Now, you stated that the only two tracts you are familiar, please name these two tracts again.

A. The two Matilda Bracy owned by record.

Q. Two you refer to in answer to questions in chief.

A. I don't remember the questions.

Q. Well you made this statement "For me to sit here and tell you the different tracts she owned I can't do that", is that true?

A. Yes.

Q. That statement is true? A. Yes.

Q. "Come down to how much Matilda Bracy owned, I can tell you

two tracts, but how much she owned I can't tell that. Miles Bracy owned a tract he never mentioned in his will, neither did Shady, nobody knows where it is."

A. That's true.

Q. What two tracts do you refer to?

A. The Wyley Turner and the Home Plantation.

Q. Home Plantation?

A. Of Shay and Matilda Bracy.

Q. The Home Plantation willed by Matilda Bracy to A. J. Turner during his life?

A. Yes sir.

Q. Has that tract of land, as you know of, ever been surveyed.

A. Yes.

Q. You surveyed it.

A. Had it surveyed.

Q. By the same gentlemen I had to survey the Low tract?

A. Yes.

Q. After he surveyed the other tract for me?

A. Yes.

Q. You mind stating how many acres he showed in the Home Place?

A. A hundred and fifty nine and some hundredths. I disremember.

Q. Who gave him the boundaries and lines in order to make the survey, from what source did he receive assistance?

A. We got them from the Clerk's Office; we got the boundaries of land, started at one tree that was chopped and simply went around.

Q. Who ran the line, he had no instrument from the Clerk's Office to show him the lines?

A. John and M. S. Turner.

Q. Are your brothers parties to this suit?

A. Yes. Myself and S. J. Jakeman of Norfolk, I don't remember anyone else.

Q. Did you have Mr. Gray along at that time?

A. I don't remember. I think he was.

Q. Did you have any old man at that time?

A. I wouldn't say positive whether Mr. Gray was there or not.

Q. Was Joe Persons?

A. He was dead at that time.

Q. Geo. Britt?

A. No.

Q. Gus Turner.

A. Didn't have him either.

And further this deponent saith not-

8

M. S. Turner, et al,
Plaintiffs.

Vs: In Chancery.

L. H. Turner, et als,
Defendants.

4120-4124

Commissioner's Report.

Feb. 25-1927.

Filed.

Note: N.A. Eavor Jr.
Ch.

E. H. WILLIAMS,
ATTORNEY-AT-LAW.
SMITHFIELD, VIRGINIA

Commonwealth of Virginia,

To the Sheriff of Isle of Wight County—Greeting:

WE COMMAND YOU, That you summon

L. H. Turner, J. D. Nelson,
Lurline Nelson, Nellie Nelson, Mamie Frye,
and John L. Frye

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 December, 1925,
to answer a bill in chancery, exhibited against them
in our said Court by

Wm. S. Turner and John H. Turner.

And have then and there this writ.

Witness, R. A. EDWARDS, Clerk of our said Court, at the Courthouse, this 16th
day of December, 1925, and in the 150th year of the
Commonwealth.

R. A. Edwards Clerk.

M. S. Turner et al.

vs. }

CHANCERY NO. ~

L. H. Turner -

ORIGINAL SUBPOENA

Virginia, Clerk's office of the Circuit
Court of the County of Isle of Wight.

....., 19.....
Returned, entered and filed.

Teste:

.....Clerk

To 2nd Dec. Rules

1925

E. F. Whitley p. q.

Subpoena for Chgo. to Geo. F. Whitley

I executed the within on this the 17 day of
Dec. 1925 by Geo. F. Whitley
copy of this same made by Geo. F. Whitley
in the County of Isle of Wight a true
in person
Geo. F. Whitley
Sheriff of Isle of Wight Co.

Commonwealth of Virginia,

To the ~~Sheriff of Isle of Wight County~~ ^{Sargeant of the City of Newport} Greeting:

WE COMMAND YOU, That you summon L. H. Turner, J. D. Nelson;

Gerlie Nelson, Nellie Nelson, Marnie Frye,
and John L. Frye,

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 December, 1925,
to answer a bill in chancery, exhibited against them -
in our said Court by

Mr. S. Turner and John H. Turner,

And have then and there this writ.

Witness, R. A. EDWARDS, Clerk of our said Court, at the Courthouse, this 16th
day of December, 1925, and in the 150th year of the
Commonwealth.

R. A. Edwards Clerk.

Executed in the City of Norfolk,
Va., this the 18 day of Dec 1925
by serving a Copy hereof on
William Melms

IN PERSON.

C. H. TUMBLESON,

Sergt. City of Norfolk, Va.

By W. Carmine Deputy

Not finding William Frye
nor any member of his/her family
above the age of 16 years at his/her
usual place of abode I executed the
within process in the city of Norfolk,
Va., this the 18 day of Dec 1925
by leaving a COPY hereof posted at
the FRONT DOOR of his/her place
of abode.

C. H. TUMBLESON,

Sergt. City of Norfolk, Va.

By W. Carmine Deputy

Not finding John F Frye
nor any member of his/her family
above the age of 16 years at his/her
usual place of abode I executed the
within process in the city of Norfolk,
Va., this the 18 day of Dec 1925
by leaving a COPY hereof posted at
the FRONT DOOR of his/her place
of abode.

C. H. TUMBLESON,

Sergt. City of Norfolk, Va.

By W. Carmine Deputy

Sergants Feb 22

PAID

M. S. Turner
et al

vs.

CHANCERY NO. —

L. H. Turner et al

ORIGINAL SUBPOENA

Virginia, Clerk's office of the Circuit
Court of the County of Isle of Wight.

Returned, entered and filed. 19

Teste:

Clerk

To L. H. Turner Rules

1925

p. q.

Not finding William Melms
at his/her usual place of abode I exe-
cuted the within in the City of Nor-
folk, Va., this 18 day of Dec 1925
by delivering a copy hereof to his
wife

he being then there, a MEMBER
OF HIS/HER FAMILY and over
the age of 16 years, and giving infor-
mation of its purport to her/him.

C. H. TUMBLESON,

Sergt. City of Norfolk, Va.

By W. Carmine Deputy

Not finding J. T. Melms
at his/her usual place of abode I exe-
cuted the within in the City of Nor-
folk, Va., this 18 day of Dec 1925
by delivering a copy hereof to his
wife

he being then there, a MEMBER
OF HIS/HER FAMILY and over
the age of 16 years, and giving infor-
mation of its purport to her/him.

C. H. TUMBLESON,

Sergt. City of Norfolk, Va.

By W. Carmine Deputy

VIRGINIA,

IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT.

M. S. Turner and John W. Turner, *
Plaintiffs. *
vs. *
L. H. Turner, J. T. Nelms, Gurley *
Nelms, Nellie Nelms, his wife, *
Mamie Frye and John F. Frye, her *
husband, *
Defendants. *

The joint and separate answers of J. T. Nelms, Gurley Nelms, Nellie Nelms, Mamie Frye and John F. Frye, to a bill in chancery exhibited against them in the Circuit Court of Isle of Wight County, Virginia, by M. S. Turner and John W. Turner:

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

1st. The allegations contained in Item 1 of complainants' bill are admitted.

2nd. That the will of the said Matilda Bracy speaks for itself and will best show what devises are made therein, original of said will of the said Matilda Bracy is called for and that no admissions are made in this answer, except as to such facts as the said will shall disclose and all allegations inconsistent with the said will are hereby specifically denied.

3rd. That as to the allegations contained in Item 3 of said complainants' bill, these respondents call for strict proof of said allegations, but believe and are advised that said tract of land referred to in said allegations contains

considerably more than One Hundred and Fifty (150) acres and allege that said tract of land referred to is not accurately bounded and described therein.

4th. These respondents are advised and aver that the said L. H. Turner, one of the defendants, was not living at the time of the death of Matilda Bracy, and your respondents call on the complainants for strict proof showing that the said L. H. Turner or any others who claim under and by virtue of the will of Matilda Bracy were living at the time of the death of Matilda Bracy.

5th. Your respondents are not advised as to the correctness of the allegations contained in Item 5 of said complainants' bill and therefore call for strict proof of same.

6th. These respondents say that as to allegations contained in Item 6 of complainants' bill that they are not advised as to whether or not the said real estate referred to in Item 3 of said bill is susceptible of partition and call for strict proof of said allegations.

All further statements contained in the said bill which are not specifically admitted nor denied are herein neither admitted nor denied, and strict proof of each of said allegations is demanded.

These respondents, further answering, aver that one Shadrach Bracy, by his last will and testament bearing date on the 1st day of September, 1884, proved March 3, 1885, entered in Will Book 31, page 673, Clerk's Office of the Circuit Court of Isle of Wight County, gave and devised to his sister, Matilda Bracy, all of his property; that said Shadrach Bracy, by his deed, bearing date on the 1st day of September, 1884, Deed Book 48, page 14, Clerk's Office aforesaid, conveyed to A. J. Turner

the Wester Tract of land for his attention and kindness from childhood to present; that the said Matilda Bracy mentioned and referred to in complainants' bill, by her last will and testament, bearing date on the 24th day of August, 1886, and proved April 7, 1890, entered in Will Book 32, page 503, Clerk's Office aforesaid, gave and devised to Eva R. Turner, daughter of A. J. Turner, and the deceased wife of J. T. Nelms, one of your respondents, and the deceased Mother of Gurley Nelms and Mamie Frye, the Low Tract of land; to M. S. Turner, son of A. J. Turner, at her death the Wiley Turner Tract of land; to A. J. Turner, his life and at his death to his lawful heirs at her, the said Matilda Bracy's death, the balance of her real estate not above mentioned, etc.

These respondents further allege and aver that on the 26th day of February, 1904, Eva R. Nelms, formerly Eva R. Turner, the wife of J. T. Nelms, died leaving as her heirs at law, her husband, J. T. Nelms, and two children, namely, Gurley Nelms and Mamie Frye, who are both over the age of twenty-one; that A. J. Turner on the 20th day of August, 1920, died, leaving as his heirs at law the following: Gurley Nelms, Mamie Frye, children of Eva R. Nelms, deceased, the daughter of A. J. Turner, deceased, and the following children: M. S. Turner, John W. Turner, L. H. Turner, Nellie L. Car, Annie Stephenson and Mattie S. Car.

