

1867-012

MICHAEL KING VS ADMR. OF ELISHA ASHBURN ETC

1867

WANSEMOND COUNTY
(SUFFOLK)

CHANCERY CAUSES

SURNAMES: BUTLER, DUKE, VAUGHAN, CARR, PARKER, DUKES, NORFLEET, SIMONS

Nansemond County Court

Michael King
vs.

Elisha Cuthbert
et al

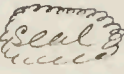
Papers in above Styled Suit
in the Hands of

Wm. T. Cuthbert
Attorney

5/31/37 193

This Indenture made this 15th day of January in the year of our Lord 1848
between Solomon Carr of the county of Warren and State of Virginia
of the first part and Elisha Ashburn of the same county and State. Witness-
eth: That the said Solomon Carr for and in consideration of the sum of
Twelve hundred Dollars to him in hand paid by the said Elisha Ash-
burn, before the signing, sealing and delivery of these presents, the receipt-
whereof is hereby acknowledged, have granted bargained and sold
and by these presents doth grant, bargain, sell and convey unto the said Elisha
Ashburn his heirs and assigns, a certain tract of Land, with a Mill situated
thereon, known formerly as Smellie's Mill, and now Carrs; situated, lying
and being in the county and State aforesaid, said to contain Two hun-
dred & 60 acres more or less (firmly lying ground excepted) & bounded
as follows, to wit: North by the lands of Richard Eley. East by the lands of Daniel
McCormey, South by the land of the aforesaid Elisha Ashburn and West by
the land of Carr Parker: to have and to hold the aforesaid tract of Land
& mill, with the appurtenances thereunto belonging to him the said Elisha
Ashburn his heirs and assigns, to the only proper use and behoof of him
the said Elisha Ashburn his heirs and assigns forever, and the said Sol-
omon Carr, for himself his heirs executors and administrators, doth hereby
covenant and agree to and with the said Elisha Ashburn his heirs and
assigns, that he the said Solomon Carr and his heirs, the said tract of
Land and Mill thereon, with the appurtenances thereunto belonging,
unto him the said Elisha Ashburn and his heirs, and against the
claims of all persons whomsoever: shall and will
warrant and forever defend by these
presents, & in witness whereof the
said Solomon Carr hath hereunto
set his hand and affixed his seal

This day and date as first above written

Signed, sealed and delivered { Solomon Carr 

in presents of

Azel Benthall

Daniel McClellan

Carr^{his} Parker
mark



In the Clerk's Office of Newbern County Court, the 21st day of January 1848.
This Indenture was acknowledged by Solomon Carr to be his act and
deed, and thereupon admitted to record.

Teste,

Ro: R. Prentiss. Ck.

In the Clerk's Office of Newbern County Court, the 16th day of October 1866.
The foregoing Deed with the original certificate thereon was produced by Elisha
Ashburn to the Clerk of said Court: and on the application of said Ashburn the
~~same~~ is recorded anew: the book in which the same was originally re-
corded having been destroyed by the burning of the Clerk's Office and re-
cords on the 7th day of February 1866.

Teste,

Peter B. Prentiss Clerk.

A copy:

Teste,

Peter B. Prentiss Clerk.

Solomon Carr

To { Copy Deed

Elisha Ashburn

" "
(A)

Exhibit filed with
Answer of Elisha Ashburn

ads
Huck King

The Commonwealth of Virginia,

To the Sheriff of Nansemond County---Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON *Elisha Asburn, Rufus
Biller and Abraham Duke's*

to appear at the Clerk's Office of our *Circuit* Court, for the County of Nansemond, on the
first Monday in *October* next, 186*6*, being rule day, to answer a bill in
chancery, exhibited against *them*, by

Michael King,

and unless *they* shall answer the said bill by the next rule day
thereafter, the Court will take said bill for confessed, and decree accordingly.

And have then and there this writ. Witness, PETER B. PRENTIS, Clerk of our said Court, at his
Office, this *28th* day of *September* 186*6*, and in the *91st* year of
the Commonwealth.

Peter B. Prentis. Clerk.

For The Sheriff will, in his return, note the day on which this process is executed on each Defendant.