These respondents further allege and aver that Gurley Nelms and Mamie Frye, children of Eva R. Nelms, deceased, subject to the courtesy right of J. T. Nelms, own the following real estate in fee simple known as the Low Tract, by virtue of the will of Matilda Bracy above referred to, which is bounded and described as follows: All that certain tract of land situated in the County of Isle of Wight, in the State of Virginia, containing One Hundred and Thirty-two and Two One Hundred's (132.02) acres by survey and is bounded on the North by the lands of James

W. Robinson and the Pope Tract, on the East by the lands of John W. Roberts and J. S. Persons, on the South by the Old Bracy Homeplace, Jesse Whitley, Wiley Turner and others and on the West by the lands of James Gray and others, for a more particular description reference is hereby made to a map or plat made by J. R. Kirk, Surveyor, in June, 1921, a copy of which plat is attached hereto. That said Shadrach Bracy on the 1st day of September, 1884, conveyed to A. J. Turner, by deed, what was mentioned therein as the Wester Tract of land, acreage not stated therein. Subsequent thereto A. J. Turner conveyed to his wife, Nancy E. Turner, the same tract of land conveyed to him by Shadrach Bracy by deed dated the 1st day of September, 1884, and afterwards the said A. J. Turner and wife conveyed to J. S. Persons the aforesaid mentioned tract of land, and the said J. S. Persons on the same day conveyed all of said tract of land back to the said A. J. Turner, with the exception of Eleven (11) acres that he reserved. Later said A. J. Turner and wife conveyed to John W. Roberts a certain tract of land purporting to be a part of the Wester Tract.

Some of the heirs and parties to this suit claim and contend that the said A. J. Turner and wife did not convey all of the said Wester Tract of land in their lifetime and since the death of the said A. J. Turner there has been strong intimation on the part of some of the heirs of the said A. J. Turner that there is still left a part of the said Wester Tract owned by A. J. Turner at the time of his death and not conveyed during his lifetime. It is also contended and these respondents are informed that the said complainants and L. H. Turner contend that there is still a portion of the Wester Tract left undisposed of by their Father, A. J. Turner, deceased, and that same adjoins the Old Bracy Homeplace Tract on the North, the exact boundary lines between the Old

Bracey Homeplace Tract and the alleged remainder of the Wester Tract in dispute and undetermined. On the other hand, these respondents are informed that all of said Wester Tract was conveyed away by the said A. J. Turner and wife in their lifetime.

These respondents further allege and aver that there is a dispute between the parties to this suit as to the true boundary line between the said Old Bracy Homeplace Tract and that Tract of land lying to the South of said Tract, which said Tract these respondents allege there are various contentions and claims made concerning by some of the heirs at law of the said A. J. Turner, deceased, which are calculated and do tend to dispute the boundary lines of the said Old Bracy Homeplace Tract and to make uncertain the true boundary lines thereto.

These respondents allege that the Low Tract of land above set out is the tract of land that some of the heirs and parties to this suit are confused about and are claiming is that which was left of the Wester Tract, which was not conveyed away by the said A. J. Turner and wife during their lifetime.

To avoid a multiplicity of suits and to establish and settle forever the true boundary lines of the aforesaid real estate, the title thereto, the interest of the various parties therein, to ascertain and determine the question as to whether A. J. Turner died seized and possessed of any part of the Wester Tract of land and for a partition of any part of the Wester Tract, if any, these respondents pray that this answer be treated as a cross-bill and these respondents further aver and allege that the Old Bracy Homeplace Tract above set out and any part of the Wester Tract, if any, of which A. J. Turner may have died seized and possessed of, are, as they believe susceptible of partition among the parties entitled thereto; but should the property not be

divisible in kind, respondents believe that the interest of those who are entitled to the said real estate referred to in this suit, or its proceeds, will be promoted by the sale of the whole of the same, or by an allotment of part and the sale of the residue.

And now, these respondents for further answer unto said bill of complaint and by way of a claim for affirmative relief, in view of the facts set forth above, pray that the same be treated as a cross-bill; that the said M. S. Turner and John W. Turner and L. H. Turner may be made party defendants to this answer, setting up a claim to affirmative relief by way of a cross-bill and required to answer the same as fully and particularly as though said allegations were here again repeated, but answer under oath is expressly waived; that proper process issue, that the real estate above referred to, that is, the Old Bracy Homeplace Tract and the Wester Tract of land, if any there be, be determined as to their respective lines and titles and as to the interest of the parties therein; that the said real estate be divided and partitioned between the parties entitled thereto, or else that it be sold and the proceeds divided among the parties according to their respective rights; that an account be taken of the rents and profits of all of the real estate from the time that the right of possession accrued to the respective parties hereto; that all proper orders and decrees may be made, accounts taken, and inquiries directed; that all proper costs and fees may be allowed to Counsel for respondents in this cause for conducting this suit and that these respondents may have all such further and other and general relief in the premises as the nature of their case shall require, or to equity shall seem meet.

And now, having fully answered the complainants' bill, these respondents pray that the complainants' bill may be

dismissed as to these respondents with their reasonable costs,
etc.

J. J. Nelms

Garley Nelms

Nellie Nelms

Mamie Frye

John T. Frye,

By J. J. Nelms p. 9. their counsel.

7
VIRGINIA,
IN THE CIRCUIT COURT FOR THE
COUNTY OF ISLE OF WIGHT.

M. S. Turner and John W. Tur-
ner,
Plaintiffs.

vs.

L. H. Turner, J. T. Nelms,
Gurley Nelms, Nellie Nelms,
his wife, Mamie Frye and
John F. Frye, her husband,
Defendants.

ANSWER.

Q. C. DAVIS, JR.
ATTORNEY AND COUNSELLOR AT LAW
PROFESSIONAL BUILDING
MAIN STREET AND BERKLEY AVENUE
NORFOLK, VIRGINIA

5/28/26 Recd F.
R. W. S.

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

M. S. TURNER and
JOHN W. TURNER,

Plaintiffs,

v.

L. H. TURNER AND OTHERS,

Defendants.

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

The answer of L. H. Turner to a bill in equity exhibited against him and others in the Circuit Court of Isle of Wight County, Virginia, by M. S. Turner and John W. Turner.

This respondent, saving and reserving to himself the benefit of all exception which may be had or taken to the said bill, for answer thereto or to so much thereof as he is advised it is material he should answer, answers and says:

It is true that Matilda Bracy died testate, leaving a will, Item 3 of which was as follows: "I give and bequeath to A. J. Turner his life and at his death to his lawful heirs at my death, the balance of my real estate not named above".

It is also true that said real estate is as described in complainants' bill, and that this respondent and the other persons named in said will are the heirs at law of said A. J. Turner living at the death of Matilda Bracey, and that this respondent and the said complainants are now the owners of the interest of Annie Stephenson, Mattie Carr and Nettie Carr.

As to all of the other allegations of said bill, this respondent calls for strict proof.

And now having answered complainants' bill, he prays to be hence dismissed with his reasonable costs, etc.

L. H. Turner

*J. H. Corbin }
J. W. Schaefer } L. H.*

6
VIRGINIA: IN THE CIRCUIT
COURT OF ISLE OF WIGHT
COUNTY.

M. S. TURNER and JOHN W.
TURNER, Plaintiffs,

v.

L. H. TURNER AND OTHERS,
Defendants.

Answer of

L. H. Turner.

af. 24th 1926. Filed

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

VIRGINIA,

IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT:

.....

M. S. Turner and John W. Turner,..... Plaintiffs.

v.) In Chancery.

L. H. Turner, J. T. Nelms, Gurlie
Nelms, Nellie Nelms, his wife,
Maimie Frye and John F. Frye, her
husband,..... Defendants.

.....oOo.....

TO THE HONORABLE JUDGE,

OF THE CIRCUIT COURT FOR THE COUNTY OF
ISLE OF WIGHT:-

Your complainants, M. S. Turner and John W.
Turner, complaining, sheweth unto your honor:-

First: That Matilda Bracy died, testate, about
thirty years ago, seized and possessed of certain real
estate, located in the County of Isle of Wight.

Second:- That by the last will and testament of
the said Matilda Bracy, a certified copy of which is
filed herewith and is prayed to be taken and read as a
part of this bill, the said Matilda Bracy, after dispos-
ing of a certain portion of the real estate owned by her,
devised the remainder of her real estate to A. J. Turner,
for life, and after his death to his lawful heirs living
at the death of the said Matilda Bracy.

Third: That the remainder of the said real estate
so devised to the said A. J. Turner for life is located in
Hardy Magisterial District of the County of Isle of Wight
and contains about One Hundred and fifty acres and is
described as follows: Bounded by the lands of Jesse Whitley,
known as the Matthew Turner place, the lands formerly belong-
ing to Henry Thorne, the lands of Peter Bradshaw, Jake

Bradshaw and others.

Fourth:- That A. J. Turner departed this life during the year 1920; that at the death of Matilda Bracy the following named children of the said A. J. Turner were living, Eva R. Turner, Nettie Turner, Annie Turner, Mattie Turner, M. S. Turner, John W. Turner and L. H. Turner, all of whom are the lawful heirs of the said A. J. Turner; that all of said children of the said A. J. Turner are now living, except Eva R. Turner, who married J. T. Nelms, and who died some fifteen or more years ago, leaving surviving her J. T. Nelms, her husband and the following named children, Gurlie Nelms and Maimie Nelms; that Gurlie Nelms has since married Nellie Nelms and Maimie Nelms has since married John F. Frye.

Fifth:- That your complainants and L. H. Turner, one of the defendants, are now the owners of the interests of Annie Turner, now Stephenson, Mattie Turner, now Carr, and Nettie Turner, now Carr, in the said real estate, which said interests were conveyed to your said complainants and the said L. H. Turner by deed dated March 30th, 1923, and recorded in the Clerk's Office of the County of Isle of Wight in D.B. 93, page 535.

Sixth:- That the said real estate, as your complainants believe, is susceptible of partition among the parties entitled thereto, but if it cannot be so divided then your complainants desire that the same be sold and the proceeds divided among the parties hereto, according to their respective rights.

For as much, therefore, as your complainants are remediless in the premises, save by the aid of a Court of Equity, they pray that the said L. H. Turner, J. T. Nelms, Gurlie Nelms, Nellis Nelms, his wife, Maimie Frye and John F. Frye, her husband, may be made parties defendant to this bill and

required to answer same, but answer under oath is hereby waived; that proper process issue; that the said real estate be partitioned among the parties entitled thereto, or else that it be sold and the proceeds divided, in case it be indivisible in kind; that all proper orders and decrees may be made and all such further and general relief as in the premises may be just and right may be granted. And notice is hereby given that proper counsel fees will be asked for during the progress of this suit. And your complainants will ever pray.

M. L. Turner
John W. Turner
By Counsel.

Geo. F. Whitley pg.

M. S. Turner and Jno. W. Turner
Plaintiffs

v) In Chancery.

L. H. Turner, J. T. Nelms,
Gurlie Nelms, Nellie Nelms,
~~his wife, Maimie Frye and~~
John F. Frye, her husband,
Defendants.

*Filed
12/22/25*

B I L L.

Dec 16-1925

*Memo filed - process issued
for defdts names and mailing.*

2nd Dec. Rule - Dec. 20-25.

*Process returned, executed
upon all defendants
named - Bill filed.*

*Third Dec. Rule 1925. Dec.
27-1925. Defendants failing
to appear to plead, answer etc -
Cause set down for hearing.*

GEORGE F. WHITLEY

ATTORNEY-AT-LAW

SMITHFIELD, VA.

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

April 19, 1926.

Mr. R. A. Edwards, Clerk,

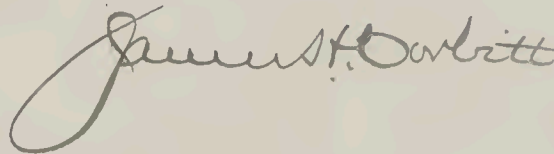
Isle of Wight C. H., Va.

Dear Mr. Edwards:

In re: M. S. Turner and John W. Turner
v.
L. H. Turner and others.

I am herewith enclosing the answer of the defendant, L. H. Turner, with an order entered by Judge White allowing the same to be filed. Judge White has requested that I forward these papers to you so that you can put such date on the order as suits the dates on the Order Book.

Very truly,



JHC/K

cc- Judge B. D. White,

Mr. John N. Sebrell, Jr.

Apr 21-76

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

R. A. Edwards, Clerk

Mamma Frye
129, Princeton ave
Norfolk
Va

All the others live in "
nighttown.

6
4
5

15

Marnie Frye

129 Princeton ave.
Norfolk Va

J. T. Nelson

205 Princeton ave.
Norfolk Va.

G. L. Nelson

205 Princeton ave.
Norfolk Va

No.

Know all Men by These Presents: That we Geo. F. Whitley

principal

and

The Fidelity and Deposit Company of Md. surety

are held and firmly bound unto the Commonwealth of Virginia in the just and full sum of five thousand 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 George F. Whitley principal

and the said Fidelity and Deposit Company of Maryland surety

by R.A. Edwards, its duly authorized

agent and attorney in fact, has caused its corporate name and seal to be hereunto affixed, the said seal to be attested

by the signature of the said R. A. Edwards, its said agent and attorney

in fact, this, the 9th day of March A. D. 1927.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the above bound George F. Whitley, who was by a decree entered in the Circuit Court of the County of Isle of Wight, Virginia, on the 7th day of March, 1927, appointed a special commissioner in the Chancery cause therein pending under the style of M. S. Turner et als vs. L. H. Turner, et als, docket No. 474.

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

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

Geo. F. Whitley [SEAL]

Fidelity and Deposit Company of Maryland

By R.A. Edwards

Its duly authorized agent and attorney in fact.

Attest: R.A. Edwards

Agent and attorney in fact.

Virginia: In the Clerk's Office of the Circuit Court of the County of Isle of Wight the 9 day of March 1927, this bond was duly executed and acknowledged by the obligors to the same and ordered to be recorded.

R.A. Edwards Clerk.

A Copy.
Dated R. A. Edwards
clh

10

M. S. Turner et al.

Cy # 494.

L. H. Turner et al.

a copy.

Filed. March 9-1927.

Teste N. G. Edwards
clh.

Everett Wadley Co.
Stationers and Printers
Richmond, Va.

Form No. 310—Clerk's Certificate that Commissioner has given Bond. Code 1919, Sec. 6269.

Virginia: In the Clerk's Office of the District Court of the
of Isle of Wight

J. B. Turner et als. Plaintiff , }
AGAINST Chancery No. 474
J. B. Turner et als. Defendant , }

I, R. A. Edwards, Clerk of the said Court, do certify that
the bond required of the Special Commissioner by the decree rendered in said cause on the
7th day of March, 1927, has been duly given.

Given under my hand as Clerk of the said Court, this 7th day
of March, 1927.
R. A. Edwards Clerk.

18
M. S. Turner et al

28. 474

L. H. Turner et al.

Certificate of bond
having been given
Filed.

3/9/27

Wm. N. A. Edwards,
clerk

VIRGINIA,

IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT:

.....

M. S. Turner and John W. Turner,.....Plaintiffs.

v.) In Chancery

L. H. Turner, J. T. Nelms, Gurlie
Nelms, Nellie Nelms, his wife,
Maimie Frye and John F. Frye her
husband.....Defendants.

.....

TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF
ISLE OF WIGHT:

Issue summons in Chancery to Second December
Rules, 1925.

W. A. White, pq

/
M. S. Turner et als

v) In Chancery

L. H. Turner et als

Memorandum.

12/16/25 Paid

Ref: 800

12/16/25

Process Sent to Sgt Hphlth

" " 544 S. C. W.

Advanced Cost to

Sgt- Naifala 250

12/16/25.

VIRGINIA,

IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT:

M. S. Turner, et al,..... Plaintiff,

VS.

L. H. Turner,.....Defendants,

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT FOR THE
COUNTY OF ISLE OF WIGHT:

This cause came on this day to be ^{again} heard on
the papers formerly read and on the report of Geo. F.
Whitley, Special Commissioner, this day by leave of
Court filed, to which report there are no exceptions,
and was argued by counsel, *and it*

^{and} It appears from said report to-gether with the
receipts returned therewith that the said Special Com-
missioner has collected from M. S. Turner, John W. Tur-
ner and L. H. Turner, the sum of THIRTY FIVE HULDRED
DOLLARS (\$3500.), the same being the amount for which
the land in the bill and proceedings mentioned sold;
that the said Commissioner has executed and delivered
to the said M. S. Turner, John W. Turner and L. H. Tur-
ner a good and sufficient deed conveying the said land
to them; that the said Commissioner has paid the Court
cost amounting to THREE HUNDRED AND SIXTY ONE DOLLARS
AND SIXTY FIVE CENTS(\$361.65) and has reserved to pay
delinquent taxes the sum of THREE HUNDRED AND SEVEN
DOLLARS AND THIRTY TWO CENTS (\$307.32); leaving a bal-
ance in hand of TWO THOUSAND EIGHT HUNDRED AND THIRTY
DOLLARS AND SEVENTY THREE CENTS (\$2,830.73) to be dis-
tributed; that he has paid out FOUR HUNDRED AND FOUR
DOLLARS AND THIRTY NINE CENTS (\$404.39) one seventh (1/7)
of the above balance in hand representing the interest
of Gurlie Nelms and Mamie Frye subject to the curtsey in-
terest of their father, J. T. Nelms, in said amount as

follows;

To J. T. Nelms, curtesy interest as of the age
of 53 years, ... 80.75

To Gurlie Nelms, his distributive share, ... 161.82

To Mamie Frye, her distributive share, ... 161.82

that he has paid out the distributive share of M. S. Turner, amounting to EIGHT HUNDRED AND EIGHT DOLLARS AND SEVENTY EIGHT CENTS (\$808.78) being a two seventh (2/7) interest, as follows:

To Annie O. Stephenson, Mattie S. Carr and Nettie
L. Carr, beneficiaries under a joint deed of trust
executed by M. S. Turner, John W. Turner and L.H.
Turner, ... \$450.00

To *M. S.* Turner, balance of his distributive share, ..358.78

that he has paid out the distributive share of L. H.

Turner, amounting to EIGHT HUNDRED AND EIGHT DOLLARS
AND SEVENTY EIGHT CENTS (\$808.78) being a two sevenths
(2/7) interest as follows:

To R. A. Edwards, Clerk, judgment Comth. of Va. 50.05

To C. S. Betts, judgment, ... 59.52

To R. A. Horne, judgment, ... 156.40

To Annie O. Stephens, Mattie S. Carr and Nettie
L. Carr, beneficiaries under joint deed of
trust executed by L. H. Turner, John W. Turner
and M. S. Turner, ... 450.00

To John N. Sebrell and James H. Corbitt, to be
applied on deed of trust, ... 92.81

that he has paid out the distributive share of Jno. W.

Turner, amounting to EIGHT HUNDRED AND EIGHT DOLLARS
AND SEVENTY EIGHT CENTS (\$808.78) being a two sevenths
(2/7) interest as follows:

To Jno. L. Gay, judgment, ... 60.95

To C. S. Betts, judgment, ... 40.83

To M. S. Turner, judgment, ... 37.25

To Annie O. Stephenson, Mattie S. Carr and Nettie
L. Carr, beneficiaries in a joint deed of trust
executed by Jno. W. Turner, M. S. Turner and
L. H. Turner, ... 450.00

Page 3.

To John W. Turner balance of his distributive
share,..... 219.75

On consideration whereof the Court doth confirm this re-
port.

And nothing further remaining to be done in
this cause the same is ordered to be stricken from the
docket.

13

M. S. Turner, et al
vs. In Chancery
L. H. Turner, et als.

Chau order Book 8 page 393 ✓

D E C R E E.

1477
J. H. B.
Enter here
B. H. B.

GEORGE F. WHITLEY
ATTORNEY-AT-LAW
SMITHFIELD, VA.

VIRGINIA,

IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT.

M. S. Turner et al.,.....Plaintiff.

VS:

L. H. Turner et als.,.....Defendants.

This cause came on this day to be again heard on the papers formerly read, and on the report of Geo. F. Whitley, Special Commissioner, this day by leave of court filed, to which report there are no exceptions, and was argued by counsel.

And it appearing from said report that the said Special Commissioner, did on the 28th day of March 1927, at 11:00 A. M., after having advertised the time, place and terms of sale as required by a former decree entered herein, offer for sale in front of the United States Postoffice of the town of Smithfield, Virginia, the property in the bill and proceedings mentioned; that M. S. Turner, John W. Turner and L. H. Turner became the purchasers of the said property for the amount of (\$3,500.00), they being the highest bidders therefor; that the said purchasers desire to pay cash for the said property, and further desire that whatever amount may be due them out of the proceeds of said sale be applied as a credit on the purchase price; that the costs of this suit are as follows;

Clerk's fees, Writ tax,

Sheriff's fees, witnesses fees and

taxed Attorney's fee.....\$ 47.95

Premium on bond.....	\$ 15.00
Crier's fee.....	10.00
Commissioner in Chancery.....	100.00
Writing deed.....	10.00
Acknowledgement.....	.50
Printing notices of sale.....	3.50
Special Commissioner's Commission.....	175.00

that the taxes for 1926 are unpaid; that the amount of said taxes is (\$90.56); that the said taxes are charged against (334) acres of land assessed in the name of A. J. Turner, which said (334) acres includes the (156) acres of land in the bill and proceedings mentioned, on consideration whereof the court doth confirm the said report, and said sale, and doth adjudge, order and decree, that the said Special Commissioner execute a good and sufficient deed with Special Warranty, conveying the said property to the said M. S. Turner, John W. Turner and L. H. Turner, upon the payment to him, the sum of (\$3,500.00), accepting from the said purchasers their receipts for their share in the said proceeds of the sale as part payment of the said purchase price.