The Object of this Suit, is to enjoin and restrain the within named Elisha Ashburn, Rufus Butler and Abraham Duker, or either of them, or the Agents of either of them, from further trespass or waste, or cutting of lumber, from the land of the within named Michael King, until the further order of the Judge of the Circuit Court of this County.

Teste,

Peter B. Prentiss. Clerk

Whithead, p. 9

Michael King

Sum. in Chy. p.

Elisha Ashburn, Rufus
Butler and Abraham
Duker

To Octo. Rules 1866.

Pro. C. No. 1. page

Co: Co

Executed Octo: 1 st: 1866. And a true Copy of this process
delivered to Elisha Ashburn, Rufus Butler
and Abraham Duker.

Wm R Mitchell
Jy for Wm R Mitchell

The Commonwealth of Virginia,

To the Sheriff of Nansemond County---Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON *Thomas J. Ashburn, Administrator of Elisha Ashburn deceased, Rufus Butler, Abram Dukes: the said Thomas J. Ashburn in his own right; Rebecca Ashburn, James C. Vaughan and Elizabeth, his wife; Margueret Ashburn, Jennima J. Ashburn, Barbara Ashburn, Peter Ashburn, Henry Ashburn: and Joseph P. Mary a, Robert Francis and Buck Ashburn: the last five being infants.*

to appear at the Clerk's Office of our *Circuit* Court, for the County of Nansemond, on the first Monday in *June* next, 1867, being rule day, to answer a bill in chancery, exhibited against *them* by

Michael King

and unless *they* shall answer the said bill by the next rule day thereafter, the Court will take said bill for confessed, and decree accordingly.

And have then and there this writ. Witness, PETER B. PRENTIS, Clerk of our said Court, at his Office, this *30th* day of *May* 1867, and in the *91st* year of the Commonwealth.

Peter B. Prentis, Clerk.

The Sheriff will, in his return, note the day on which this process is executed on each Defendant.

Whitehead. P. 9

Michael King

St. James' in city.

Eliza Ashburn's adms^{rs}

Ind:

To June Rules 1869

We acknowledge service of this process, & that we have rec^d. each a copy hereof.

Thos J Ashburn adm^r of E Ashburn
Thos J Ashburn
W R Butler
Abram Dicks
Rebecca Ashburn
James C Vaughan
Peter C Ashburn
Eliza Beth Vaughan
Femina J Ashburn
Margaret A Ashburn
Henry Ashburn
Barbary Ashburn

cc: 9

The Commonwealth of Virginia

To the Sheriff of Nansemond County. Greeting.
Whereas Michael King, heretofore exhibited to our Circuit Court, for the County of Nansemond, his bill of Complaint against Elisha Ashburn Rufus Butler and Abraham Dukes, whereon sundry proceedings have been had, as appears from the records and files of the said Court; but before a final decree, could be pronounced in the cause, the said Elisha Ashburn, departed this life, intestate, as it is said, and administration of all and singular his goods chattels and credits, hath been in due form committed to Thomas J. Ashburn, and being supplicated for the proper remedy in this behalf and being willing that what is right, should be done therein, we command you that you make known according to Law, to the said Thomas J. Ashburn administrator of said Elisha Ashburn dec^d, that he be at the Clerk's office of said Court, on the first Monday in February next, to shew if any thing for himself, ^{he hath} or can say why the said suit, should not in all things be in the same plight and condition, as it was at the time of the decease of the said Elisha Ashburn and be proceeded into a final decree against him in his character aforesaid. And further to do and receive what our said Court, shall in that part consider. And have then there, this writ. Witness Peter B. Prentiss, Clerk of our said Circuit Court for the County of Nansemond at his Office, this 25th day of January 1867. in the 91st year of our foundation.

Peter B. Prentiss. Clerk.