The court doth further adjudge, order and decree that the said Special Commissioner pay the cost of this suit *and the delinquent taxes, and the remainder he shall pay to the parties to this cause according to their respective interests, and said special Commissioner shall refund his proceedings hereunder.*

~~11/11~~ 11
Turner itak
V2

Turner at alcy

Searee

1427.
Apr 13.
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P.D.W.

Book 8
Page 382

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

M. S. Turner and John W. Turner..... Plaintiffs

Vs: In Chancery.

L. H. Turner, J. T. Nelms,
Gurlie Nelms, Nellie Nelms, his wife,
Maimie Frye and John F. Frye, her
husband.....Defendants.

This cause came on this day to be again heard on the papers formerly read and on the report of E. H. Williams, ~~Special~~ Commissioner, which report was filed in the Clerk's Office of the County of Isle of Wight, on the 25th day of February, 1927, to which report there are no exceptions, and was argued by Counsel.

And it appearing from said report, together with the depositions filed therewith, that the date of the death of Matilda Bracy could not be definitely established, but from the evidence her death occurred during the year of 1889 or 1890; that at the time of the death of Matilda Bracy, the records at the Clerk's Office showed that she was seized and possessed of 271 acres of land; that after her death the said land was assessed as follows, to-wit: A. J. Turner, 156 acres; Eva R. Turner, 50 acres, Low Tract; and, Milsit Turner, 65 acres, Wiley Turner tract; that Matilda Bracy died testate; that by her last Will and Testament ~~she~~ disposed of her real estate as follows, to-wit: to Eva R. Turner, daughter of A. J. Turner, the Low Tract of land; to Milsit S. Turner, son of A. J. Turner, the Wiley Turner tract of land; to A. J. Turner the remainder of her real estate for life, and at his death to his lawful heirs living at the death of Matilda Bracy; that the remainder of the real estate of Matilda Bracy which was devised to A. J. Turner for life consisted of 156 acres more or less lying in Hardy Magisterial

District, in the County of Isle of Wight, and now bounded by the lands of Jessie Whitley, M. L. Thorne, Peter Bradshaw, J. S. Persons et als; that the children of A.J. Turner living at the death of Matilda Bracy and to whom the property should go at the death of A. J. Turner are as follows: namely, Eva R. Turner, Annie Turner, John W. Turner, Mattie Turner, M. S. Turner, Nettie Turner and L. H. Turner; that A. J. Turner died in the month of August 1920; that Annie Turner, now Stepheson, John W. Turner, Mattie Turner, now Carr, M. S. Turner, Nettie Turner, now Carr, L. H. Turner, Gurlie Nelms, Maimie Frye, who was Nelms, and J. T. Nelms, are the owners of the said real estate; that Annie Turner, John W. Turner, Mattie Turner, M. S. Turner, Nettie Turner and L. H. Turner became the fee-simple owners of a one-seventh interest each in the said tract of land of 156 acres by virtue of devise in the said Will of Matilda Bracy, deceased; that Gurlie Nelms and Maimie Frye, who was Nelms, at the death of the said A. J. Turner, deceased, became the owners in fee-simple of a one-seventh interest of the said tract of land by descent from their mother, Eva R. Turner, deceased; that the said one-seventh interest of the children of the said Eva R. Turner, deceased, are aubject to the courtsey rights of their father J. T. Nelms, husband of the said Eva R. Turner; that on March 30th 1923, Annie O. Stepheson who was Annie Turner and J. O. Stepheson, her husband, Mattie S. Carr who was Turner, and B. H. Carr, her husband and Nettie L. Carr, widow, who was Turner by Deed recorded in the Clerk's Office of the Circuit Court, for the County of Isle of Wight in D. B. 93 page 535 conveyed their interest in the said land to L. H. Turner, M. S. Turner and John W. Turner; that the said land is now

owned as follows: M. S. Turner two-sevenths; John W. Turner two-sevenths; L. H. Turner two-sevenths; Gurlie Nelms one-fourteenth, subject to the courtesy of J. T. Nelms, and Maimie Frye, one-fourteenth subject to the courtsey rights of J. T. Nelms; that all of the parties in interest are over the age of 21 years; that there are liens against the interest of the parties entitled to share in the said tract of land as follows: a joint Deed of Trust executed by L. H. Turner, M. S. Turner and John W. Turner, and dated March 30th 1923, and recorded in the Clerk's Office for the County of Isle of Wight in D. B. 94, page 26 securing the payment of the sum of (\$1350.00), evidenced by three Bonds of (\$450.00) each; a Deed of Trust executed by L. H. Turner dated on April 10, 1924, recorded in the Clerk's Office for the County of Isle of Wight in D. B. #94, page #347, securing the payment of the sum of (\$600.00) to John N. Sebrell and James H. Corbett; that there are liens by judgments as follows:

M. S. Turner vs John W. Turner dated 12/23/1925, ✓
docketed 12/23/1925; J. D. #5 page 52; \$130.00, with
interest from 12/23/1925, until paid and \$7.25 cost.

John L. Gay vs. J. W. Turner, docketed 4/29/1911, ✓
J. D. #3, page 130. amount \$27.10, with interest from
December 1, 1908, until paid, \$2.50 cost.

C. S. Betts vs. L. H. Turner, dated 11/4/1919, docketed ✓
11/4/1919, in J. D. #4, page 39; amount \$96.50, with interest
from December 5, 1917, until paid, \$2.50 cost.

C. S. Betts & Company, vs. John W. Turner, dated 11/4/1919 ✓
docketed 11/4/1919, J. D. #4, page 39; amount \$24.35, with
interest thereon from 9/18/1917, until paid, \$2.50 cost.

Commonwealth of Virginia, vs. Lennie Turner, dated 5/5/1915 ✓
docketed 12/6/1915, J. D. #3, page 191: amount \$20.00, with
interest from May 5th, 1915, \$14.50 cost.

Hubbard Fertilizer Company vs. John Turner, Lucy Turner, and J. W. Carr, dated 12/14/1921, docketed 12/14/1921, J. D. #4, page 83; amount \$58.03, with interest from 12/1/1920, until paid, ten percent Attorney fee and \$7.25 cost; subject to credit of \$5.64, as of January 30th, 1922, and credit of \$25.75, no date being mentioned. Fi Fa assigned to J. W. Carr.

R. A. Horne vs. L. H. Turner, dated 3/5/1923, docketed 3/5/1923, in J. D. #4, page 156; amount \$120.15, with interest from 10/5/1922, until paid. \$3.55 cost.

That the annual value of the said tract of land is \$60.00 per year and the fee-simple value thereof is from \$3750.00 to \$4,000.00; that there are delinquent taxes against 334 acres of A. J. Turner's land as follows: 1921 \$79.01; 1922 \$80.85; 1923 \$80.12; 1924 \$86.36; 1925 \$90.04; that included in the 334 acres upon which the delinquent taxes are a charge is the said 156 acre tract; the the said 156 acre tract of land cannot be conveniently divided among the parties in interest and that the interest of the parties in interest will be promoted by a sale of the said land; that the said ~~Special~~ Commissioner recommends a sale of said land and a division of the proceeds according to the respective interests of the parties entitled thereto, and that all of the necessary parties are properly before the Court, on consideration doth confirm the said report and whereof the Court doth adjudge, order and decree that George F. Whitley, who is hereby appointed, Special Commissioner, for the purpose do, after having first advertised the time, place and terms of sale for a period of 15 days, by hand bills posted in five or more public places, in the County of Isle of Wight, sell the property in the bill and proceedings in this cause mentioned and described as follows:

All that certain piece or parcel of land situated in Hardy Magisterial District, of the County of Isle of Wight, State of Virginia, containing 156 acres more or less and

bounded by the lands of Jessie Whitley, M. L. Thorne, Peter Bradshaw, J. S. Persons et als., and being a part of the land of which Matilda Bracy died seized and possessed, and being that part of said land devised to A. J. Turner for life, at public auction in front of the United States Post Office in the Town of Smithfield, Virginia; and upon the following terms to-wit: one-third cash; one-third on a credit of twelve months; and the residue ~~on~~ a credit of two years from the day of sale, the credit installments to bear interest from the day of sale; taking from the purchaser notes waiv~~ing~~ the homestead exemption for the deferred payments and the title to be retained until the further order of the Court; with the option to the purchaser to pay the entire purchase price in cash; and the purchaser of said land is required to pay to the said Commissioner a sum equal to 15% ^{per cent} of the purchase price on the day of sale, and should said purchaser fail to make said deposit of ~~15%~~ with said Commissioner, the said Commissioner shall forthwith offer again the said property for sale, the said sum of ~~15%~~ so deposited with said Commissioner, ^{at the time of said sale} in addition to any other remedies shall be forfeited to this cause in the event that the terms of sale are not complied with by the purchaser within ten days from the date of the confirmation of said sale.

But before the said Special Commissioner shall do any act under this decree he shall first give bond before the Clerk of this Court in the sum of \$5000⁰⁰ with surety deemed sufficient by the said Clerk, and conditioned for the faithful performances of his duties under this and all subsequent decrees entered in this cause.

And the said Commissioner shall make report to Court ^c however he has executed this decree.

7
H. S. Turner et al

VS 474

In Chancery

L. H. Turner et als.

Decree

1927
Mar. 7.
Entered
R.W.

Book 8. P. 366

GEORGE F. WHITLEY
ATTORNEY-AT-LAW
SMITHFIELD, VA.

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

M. S. TURNER and
JOHN W. TURNER,

v.

L. H. TURNER AND OTHERS.

)
)
)
)
)
)

ORDER

On motion of the defendant, L. H. Turner, leave
is hereby given him to file his answer in the aforesaid
cause, and his said answer is this day accordingly filed.

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

M. S. TURNER and
JOHN W. TURNER,

v.

L. H. TURNER AND OTHERS.

ORDER

1426.
Apr. 14 -
Enter this
B.H.W.

Book 8
page 327

VIRGINIA,

IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT.

.....

M. S. Turner and John W. Turner..... Plaintiffs.

v.) In Chancery. *#474*

L. H. Turner, J. T. Nelms, Gurlie
Nelms, Nellie Nelms, his wife,
Maimie Frye and John F. Frye, her
husband..... Defendants.

-----oOo-----

in which the above named parties are complainants and defendants.
This cause, which has been regularly proceeded on
at rules and set for hearing as to all of the defendants,
came on this day to be heard on the complainants' bill,
regularly filed ~~and proceeded on at rules~~ and taken for
confessed as to all of said defendants, they having fail-
ed to appear, plead, demur or answer the said bill, and
was argued by Counsel.

On consideration whereof, the Court doth adjudge,
order and decree that this cause be referred to one of
the Commissioners of this Court who will inquire into and
report to Court the following inquiries:

First: When did Matilda Bracy die?