Executed January 23rd 1867 And a true Copy hereof
delivered to Thos. J. Ashburn

Wm Eley Jt

Michael King

vs Sci: Fus:

Thomas J. Ashburn,
Adm^r: of Elisha Ashburn
dec'd

To February Rules 1867

To ~~Wm. Ashburn~~ Ashburn, Ann. of Elisha Ashburn, Henry Ashburn, an John P. May Jr., Robert Francis and Buck Ashburn, the last being infants and others -
To

Take notice that I shall on the 2nd day of August 1867, next, at
The office of J^r R. E. Kelly in Suffolk
between the hours of 8 a. m. and 6 p. m. of that day, proceed
to take the Depositions of John Simons, ~~and others~~
and others, to be read as evidence in my behalf, in a certain Suit
in Chancery, depending in the Circuit Court of Stafford
County, wherein I am
~~an~~ plaintiff, and you
are defendants; and if from any cause the taking of the said
Depositions be not commenced on that day, or if commenced be not concluded on that day, the
taking of the same will be adjourned and continued from day to day or from time to time, at the
same place and between the same hours, until the same shall be completed.

Respectfully,

To the Sheriff of
County to execute.

} Michael King
by
Robert M. Mendenhall
Attorney.

Service of the within notice

acknowledged.

John R. Kilby
att'y. for Defts.

King

vs. J. In Chy.

Elisha Ashburn & al.

The Depositions of John Simons
Taken before me, W. L. Riddick, a Notary
Public for the County of Hansemond, pursuant
to notice hereto annexed, at the office of John
R. Kilby in the Town of Suffolk, on the 2nd
day of August, 1847, between the hours of 6. a. m.
and 6. p. m. to be read as evidence on behalf
of Michael King in a certain suit in Chan-
cery depending in the Circuit Court for the County
of Hansemond, wherein the said Michael King
is plaintiff and the said Elisha Ashburn and
others are defendants.

Present:

R. O. Whitehead. Plaintiff's Atty.

Jno. R. Kilby. Def't's. Atty.

John Simons being first duly sworn deposes
and saith as follows:

1st Question: What is your age, and where do
you reside?

Answer: I am sixty years old, and live in
Hansemond County, Virginia.

2nd Question:

Do you know any thing of the land and
timber now in controversy in the suit of

King vs: Ashburn and others?

Answer: I have known the land for many years - nearly all my life - was raised near there.

3rd Question:

Did you ever sell the land in question, either as Commissioner, or otherwise to Michael King, if so, at what time, and did you sell the timber in the pond with the land?

Answer. I sold the land as Commissioner, appointed by the County Court of Nassau County, ^{it} belonging to the Estate of Jonathan Rogers, decd. in the year 1849 or 1850 - and in the deed described it as bounded on the North by Carr's Mill-pond, on the East by Elisha Ashburn, on the South by Micajah Pearce, and the West by Hugh H. Kelly. I sold the land as it was, without any particular description, and without any reservation, as the decree directed.

4th Question:

Did the Northern boundary, which you say was Carr's Millpond, extend to the run?

Answer: Yes, I consider it extended to the run.

(Answer excepted to as a mere opinion of witness)

5th Question: On what grounds do you found your statement that ^{the} line extended to the run?

Answer: It is founded on the general practice that when a ^{sufficient} run divides two tracts of land, it is

usual to consider such run to be the live. I bought cypress-trees standing in said Mill-pond in 1828, when this same land in question belonged to Elisha Rogers, from the said Rogers, but who did not own the Mill.

6th Question:

Was it the common custom of the neighborhood to purchase the timber standing in the pond from the land owners on the pond, and not from the owner of the Mill?

Answer: Yes, such was the custom. I bought timber of Wm. Parker in 1827, standing in the pond when I bought it.

7th Question:

Do you know that any owner of Carr's Mill ~~has~~^{feat.} ever claimed the timber in said pond before this suit was brought?

Answer: No, I never knew of such claim.

8th Question:

Have the owners of land around said pond invariably claimed and used the timber in said pond without dispute?

Answer. Yes, they have so used it, and I have never heard of any objection or dispute concerning the same.

(Cross-examined by Deft's Atty.)

1st Question.

When was this Mill first erected and

by what authority:

Answer: The Mill was erected before my recollection. and I don't know by what authority.

2nd Question:

How many ~~persons~~ ^{persons} have owned this Mill since your recollection, and who were they?

Answer: Only three. When I first recollect the Mill belonged to Solomon Carr, senior, afterwards to Solomon Carr, junior, and then to Elisha Ashburn.

3rd Question.

Have you ever heard from any old citizen how this Mill was erected and if so who did you hear it from and when?