Second: Of what real estate Matilda Bracy died,
seized and possessed? *together with the location and description thereof*

Third: Whether Matilda Bracy died testate, and if she
did die testate what disposition was made of said real estate
by her last will and testament?

Fourth: What portion of said real estate was devised
to A. J. Turner, and whether same was devised to ~~him~~ *him* for
life or in fee simple, and if devised to ~~him~~ *him* for life to
whom said property should go after his death? Where said
property is located, together with description of same.

Fifth: When did A. J. Turner die, and who are the present owners of the said real estate so devised to him by Matilda Bracy, the interest of each, how they came in possession of same and whether not any of the parties in interest are under the age of twenty one years.

Sixth: Whether or not there are any liens on said real estate so devised to said A. J. Turner, or on the interest of any party in interest, their dignities and priorities and to whom due.

Seventh: The annual and fee simple values of said real estate.

Eighth: Whether not there are any taxes due and unpaid against said real estate.

Ninth: Whether partition of the entire real estate, so devised to said A. J. Turner, or any distinct or independent part thereof can be conveniently made to advantage.

Tenth: Whether all the necessary and proper parties are properly before the Court.

Which several inquiries the said Commissioner shall make and report to Court, together with any matter especially stated deemed pertinent by himself or required by any party in interest to be stated.

Any testimony taken by said Commissioner hereunder shall be reduced to writing and returned with his Report.

4
M. S. Turner et al

v.) In Chancery

L. H. Turner et als.

DECREE OF
REFERENCE.

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CoB. 8.
page 318

GEORGE F. WHITLEY
ATTORNEY-AT-LAW
SMITHFIELD, VA.

VIRGINIA,

IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT:

M. S. Turner et al.....Plaintiffs

VS:

L. H. Turner et als.,.....Defendants

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT FOR THE
COUNTY OF ISLE OF WIGHT:

The undersigned Special Commissioner begs leave to
make the following report:

That pursuant to a decree entered in this cause on
the 12th day of April, 1927, your Commissioner has collected
from M. S. Turner, John W. Turner and L. H. Turner, the
sum of THIRTY-FIVE HUNDRED (\$3500.00) DOLLARS, and has
executed a deed conveying the property to the above parties,
and delivered the same to them; that your Commissioner
has paid the Court cost, as provided for in said decree,
amounting to \$ 361.95, and has reserved to pay delinquent
taxes, the sum of \$ 307.32; that there is now a balance
in hand of \$ 2,830.73, to be distributed among the parties
in interest;

Your Commissioner here states that M. S. Turner, John
W. Turner, and L. H. Turner, are entitled to two-sevenths
each of the above amount, and, that Gurlie Nelms and Mammie
Frye, are entitled to a one-seventh interest to be equally
divided between them, subject to the ^{* interest} ~~courtesy~~ of their Father,

J. T. Nelms, as will be shown by a decree entered in this cause on the 7th day of March, 1927; that the said J. T. Nelms is Fifty-Three (53) years of age; that your Commissioner has paid to J. T. Nelms, the sum of \$ 80.75 , same being the amount of his ~~courtesy~~ interest; to Gurlie Nelms and Mammie Frye the sum of \$ 161.82 each, the same being the amount of their distributive share.

Your Commissioner here states that the amount of M. S. Turner's distributive share is \$808.78; that out of this amount he has paid to Annie O. Stephenson, Mattie S. Carr and Nettie L. Carr, the sum of \$450.00, the same being the proportionate amount due them by the said M. S. Turner on a certain joint deed of trust, executed by M. S. Turner, L. H. Turner and John W. Turner securing \$ 1, 350.00, and has paid to M. S. Turner the sum of \$ 358.78, the same being the balance of the distributive share of the said M. S. Turner.

Your Commissioner here states that he has distributed the amount of \$ 808.78 representing the distributive share of L. H. Turner as follows:

Amount paid R. A. Edwards, Clerk, judgment, Commonwealth of Virginia against L. H. Turner..	
.....	\$ 50.05
Amount paid C. S. Betts, settlement in full of judgment against L. H. Turner.....	59.52
Amount paid R. A. Horne, judgment against L. H. Turner.....	156.40

Amount paid Annie O. Stephenson, Mattie S. Carr, and Nettie L. Carr, beneficiaries under joint deed of trust for \$ 1350.00,.....\$	450.00
Amount paid John N. Sebrell,.and James H. Corbett to be applied on \$600.00 deed of trust.....	<u>92.81</u>
Total.....\$	808.78

Your Commissioner here states that he has distributed the amount of \$ 808.78, representing the distributive share of John W. Turner as follows:

Amount paid J. L. Gay, judgment against John W. Turner.....\$	60.95
Amount paid C. S. Betts, judgment against John W. Turner,.....	40.83
Amount paid Annie O. Stephenson, Mattie S. Carr, and Nettie L. Carr, beneficiaries under joint deed of trust for \$ 1,350.00.....	450.00
Amount paid M. S. Turner, settlement in full against John W. Turner, judgment,.....	37.25
Amount paid John W. Turner, balance of his distributive share.....	<u>219.75</u>
	\$ 808.78

Respectfully submitted,

Geo. F. Whitley.
Special Commissioner.

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M. S. Turner et al.

^{vs}
L. H. Turner et al.

Report of
Special Comm.

M. S. Turner, et al.
vs. In Chancery
L. H. Turner, et als.
Special Commissioner's
Report.

VIRGINIA,

IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT.

M. S. Turner et al.....Plaintiff

VS:

L. H. Turner et als.....Defendants

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT FOR THE
COUNTY OF ISLE OF WIGHT:

The undersigned Special Commissioner begs leave
to make the following report:

That pursuant to a decree entered in this cause
on the 7th day of March 1927, after having advertised
the time, place and terms of sale as required by the
above decree, he did on the 28th day of March 1927, at
11:00 A. M. offer for sale in front of the United States
Postoffice, of the town of Smithfield, Virginia, the
property in the bill and proceedings mentioned; that
M. S. Turner, John W. Turner, and L. H. Turner became
the purchasers of the said property, they being the
highest bidders therefor, and that the amount of the
bid was (\$3,500.00). Your Commissioner is advised that
the said purchasers desires to pay cash for the said
property, and further desires that whatever amount may
be due them out of the proceeds of sale may be applied
as a credit on the purchase price.

Your Commissioner here states that the property was
well advertised; that all parties in interest were present
or represented at said sale; and, that while the property
did not bring as much as its value was assessed by the
witnesses testifying, your Commissioner believes that it
brought a fair price and, therefore, would recommend the

confirmation of the said sale.

Your Commissioner here states that the costs of this suit is as follows:

Clerk's fees; writ ~~tax~~ ; Sheriff's fees; witnesses fees and taxed Attorney's fee.....	\$ 47.95
Premium on bond.....	15.00
Crier's fee.....	10.00
Commissioner in Chancery.....	100.00
Writing deed.....	10.00
Acknowledgement.....	.50
Printing notices of sale.....	3.50
Special Commissioner's Commission.....	175.00
Total.....	<u>\$361.95</u>

Your Commissioner here states that he is informed by the County Treasurer, that the taxes for 1926 have not been paid; and, that the amount of these taxes is (\$90.56); that the said taxes are on (334) acres of land assessed in the name of A. J. Turner; and that the (156) acres of land in the bill and proceedings mentioned, is included in the above acreage.

Respectfully submitted,

Geo. A. Whitley.
Special Commissioner

Present, George F. Whitley, Counsel for Complainants
Q. C. Davis, Jr.,
John N. Sebrell,
James H. Corbett,

A. A. Turner, a witness of lawful age, being first duly sworn,
deposes and says, as follows:-

By Mr. Davis:-

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

A. A. A. Turner, fifty-seven, farmer, Windsor, Isle of Wight
County, Virginia.

2. Q. Did you know Mr. A. J. Turner, late of Isle of Wight County?

A. Yes, I reckon so, I lived with him about three years.

3. Q. How long did you know him prior to his death, about?

A. Oh, I don't know. I've been knowing him all my life around there.

4. Q. Where did he live during his lifetime?

A. Well, at first, when he was first married, I suppose he went to the Westry place. After old man Bracy died he moved back to the old Matilda Bracy place.

5. Q. This suit is brought for the purpose of partitioning what is known as the old Bracy Home Place, are you familiar with that tract of land?

A. Well, yes, I ought to be, it joins my father's place.

6. Q. Did you ever live on that place?

A. On the Bracy place?

7. Q. Yes.

A. Yes, sir.

8. Q. Where were you born and raised?

A. I was raised on my father's place which joins to it.

9. Q. Joins to what?

A. The Bracy place.

10. Q. Is that the Matilda Bracy Home Place?

A. Yes.

11. Q. Did you ever live on the Matilda Bracy Home Place?

A. Yes.

12. Q. Did you know Matilda Bracy during her lifetime?

A. Yes, I knew her all my life; I was living with them when she died.

13. Q. Where was she living when she died?

A. At the old Home Place.

14. Q. You have stated that you lived with Matilda Bracy when

she died on the Bracy Home Place; who else was living there?

A. Old man Jack he did move there.

15. Q. Who do you mean by old man Jack?

A. A. J. Turner.

16. Q. Was Mr. A. J. Turner living at the Matilda Bracy Home Place with Matilda Bracy at the time she died?

A. Yes, sir.

17. Q. How long had you been living there at the time Matilda Bracy died?

A. About a year and a half, I think; I don't remember exactly what time of the year she died, I think she died in August.

18. Q. Were you working for Matilda Bracy or who were you working for at that time?

A. I was working for A. J. Turner.

19. Q. Please state whether or not A. J. Turner was married at the time Matilda Bracy died.

A. Yes, he was married.

20. Q. Was living there with his family, at the Matilda Bracy Home Place at that time?

A. Yes, sir.

21. Q. Please name the children of A. J. Turner, if you know them.

A. There was Eva, John, I don't know if I can name them along their ages or not, and Nettie, Mattie, Shay, Lennie, yes Lennie was born while I was there. I think that's all, I don't remember.

22. Q. You mentioned the name of Eva, is she living at the present time?

A. No, sir.

23. Q. Please state, if you recollect, whether or not Lennie Turner was living or was born at the time of Matilda Bracy's death?

A. Well, I don't think so. I think he was born after.

24. Q. How many years did you live and work with Mr. A. J. Turner at the Matilda Bracy Home Place?

A. Well, I stayed with him three years, but he moved during the time to the new place, but I don't remember just what time he moved up there.

25. Q. Do you know when Mr. A. J. Turner moved from the Matilda Bracy Home Place.

A. I don't remember exactly the time.

26. Q. Do you know that he did move from there?

A. Yes, sir.

27. Q. Where did he move to when he moved from the Matilda Bracy Home Place?

A. He moved over the road to the new building where his widow now lives.

MR. SEBRELL: Question objected to as the reference under which this testimony is being taken applies only to the lands devised to A. J. Turner by Matilda Bracy and does not involve any question relating to any other land. Such testimony is therefore irrelevant and incompetent.

By Mr. Davis:

28. Q. What is that tract known as?

A: It was known as the Low tract at that time.

29. Q. Does the Low tract of land adjoin the Matilda Bracy Home Place?

A. Yes, sir.

MR. SEBRELL: Same objection for the same reason.

By Mr. Davis:

30. And adjoins it where, on the North or South?

A. On the South.

31. Q. Is that to the South of the Low tract?

A. Yes, Low tract.

32. Q. Can you give the boundaries of the Matilda Bracy Home Place?

A. Yes, I know mighty well where it is, but I don't really know who owns it now.

33. Q. Can you give the boundaries, as you knew them at that time?

A. Yes, it joined at the Low tract, my father's place.

34. Q. What was your father's name?

A. M. N. Turner. And joined the Red place, it was called then, I think it belongs to Gray now and the Daughtrey tract.

35. Q. How many acres, if you know, are there in the Matilda Bracy Home tract?

A. I don't know. I ain't got much idea. I suppose there's around two hundred acres, I reckon, I don't know. It has been a long time since I was over there and I'm a poor estimator anyway.

36. Q. Please state whether or not a tract of land known as the Westry tract adjoins the Matilda Bracy Home tract, at any place or point?

A. I don't much think it did, but it run mighty close to it. It might have cornered on the same tree, but I am not sure.

37. Q. Do you know whether or not the old dwelling house on the Bracy Home tract ever burned?

A. Yes, it got burned later on after I come there, but I don't know just when it was done.

38. Q. Do you know a road by the name of Tar road near the old Bracy Home tract?

A. Mighty well.

39. Q. Does the old Bracy Home tract touch the Tar road at any point?

A. I don't think so.

40. Q. Please state whether or not there is a tract of land lying North of the Matilda Bracy tract between the Matilda Bracy tract and the Tar road?

A. Well, it might be down towards Mr. Persons, it might come out near the old school house; it might strike it there. I don't much think it did though.

41. Q. Please state whether or not a portion of the Low tract of land lies between the Tar road and the Matilda Bracy tract?

A. Yes.

MR. SEBRELL: Question objected to because the Low tract of land is not involved in this suit.

42. Q. Do you recollect what lands, if any, Matilda Bracy died in possession of?

A. Well, the Home Place, I reckon. I believe she left it to old man Jack. You mean before she willed this property? No, I mean at the time of her death.

By Mr. Sebrell:-

1. Q. Mr. Turner, you said you stayed with Mr. A. J. Turner for some years, a part of that time was at the old Home place and the other part was at the new house, I believe?

A. Yes, sir.

2. Q. Do you remember how long you stayed at the Home place or has it been so long ago that you would not be able to remember the different occurrences that took place?

A. I think the two first years '88 and '89 at the old place and '90 at the new place. I did not stay all of '90.

3. Q. I understood you to say that A. J. Turner was living at the Home place at the time that Matilda Bracy died.

A. He was.

4. Q. You were a small boy then, were you not, Mr. Turner?

A. I was about as large as I am now, larger I reckon.

5. Q. You were born in what year?

A. In '69.

6. Q. And that was in 1888; you were nineteen years old.

By Mr. Davis:-

1. Q. Mr. Turner, please state whether or not at any time during Mr. A. J. Turner's lifetime and after the death of Matilda Bracy, Mr. A. J. Turner ever claimed that the Low tract was a part of the Matilda Bracy Home Place?

MR. SEBRELL: Question objected to as being irrelevant for the reason heretofore stated.

A. He did not.

And further this deponent saith not.

Mr. J. T. Nelms, a witness of lawful age, being first duly sworn, deposes and says, as follows:-

By Mr. Davis:-

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

A. J. T. Nelms, fifty- two years old last December, foreman,

2. Q. Did you know Mr. A. J. Turner during his lifetime?

A. Yes, sir.

3. Are you familiar with the tract of land known as the Matilda Bracy Home Place in Isle of Wight County?

A. Yes, I am.

4. Q. Please state whether or not you married one of A. J. Turner's daughters?

A. Yes, the oldest one, Eva R.

5. Q. And she is now dead?

A. Yes.

6. Q. Mr. Nelms are you familiar with the location of the Matilda Bracy Home tract with reference to other adjoining tracts

of land?

A. Yes, sir, I know where and who it joins but I don't know whether it has changed hands or not. I don't know who owns it now.

7. Q. Will you please state what tracts of land the Matilda Bracy Home tract joins?

A. Well, it joins the Mathew Turner place, the Henry Thorne and Red place, it did belong to Daughtrey, and it strikes the new Persons line, also the Low tract of land.

8. Q. To identify these tracts, do you know who lives on the several tracts you mentioned?

A. No, I don't know. Old Mr. Persons is dead and the Red place is rented out as usual; Jesse Whitley lives at the Turner place and the Thornes live on the Thorne place.

9. Q. Who lives on the Low place?

A. Mrs. Turner, widow of A. J. Turner, and the boys.

10. Q. Who do you mean by the boys?

A. I mean Lennie and John.

11. Q. Mr. Nelms, if you know, please state the acreage of the old Bracy Home Place.

A. Well, now, I don't know. It is a good big tract of land. I couldn't say how many acres there are. I should say that there's over a hundred. You can't guess a piece of land until it is measured.

12. Q. Does any portion of the Matilda Bracy Home tract come to the Tar road?

A. No, sir.

By. Mr. Sebrell:-

1. Q. Did you ever live there, Mr. Nelms?

A. No, I never lived at the Home Place. I lived at the Westry place.

2. Q. Did you ever live at the place where Mrs. Turner now lives?
A. No, sir.
3. Q. How long did you live at the Westry place?
A. I lived there one year.
4. Q. What year was that?
A. It was the second year after I was married.
5. Q. Well, what year was that?
A. I don't remember what year, but it was the second year after I was married.
6. Q. About how many years ago was that?
A. It has been about thirty or thirty-one years ago.
7. Q. And you have lived in that neighborhood only one year?
A. I was raised in that neighborhood all of my life until I came to Norfolk about eighteen or nineteen years ago.

And further this deponent saith not.

Mrs. Nancy M. Turner, a witness of lawful age, being first duly sworn, deposes and says, as follows:-

By. Mr. Sebrell:-

1. Q. What is your name?
A. Nancy M. Turner.
2. Q. You are the widow of A. J. Turner, are you not?
A. Yes, sir.
3. And you are the mother of Eva Turner, Nettie Turner, Shay Turner, John Turner and Lennie Turner, are you not?
A. I am the mother of all seven of them and two dead.
4. Q. Did you know Matilda Bracy?
A. Did I know her?
5. Q. Yes.
A. Yes, I went down and stayed with her a while.

6. Q. Do you remember when she died?

A. I remember when she died, but I couldn't tell you exactly when, 1990, I think.

7. Q. Do you mean 1890 or 1990?

A. 1890.

8. Q. Were you there at the time she died?

A. I was.

9. Q. Have you had any children born since that time?

A. No, sir.

10. Q. What is the name of your youngest child?

A. I don't know what it was named. I lost it, but they named it.

11. Q. The youngest one?

A. The youngest is Lennie Harrison.

12. Q. Was he born before Matilda Bracy died?

A. I don't know what to tell you. I have told you all I know.

13. Q. I am not going to question you too much. I'm going to stop in a minute. I want you to tell the Commissioner whether or not Lennie was born before she died?

A. Before she died? Yes.

By Mr. Davis:-

1. Q. What year did Matilda Bracy die in?

A. 1889.

2. Q. Did she die in the Spring of the year or Summer, Fall or Winter?

A. She died in February. I don't know exactly the date of the month. I couldn't tell you.

3. Q. Was Mr. Gus Turner living with you all at that time?

A. Yes, sir, Mr. Gus Turner, no, I can't tell you whether he was there or no.

4. Q. Was Mr. A. A. Turner living at your home, that is Gus Turner living at your home at the time Lennie Turner was born?

A. Well, now, I couldn't tell you. Gus stayed there about twelve months off and on and that was directly after I went there, but whether he was staying there then or no I couldn't tell you. I forgot.

5. Q. What year was Lennie Turner born in?

A. I couldn't tell you. I can't tell you any more than I have told you. 1888, I believe. I think it was, the nearest I recollect.

6. Q. When did you move from the place where Lennie was born to where you live now?

A. Well, I couldn't tell you that.

7. Q. You have a family bible with all of the records of the births of your children, have you not?

A. I had one there but it got misplaced long about the time they come to survey the land. I couldn't tell you where it is, but I had one.

8. Q. Where you live now is the house that your husband built before you moved from the old Bracy Home Place?

A. Yes, sir.

And further this deponent saith not.

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

M. S. Turner and John W. Turner,
Plaintiffs,

v.

DEPOSITIONS.

L. H. Turner, J. T. Nelms, Gurley Nelms,
 Nellie Nelms, his wife, Mamie Frye and
 John F. Frye, her husband,
 Defendants.

Deposition of Annie Stephenson taken before me, Inez King, a Notary Public for the City of Suffolk, in the State of Virginia, pursuant to agreement of counsel for plaintiffs and defendants, at 607 National Bank of Suffolk Building, in the City of Suffolk, Virginia, on the 3rd day of July, 1926, between the hours of ten, A. M., and five, P. M., to be read as evidence on behalf of L. H. Turner in a certain suit in equity depending in the Circuit Court of Isle of Wight County, in the State of Virginia, wherein L. H. Turner and others are defendants, and M. S. Turner and others are plaintiffs.

PRESENT: James H. Corbitt, Attorney for the
defendant, L. H. Turner.

Q. C. Davis, Attorney for the defendants,
J. T. Nelms, Gurley Nelms, Nellie Nelms,
Mamie Frye and John F. Frye.

No attorney for the plaintiffs.

MRS. ANNIE STEPHENSON, being duly sworn, testified as follows:

By Mr. Corbitt:

Q. What is your name, age, and residence?

A. Mrs. Annie Stephenson; born August 3, 1879; I live down close to Central Hill Church, if you know where that is, in Isle of Wight County.