~~Answer:~~ (Excepted to by Pltff's Counsel as being only hearsay)

Answer: I heard from my father, who died in 1825, that Mr. John Parker, who was older than my father, and who then owned the land now owned by Carr Parker and part of that owned by Michael King, that the Mill was originally put up by one Nathan Carr and by authority of an Order of Court.

4th Question -

Do you know the legal rights of the parties to this suit.

Answer. I do not know what the law is about

it.

(~~XXXXXXXXXXXX~~)

And further this deponent saith not.

John Simons

Caro Parker being ~~the~~ first duly sworn
deponent & saith as follows:

1st Question:

How old are you, and do you know
the parties to this suit.

Answer: I am about fifty one years
old, and I know the parties to this suit.

2nd Question:

Will you state what you know in regard
to the timber in Caro's Old Mill Pond, and the
general opinion in the neighborhood as to whom
this timber belonged, and the custom as to using
and cutting it?

Answer: I have been in the habit of using and cutting
the timber in said pond up to the run on my
side of the pond, and such has been the custom
with the other owners.

3rd Question:

Did Ashburn or any other ~~other~~ owner of
the Mill ever claim this timber before the
war, or ever use it in any way.

Answer: No, unless he bought it.

4th Question:

Did Ashburn try to purchase this timber before he commenced cutting, or having it cut, & if so, of whom.

Answer: I sold him some of this timber. My brother sold Ashburn and others, timber on the land now owned by Michael King - and in the Mill-pond, and without any dispute. I sold him timber from my land since he owned the mill.

^{farther}
And, this Deponent saith not.

Carri^{his} X Parker
mark

Joshua Simons being first duly sworn deposes and saith as follows:

1st Question: What is your age? and do you know the parties to this suit, and the land in question?

Answer: I am fifty two years old. I know the parties to this suit, and I have known the land in dispute all my life.

2nd Question:

Q^{ue}stion: Do you own any land flooded by the water of Carri's Mill-pond?

Answer: I do own land covered by the water of said Mill-pond, since the dam has been raised; but it is only a small portion.

3rd Question: ~~Do you understand your title to ex-~~

Do you understand your title to ex-

tend to the run of the Mill-pond. instead of to the edge - and do you cut and use the timber accordingly, and has such been the general custom of other similarly situated since your recollection. Answer. I do claim, and consider that my title extends to the run, and have cut and used the timber accordingly, as has been the general custom with others owning lands on said pond.

4th Question:

Was any claim to the timber in the pond ever made by any owner of the Mill before the destruction of the County Records by fire, or by any owner of the Mill seat except Elisha Ashburn?

Answer. I never heard of any claim being set up by any Mill-owner to the timber in the pond before that made by Elisha Ashburn.

5th Question:

Would not the owner of the mill have had to purchase any timber from the pond, he might wish to use?

Answer. I should think he would. I never heard of any owner cutting any timber without the consent of the owners of the land, or paying for it.

And further this deponent saith not
Joshua Simons

Thomas J. Ashburn being first duly sworn
deposes and says as follows:

1st. Question:

What is your age, and do you know the land
in question?

Answer. I am about thirty seven years old.
and know the land in question.

2nd. Question:

Do you own any land on Carr's Mill-pond,
and if so, did you tell Elisha Ashburn that he
might cut the timber on King's land, but that he
could not cut yours?

Answer: I do own ^{land} on said pond. I did tell Elisha
Ashburn, who was my father, that if he chose he could
^{cut} timber out of the pond, but he could not cut mine

3rd. Question:

Did you not say to Elisha Ashburn you thought
it wrong for him to cut Mike King's timber in
the pond?

Answer. I don't recollect saying so.

(Cross-Examined by Deft's Atty.)

1st Question:

Of whom did you get the land & how?

Answer: I got the land by deed of gift, from
Elisha Ashburn, my father

2nd Question. Explain what you mean by
"cutting timber on King's land, and not on
yours.

Answer: My father told me that he had sold the timber on the South side of the Mill-run up to high water mark, to Abram Duke. whereupon I told him that he could not sell or cut the timber on my land, as he had ^{already} given it to me.

(Reexamined by Plaintiff's Counsel)

4th Question:

Did your father ever sell or claim any timber in this pond before the war, and did he not buy timber instead of selling it in the pond?

Answer: I know that my father got shingles from the pond, but I don't know, or in what manner he obtained the timber. I never heard of his selling any timber from the pond, till the sale ~~to~~ to Abram Duke.

And further this deponent saith not.

Thos. J. Ashburn

The plaintiff, Michael King, was offered as a witness, but was excepted to, and ruled out, (not being a competent witness - the defendant being dead).

State of Virginia

Nassau County, to wit:

I, W. L. Riddick, a Notary Public
for the County and State aforesaid, do hereby
certify that the foregoing depositions were duly
taken, sworn to and subscribed before me at
the time and place mentioned therein.

Given under my hand this 2nd day of August
1867.

W. L. Riddick
N. P.

Notary Public's fees \$5- chg^d. to Plaintiff -

King.

u: Σ Depositions &c.

Ashburn & al.

1867. Aug: 3^d. Same to hand
under cover, sealed. CLK:

To Thomas J. Ashburn in his own right and as admr. of
Eliha Ashburn decd, and as curator of Addison Ashburn
decd; - Rebecca Ashburn, James C. Vaughan & Elizabeth his
wife, Peter Ashburn, Henry Ashburn, & Dr. P. Mary Allen - Robert -
Francis Buck Ashburn the last 5 infants, by P. B. Prentiss guardian
Take notice that we shall on the 12 day of March 1867, next, at
the office of John R. Kelly, in Suffolk in Nansemond
County, Virginia between the hours of 8 a. m. and 6 p. m. of that day, proceed to
take the Depositions of Wilson Norfleet, Jas. R. King
and others, to be read as evidence in our behalf, in a certain suit
in Chancery, depending in the Circuit Court of Nansemond
County, wherein we
are plaintiffs, and you
are defendants; and if from any cause the taking of the said Depositions be
not commenced on that day, or if commenced be not concluded on that day, the taking of the same will
be adjourned and continued from day to day or from time to time, at the same place and between the
same hours, until the same shall be completed,

Respectfully,

Margaret Ashburn
Sonima J. Ashburn
& Barbara Ashburn
their attys.

To the Sheriff of Nansemond }
County to execute.

askburn

m } notice to
take deep on
12 Mars 1867
askburn &

Execute these notices
return to me
J. RSC

Execute in acc of the defendants.

John E. Bay 1867

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF NANSEMOND COUNTY—Greeting.

YOU ARE HEREBY COMMANDED TO SUMMON *Wilson Norfleet, Jas:*
R. King and Thomas J. Ashburn

to appear before ~~the~~ ^{some} Justice of the Peace or Notary Public
at *John R. Kelly's Office, in Suffolk,* ~~Court of~~ Nansemond County, on the *12th*:
day of *March* next to testify and the truth to say in behalf of *Margaret*
Ashburn & others

in a certain matter of controversy in ^{*The Circuit*} ~~our said~~ Court, *of said County*
depending and undetermined between *Thomas J. Ashburn in his own right and*
as Adm^{rs}: of *Elisha Ashburn dec'd & others*, and said *Margaret Ashburn*
& others.

And this *they* shall in no wise omit, under the penalty of ~~\$~~100. each And have then
there this writ.

Witness, PETER B. PRENTIS, Clerk of our said Court, at his Office, the *26th*: day of

February — 186*7*, in the *91st*: year of the Commonwealth.

Peter B. Prentis, Clerk

Margaret Ashburn Dal.

¹¹
25th { Spa:

Thomas J. Ashburn, in his
own right & as adm^r: of
Elisha Ashburn do^t Dal:

To 12th day of March 1867
at John R. Kelby's Off^r:
in Suffolk.

Exce^{pt} & return copy hereof delivered to
William Brewster, J. A. King and Henry
J. Adair.