Q. Who was your father?

A. A. J. Turner.

Q. Do you know Mr. L. H. Turner?

A. Yes, sir.

Q. What relationship is he to you?

A. He is my brother.

Q. Did you know Matilda Bracy?

A. Yes, sir.

Q. Do you remember her death?

A. Yes, sir.

Q. Where was she living when she died?

A. At the old home place.

Q. Who else was living at the old home place when she died?

A. My father and mother was living there, and brothers and sisters.

Q. How many of your brothers and sisters were living at the time of Matilda Bracy's death?

A. Well, there were seven of us and all were living there.

Q. Was your brother, Lennie H. Turner, living at the time of Matilda Bracy's death?

A. Yes, sir.

By Mr. Davis:

Q. Mrs. Stephenson, you were born in '79, in 1879, were you not?

A. Yes, sir.

Q. How old were you when Matilda Bracy died?

A. I don't know exactly.

Q. Were you grown?

A. I reckon I was, - no, sir, not exactly grown, but I was large enough to attend to children, though.

Q. You had a sister named Evie?

A. Yes, sir.

Q. She was the oldest one?

A. Next to the oldest.

Q. Next to the oldest?

A. Yes, sir.

Q. She married J. T. Nelms?

A. Yes, sir.

Q. Was she living at that time?

A. What, when Aunt Matilda died?

Q. Yes?

A. Yes, sir.

Q. Do you know what year Matilda Bracy died in?

A. 1890.

Q. Do you recollect whether it was winter or summer, or what time of the year it was?

A. No, sir, I do not know exactly when it was, it has been so long.

Q. Do you know what year Lennie Turner was born in?

A. September 12, 1889.

Q. What would you say to it if he gave his birth as September 12, 1891, when he registered in the war?

A. If he did he put it wrong.

Q. How do you know he was born in 1889?

A. That is what they always told me.

Q. But you have no independent recollection of what year it was, yourself, have you?

A. No, sir.

Q. Did you know Mr. A. A. Turner, Mr. Gus Turner, I mean?

A. Yes, sir.

Q. Was he living there at the old home place?

A. No, sir, he was not living at the old home place at that time.

Q. Do you mean to state that he was not living with you all when Lennie Turner was born?

A. No, sir, he was not living with us at the old home place.

Q. When Matilda Bracy died, your father, mother and children were living with Matilda Bracy at the old home place, were they not?

A. Yes, sir, at the old home place.

Q. Lennie was born there, was he not?

A. Yes, sir.

Q. Wasn't Gus Turner working for your father and living there at that time?

A. I don't think he worked for us until we moved up to the other house.

Q. Was that the place where your father built on the Tar Road?

A. Yes, sir.

Q. It is the place where your mother lives now, isn't it?

A. Yes, sir.

Q. Then, you don't recollect Mr. Gus Turner living with you all at the Bracy Home Place at all, do you?

A. I don't remember whether I do, or not.

Q. Well, your mother said so.

A. He might have stayed there, because several stayed there.

Q. How old was Lennie when Matilda Bracy died, if he was living?

A. I don't know how old he was. He was small.

Q. Was Mr. Gus Turner a grown man at the time he lived with you all?

A. Yes, sir, he was grown.

Q. He says that Lennie was not born when Matilda Bracy died?

A. Gus says so? Yes, he was. I attended to him and rocked him.

Q. You have a Bible, haven't you?

A. Yes, sir.

Q. With all the dates of the births of all the children in it?

A. Yes, sir.

Q. Could you get hold of this Bible?

A. I reckon so, it is right at home where I stayed before I was married. I am married now and don't live there. I don't live over five miles from there.

Q. What kind of a Bible is it? One of those large family Bibles?

A. Yes, sir.

Q. When did you last see it?

A. I don't know.

Q. When were you home last?

A. Not in two months I don't reckon.

Q. When did you last see it over there?

A. I don't know, I see it most any time.

Q. Well, it used to stay in the front room, didn't it?

A. Yes, sir, it did stay on the table there.

Q. Which room?

A. I think it stays in the front room right on the center table.

Q. Is it a book the size of that black book, something like
Mr. Corbitt has his elbow on?

A. Yes, sir.

Q. Is it a whole lot larger than 1924 Michie's Code of Virginia
there on the desk that Mr. Corbitt is leaning on? A large
family Bible?

A. Yes, sir.

Q. When did you last see it?

A. Well, I disremember.

Q. Two months ago, or when have you seen it?

A. Yes, sir, I have seen it.

Q. Have you seen it within six months?

A. I reckon I have. I don't remember exactly when I have seen it.

Q. Are all the dates of the births of all the children down in
that book?

A. Yes, sir.

Q. And yours is down there?

A. Yes, I reckon mine is there too.

Q. Have you seen Lennie's written in there?

A. Lennie's age?

Q. Yes, in the old family Bible?

A. I reckon it is in there. I don't know whether they are all in there, or not.

Q. Have you seen any of the children's ages in the Bible?

A. Yes, sir.

Q. Can you state which ones you have seen there?

A. I know mine and Evie's and Johnnie's.

Q. Do you know the date of Evie's?

A. She was born September 1st. She is two years older than I am.

Q. Do you know the age of John?

A. John was born in 18 - I thought I knew all the ages. I don't know whether '87, or what.

Q. Why is it you knew Lemmie's so accurately and you can't answer any of the others at all?

A. I do not know them all.

Q. Who have you been talking to about Lennie's age?

A. I haven't seen anybody.

Q. Did he come after you this morning?

A. No, sir.

Q. Who came after you?

A. Melvin Uzzle brought Jim, my husband, and myself, and my daughter came with us.

Q. Did they tell you they were bringing you to testify about Lennie's age?

A. No, sir.

Q. Didn't they tell you they were bringing you here to testify about Lennie's age? Answer this. Didn't they tell you that they were going to bring you down here to Mr. James H. Corbitt's office to testify about Lennie's age? Now, that is plain enough.

A. I didn't know nothing about it.

Q. Did you know what you were coming down here for?

A. I did not know I was going to be a witness, or anything, but just tell what I know.

Q. You did not know you were going to testify to-day?

A. Yes, sir, I thought I would have to tell my age and everybody's I know.

By Mr. Corbitt:

Q. Mrs. Stephenson, about that Bible,- do you pay much attention, when you go to the house, as to whether the Bible is there, or not?

A. No, sir, when I go there I go in the room where my mother stays, and the Bible stayed in the other room.

Q. So you don't know whether the Bible is there, or not?

MR. DAVIS: The question is objected to on the ground that it is highly leading and it suggests to the witness the answer.

MR. CORBITT: Counsel replies that this question about the Bible was brought out by opposing counsel in his cross examination, and not in examination in chief.

MR. DAVIS: Counsel replies by stating that all has to do with the age of Lennie Turner, which is the subject of this examination.

Q. Can you tell, then, when you have seen that Bible?

A. No, sir, I sure can't. When I stayed at home I read the Bible, but I don't ever read it now.

Q. All you remember about it was there was a big family Bible?

A. Yes, sir.

Q. You said you remember Matilda Bracy dying?

A. Yes, sir.

Q. How old was Lennie at that time?

A. I don't remember how old he was right at that time.

Q. About what size was he?

A. He was small, I rocked him in the cradle and toted him around. Not two years old.

Q. You said you rocked him in the cradle and toted him around; you were doing that when Matilda Bracy died, and you had been doing that before she died, you say?

A. Yes, sir. My mother would be out cooking and somebody had to attend to him.

By Mr. Davis:

Q. Mrs. Stephenson, have you ever seen any Bible in that house at all?

A. Yes, sir, I have seen a Bible there.

Q. I mean this Bible you speak about being in the house?

A. Yes, sir.

Q. You just stated a few minutes ago in answer to my question that you had seen the Bible within the last six months yourself at your mother's home. Now, do you want to change that?

A. No, sir, I have seen the Bible there.

Q. Within the last six months, haven't you?

A. I reckon I have.

Q. Has anybody ever taken it away and destroyed it?

A. No, sir.

Q. Have you ever heard of anybody stealing it, or burning it, or destroying it, or anything?

A. No, sir.

Q. Did you ever hear of it being taken away, torn, or burned up?

A. No, sir.

By Mr. Corbitt:

Q. Mrs. Stephenson, in reply to Mr. Davis' question as to whether or not you had seen the Bible within six months, you said: "I don't know", "I reckon I have". Is that right? When Mr. Davis asked you if you had seen the Bible within the last six months, you said: "I don't know", "I reckon I have"?

A. Yes, sir.

Q. Do you know, can you remember, whenever you have seen that Bible?

A. I don't know.

Q. Can you remember any definite time seeing that Bible in the last twelve months?

A. No, sir.

Q. You said you paid no attention to the Bible, didn't you?

A. I did when I stayed there, but I have one of my own now.

Q. How long has it been since you stayed there?

A. I have been married twenty-three years.

Q. Then, you haven't paid any attention to that Bible in twenty-three years?

A. No, sir.

MR. DAVIS: The question is objected to on the ground that it is leading.

MR. CORBITT: Counsel replies that this question of the existence of the Bible was brought out by opposing counsel as new matter.

MR. DAVIS: The Bible was testified to by the witness's mother, Mrs. A. J. Turner.

MR. CORBITT: It makes no difference what another witness testified to. This witness was not in examination in chief questioned about the existence of the Bible.

Q. So since you left there twenty-three years ago you haven't paid much attention to the family Bible?

A. I looks at it sometime. I used to when I was first married.

Q. And when you go back there now you don't pay any attention to see whether it is there, or not?

A. No, sir.

MR. DAVIS: The question is objected to on the ground that it is leading.

Q. And you don't know when you have seen that Bible, do you?

A. No, sir.

Q. You could not tell when you have seen it, could you?

A. No, sir.

Q. It would be impossible to tell when you had seen that Bible, wouldn't it?

MR. DAVIS; The question is objected to on the ground that it is leading.

A. I know it has not been very long since I have seen it.

Q. Is there more than one Bible there?

A. Yes, sir, I think Aunt Matilda and Uncle Shay had an old timey Bible.

Q. But you don't know how long it has been since you have seen it?

A. I don't know exactly.

By Mr. Davis:

Q. Do you refer to the old big family Bible with all the names in it?

A. Yes, sir.

And further this deponent saith not.

STATE OF VIRGINIA,
CITY OF SUFFOLK, To-wit:

I, Inez King, a Notary Public for the City of Suffolk,
in the State of Virginia, do hereby certify that the foregoing
deposition was duly taken and reduced to writing before me at the
place and time therein mentioned, the signature of the witness
being waived, pursuant to agreement of counsel.

In witness whereof I have hereunto set my hand at
Suffolk, Virginia, this 3rd day of July, 1926.

Inez King
Notary Public.

My Commission expires May 8, 1928.

VIRGINIA:

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

M. S. Turner and John W. Turner,.....Plaintiffs.

v.

L. H. Turner, J. T. Nelms, Gurley Nelms, Nellie Nelms,
his wife, Mamie Frye and John F. Frye, her husband..Defendants.

The testimony of John Holland and Bud Butler, taken
and reduced to writing before E. H. Williams, Commissioner
in Chancery, at his Office in the town of Smithfield, Vir-
ginia, on February 4th, 1927, after due notice to Counsel
for the respective parties.