Wm Brewster

The depositions of Jas R. King
taken on this 12th day of
March 1867 at the office of John R. Kilby
in Suffolk, Nausumund County, between the
hours of 8 a.m. and 6 p.m. of that day
to be read as evidence in a suit in
Chancery now pending in the Circuit Court
of Nausumund County, between Margaret
Ashburn, Jennina J. Ashburn, & Betsy Ashburn
Plaintiffs and Thomas J. Ashburn and
others Defendants - taken pursuant to the
annexed notice -

James R. King being duly
sworn, answers and says, as is set forth
in the answers following -

1st Question by John R. Kilby plaintiff's Attorney

State whether Addison Ashburn before
his death ever executed a will in your
presence, and if so, when, and all the
circumstances connected with it -

Answer. Addison Ashburn did execute a
will in my presence, and that of Wilson
Norfleet, in the counting room of James B.
Norfleet, in the Town of Suffolk, during
the spring of 1861. I think it was on a County
Court day. He stated as a reason for making
a will that he was going into the military ser-
vice of the Confederate States, and wished to

make such a disposition of his property as suited him. Wilson Norfleet and myself witnessed such will at his request - all being present together at the time. He carried the will away, and I do not know what became of the paper afterwards. I did not read the will, nor hear him or anyone else read it, nor do I know what its provisions were.

And further this deponent saith not.

J. R. King

Wilson Norfleet being duly sworn on the Holy Evangelists of Almighty God, deposes and saith as follows:

1st Question: State whether Addison Ashburn before his death ever executed a will in your presence, and if so, when, and all the circumstances connected with it.

Answer: About the beginning of the late war, in the counting room of James B. Norfleet, in the town of Suffolk, Mr. Ashburn called upon me to witness a paper, which he said was his will, which I did.

I cannot say whether any other person was present when I so witnessed the paper, except Mr. Ashburn, though there might have been. He stated that he was going into the military service and he

desired to make a will disposing of his property; in the event that anything should happen to prevent his return.

He took the paper which he said was his will, away with him, and I never saw either that or him afterwards.

(Cross Examined by defendants' Counsel)

1st Question - Can you state definitely, whether any other witness signed the paper at the time that you did - ^{if so} Did Mr. Ashburn acknowledge or sign the paper in your presence and that of the other witness?

Answer: My recollection of the matter is that some other person had already witnessed the will and then I was called upon to witness it. I cannot say whether any other person was present when Mr. Ashburn acknowledged it to be his will, though there might have been. I know nothing as to the provisions of the will.

And further this deponent saith not.
(Wilson, Norflet)

Thomas J. Ashburn, being duly sworn deposes and saith as follows:

1st Question by Plff's Counsel:

How old are you? and what ~~the~~ relation were you to Addison Ashburn, and to the plaintiffs?

Answer: I am thirty-six years old, and am brother to Addison Ashburn and the plaintiffs.

2^d Question - by same.

When did Addison Ashburn go into the military service of the Confederate States - how long was he absent, and when did he die?

Answer: He went into the army about the month of July, 1861 - he continued in the service till May 1864, when he died, at Chimborazo Hospital, near Richmond.

3^d Question by same

State what you may know of the execution of any will by Addison Ashburn, and its contents - and if such will was made, what became of it? and generally, what you may know concerning the same.

Answer: He told me about the time he went in the army, that he had made a will - but did not state its contents - He ^{was} placed ~~it~~ in a box and ~~deposited the same~~, which contained all his papers, and left the same with me to be taken care of. The box remained in my house until the fall of 1862, the box was then delivered to my sister, Margaret, with the bureau in which it was placed, and remained in her possession until February 1866. She then brought a will executed by Addison Ashburn, and wit-

2.

referred by James R. King and Wilson Kaffleet and gave it ^{to} my father, Elisha Ashburn, now dead, and my father handed it to me, and requested me to read it, which I did, in the presence of his widow, my mother-in-law, and ~~some of the~~ ^{some of the} children. The will contained the following disposition of his property: He gave to his sister Margaret the house and land on the North side of the road. To his sister Jermina Ashburn the land on the South side of the road: They were to pay his sister Barbara Ashburn, in proportion to the valuation of their land to make her equal with them. The remainder of his property he requested to be divided equally among his other brothers & sister of the whole blood, viz: Thomas J. Ashburn, Elizabeth Gaughn, Peter Ashburn, and Henry Ashburn. He appointed no Executor. There was a Codicil to the will, Changing the disposition of his ~~estate~~ ^{personal} personal Estate, by giving his three negroes to his three sister - Margaret, Jermina & Barbara. This Codicil, as well as the will, was in Addison Ashburn's handwriting. There were no witnesses to the Codicil.