PRESENT: James H. Corbitt, Attorney for the
defendant, L. H. Turner.

JOHN HOLLAND, being duly sworn deposes as follows:

By Mr. Corbitt.

Q. What is your age and where do you live?

A. I live right close to Lennie Turner, about half way to
Windsor and Isle of Wight.

Q. How old are you?

A. Will be 59 the 27th of next August.

Q. Do you know Lennie Turner?

A. Yes Sir.

Q. How long have you known him?

A. Every since he was a baby.

Q. Will you please say when he was born, what year?

A. He was born in 1889.

Q. How do you happen to remember he was born in 1889?

A. Because my uncle had a daughter who was born in 1889.

Q. And you remember both was born the same year?

A. Yes Sir.

Q. Did you go to school anywhere near where Lennie Turner was born?

A. Yes Sir.

Q. How far was that from where Lennie Turner was born?

A. Don't know about four or five hundred yards.

Q. Did you know Matilda Bracy?

A. Yes Sir.

Q. Was she living or dead when Lennie Turner was born?

A. She was living.

Q. Is there anyway that you can now claim that she was living at that time?

A. Yes because Mr. Turner lived in the old home place where she lived and it was on the Westry tract of land, but that house went built then cause he built before the lumber was_____.

Q. Was that done after Matilda died?

A. Yes Sir.

Q. Lennie was born where?

A. Down at the old place.

Q. Mr. Holland you said that you knew when Lennie was born, or what year, how long have you known him every since?

A. I couldn't tell you how often I see him, I see him every week or month. I've been use to seeing him every year since he was born, except when he was in the World War, I saw him shortly after he came back out of the army.

Q. You knew his father and mother?

A. Yes Sir.

Q. You knew Matilda Bracy?

A. Yes Sir.

And further this deponent saith not.

BUD BUTLER, being duly sworn deposes as follows:

By Mr. Corbitt.

Q. What is your age, residence and occupation?

A. I will be 62 the 9th of April.

Q. What is your occupation?

A. Farming.

Q. Where do you live?

#3

A. I live near Windsor, about two and a half miles from Lennie Turner.

Q. Did you know Linnie H. Turner, the son of Jack Turner?

A. I have been knowing him every since he was a small baby.

Q. Did you know his father, Jack Turner?

A. Yes Sir/

Q. Did you know his Aunt Matilda?

A. I've seen her two or three times before she died.

Q. Do you remember about the time of her death?

A. Yes Sir.

Q. Where was Jack Turner living at the time Matilda Bracy died?

A. He was living right off from where he built.

Q. Known as the Home Place?

A. I reckon so, Mrs. Bracy claimed it at the time she died.

Q. And she died there?

A. Yes Sir. If they did not live in the same house they stayed there in the day time.

Q. Did you go to this house where Jack Turner lived or stayed when you saw them any time, or before her death?

A. I went there, I wont say one week, two weeks, three weeks or four weeks with my father on account of an invitation, or whatever you might determine it, that my father received from this boy's father, after this lady died. He wanted us to come over and get a plenty of money. I said Jack its just some old confederate money. When I went over to my brother's I said lets walk over to Jack's, he said he had plenty of money and wanted to give us some. So we went over, and he went on with his talk about the youngest son, he brought up about Linnie Harrison, he said he was going to make a preacher out of him and that he named it after Linnie Whitley and Harrison Butler, and I was paying strict attention to what he was saying and he said he has got ways like I have. So I was paying attention to what he was saying and how he was talking, and I looked up at the house and a girl was sitting in the door, I wont say about a porch as I don't remember about a porch, with a baby in her lap and in talking about his youngest son, he said, bring me that baby, and the girl brought him out there. He was jumping him up and down, tossing him about, and it was a little baby, I thought he was going to break his neck, and they said his name was Linnie Harrison, and he said these words: "This is the youngest boy, and I named him after Linnied Whitley and Harrison Butler."

By Mr. Williams.

Q. When was this, the date and year?

A. I don't remember, of course I've heard Mr. Holland say.

Q. But you do know this boy was several months old?

A. Yes Sir.

By Mr. Corbitt.

Q. Did Mr. Jack Turner give you any money?

A. After he tossed this baby about, the girl must have thought he was going to hurt him, so she got the baby and went back, and he said, "Bring me the basket of money," and I don't think the same girl brought the money who brought the baby, anyway a girl brought it, and it was an old-timie basket, something like an egg basket, it would hold about a half gallon or three quarts I guess, the money was loose about in that, silver money and some ^{the} dates were wore off, and he give me two or three pieces and he give my father some, and I never tried to pass none of it, Of course you could see it was money and silver.

And further this deponent saith not.

VIRGINIA,

IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT:

- - - - -

M. S. Turner and John W. Turner,..... PLaintiffs.

v.

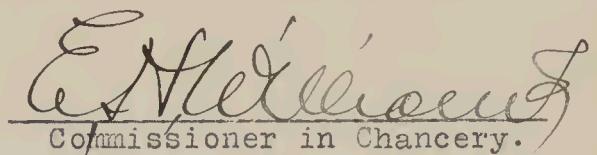
L. H. Turner, J. T. Nelms, Gurlie Nelms and Nellie
Nelms, his wife, Maimie Frye and John F. Frye, her
husband..... Defendants.

- - - - -

To L. H. Turner, J. T. Nelms, Gurlie Nelms and Nellie
Nelms, his wife, Maimie Frye and John F. Frye, her husband:

You are hereby notified that I have fixed on
Friday, January 29th, 1926, at ten o'clock A. M., as the
time and the office of Geo. F. Whitley, in the town of Smith-
field, Virginia, as the place for executing the decree which
was entered in the above styled cause depending in the Cir-
cuit Court for Isle of Wight County on the 4th day of January,
1926.

Given under my hand as Commissioner in Chancery of
the Circuit Court of Isle of Wight County this 18th day of
January, 1926.


Commissioner in Chancery.

Not finding Gurlie Nelson
at his/her usual place of abode I exe-
cuted the within in the City of Nor-
folk, Va., this 21 day of Jan 1926
by delivering a copy hereof to

His wife

She being then there, a MEMBER
OF HIS/HER FAMILY and over
the age of 16 years, and giving infor-
mation of its purport to her/him.

C. H. TUMBLESON,

Sergt. City of Norfolk, Va.

By C. B. Lisner

Not finding J. I. Nelson
at his/her usual place of abode I exe-
cuted the within in the City of Nor-
folk, Va., this 21 day of Jan 1926
by delivering a copy hereof to

His wife

She being then there, a MEMBER
OF HIS/HER FAMILY and over
the age of 16 years, and giving infor-
mation of its purport to her/him.

C. H. TUMBLESON,

Sergt. City of Norfolk, Va.

By C. B. Lisner Deputy.

PAID

Not finding John F. Frye
at his/her usual place of abode I exe-
cuted the within in the City of Nor-
folk, Va., this 21 day of Jan 1926
by delivering a copy hereof to

His wife

She being then there, a MEMBER
OF HIS/HER FAMILY and over
the age of 16 years, and giving infor-
mation of its purport to her/him.

C. H. TUMBLESON,

Sergt. City of Norfolk, Va.

By C. B. Lisner Deputy.

Executed in the City of Norfolk,
Va., this the 21 day of Jan 1926
by serving a Copy hereof on

Maimie Frye

Nellie Nelson

IN PERSON.

C. H. TUMBLESON,

Sergt. City of Norfolk, Va.

By C. B. Lisner Deputy

VIRGINIA,

IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT:

- - - - -

M. S. Turner and John W. Turner,..... Plaintiffs.

v.

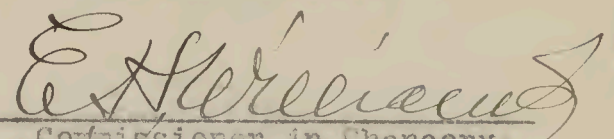
L. H. Turner, J. T. Helms, Gurlie Helms and Nellie
Helms, his wife, Maimie Frye and John F. Frye, her
husband..... Defendants.

- - - - -

To L. H. Turner, J. T. Helms, Gurlie Helms and Nellie
Helms, his wife, Maimie Frye and John F. Frye, her husband:

You are hereby notified that I have fixed on
Friday, January 29th, 1926, at ten o'clock A. M., as the
time and the office of Geo. F. Whitley, in the town of Smith-
field, Virginia, as the place for executing the decree which
was entered in the above styled cause depending in the Cir-
cuit Court for Isle of Wight County on the 4th day of January,
1926.

Given under my hand as Commissioner in Chancery of
the Circuit Court of Isle of Wight County this 18th day of
January, 1926.


Commissioner in Chancery.

Shaw's for 14 by 14 1/2

I, L. H. Turner at his usual place of abode,
do hereby certify that on this the 23 day of Jan 1906
I received the within where this the 23 day of Jan 1906
delivering a copy of same to John G. Turner for the
said L. H. Turner and explained the the purport of
same, he being a member of the family of the said L. H. Turner
and over the age of sixteen years, in the County of Isle of Wight.
H. H. Chapman Sheriff.
D. S.

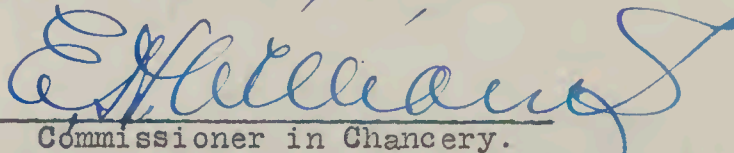
COMMONWEALTH OF VIRGINIA:

COUNTY OF ISLE OF WIGHT, TO-WIT:

TO THE SHERIFF OF SAID COUNTY - GREETINGS:

We command you that you summons George Britt, A. A. Turner, George Uzzell and Coon Joyner, to appear before E. H. Williams, Commissioner in Chancery of the Circuit Court of Isle of Wight County, at his office in the town of Smithfield, Virginia, on the 18th day of June, 1926, at 10:30 A. M., to testify and the truth to say on behalf of the defendants in a certain matter of controversy in our said Court now depending and undetermined, wherein M. S. Turner, et als., are Plaintiffs, and L. H. Turner, et als., are Defendants; and that you have then and there this writ and make return how you have executed the same.

Witness E. H. Williams, Commissioner in Chancery of the Circuit Court of Isle of Wight County, at his office in the County and State aforesaid, the 15th day of June, 1926, and in the 150 year of the Commonwealth.


Commissioner in Chancery.

Becken

I executed the within Oath, this the 16 day of
June 1876 by emperor a true
copy of the same on Geo. Bull in person
in the County of Rich State of Miss
W. H. Chapman
Sagitt of Miss. Rich Co.

His 16, 2 June 26
Rome 1888

W. H. Chapman