After I had read the will and Codicil, my father requested me to tear off the names of the witnesses; I refused to do so, and ~~and~~ gave him back the paper, and advised him not to do it. My father then put the paper away

in his desk. My father afterwards told me that he had destroyed the will, when I remarked to him that I had previously ~~advised~~ him not to do such a thing, as it might cause him to get into some difficulty. He replied that he would have Scott summoned to prove the contents of a letter which ~~was~~ filed now with the papers in this cause, as Exhibit (A.). At the time I read the will to my father, he stated that all he desired was for the land and negroes he had given Addison should come back to him - the Chattel Estate he was willing should be divided among the own brother and sisters of Addison. At the time my father took the will, he gave to my sister the bonds & money, which was in the box, to the amount of ^{about} three hundred dollars. After my return from the army, sometime about the latter part of the year, 1865, I asked my father if he was willing to the same disposition ^{of the Chattel Estate} as he had previously stated, and he answered he was, but that he thought some one would have to qualify upon Addison's Estate, in order to make this disposition of it.

4th. Question by same.

How old was Addison Ashburn when he died, and had he ever been married?

Answer: He was about thirty-five or six

years old when he died, and had never been married.

3th Question by same:

What did the "remainder" other than land, of the Estate of Addison Ashburn consist of?

Answer: One negro man, negro woman & child, a few articles of household furniture, ^{some few cattle} and the money & bonds I have mentioned before.

6th Question by same.

Was that part of the land given to Margaret Ashburn by the will the house part, and that given to Jermina that part next to the mill.

Answer. Yes.

7th Question by same

Please Examine the Exhibit Marked (A.) filed with the Bill (here Exhibit shown to the witness) and state whether it be in the handwriting of your brother Addison? And were you well acquainted with the handwriting of your brother Addison?

Answer: I have examined the paper presented to me, and from my knowledge of Addison Ashburn's handwriting, I am confident that neither the body of the letter, nor the signature is his. The signature is not spelt as he usually spelt it. I was well acquainted with my brother's handwriting.

8th Question by same.

What is the value of the land, and the quantity of which Addison Ashburn died possessed?

Answer: About two hundred acres, and the value about six or eight hundred dollars.

9th Question by same.

Who are the heirs of Elisha Ashburn, the father of Addison Ashburn?

Answer: His widow, named Rebecca - (second wife) Elizabeth Vaughan, Thomas J. Ashburn (myself) Peter Ashburn, Margaret Ashburn, Henry Ashburn, Jennima J. Ashburn and Barbara Ashburn, children by a first marriage, and Joseph P. Ashburn, Mary A. Ashburn, Robert Ashburn, Frank Ashburn, and a younger one called "Buck" - I think ^{named} ~~called~~ Columbus Washington - the children by his last wife - the present widow.

9th Question by same:

How did Addison Ashburn obtain title to the land mentioned in the will?

Answer: By deed ~~of gift~~ ^{from Elisha Ashburn} of bargain and sale, which was duly recorded.

And further this deponent saith not.

Thos. J. Ashburn

The further taking of these depositions is adjourned to the 3rd day of April, 1867, ^{at the same} ^{between} ^{at the same} ^{place.}

W. L. Radick S. P.

Suffolk, Va. April 3rd 1867

The depositions of Mrs. Rebecca Ashburn and others, taken pursuant to annexed notice and adjournment, to be read as evidence in the Chancery Cause of Margaret Ashburn & al. v: Thomas J. Ashburn & no se. and others, for the said plaintiffs:

Mr. Rebecca Ashburn, ^{one of the defendants} being duly sworn deposes and saith as follows:

1st Question by Plaintiffs' atty:

What relation are you to the late Elisha Ashburn decd. & to the plaintiffs in this case?

Answer: I am the widow of the late Elisha Ashburn decd. and the step-mother of the plaintiffs:

2nd Question by same.

State all you know of the execution of any will by Addison Ashburn decd. and its contents, & what became of it and generally all you may know about the will?

Answer: I know nothing of any execution of any will by Addison Ashburn decd. and only heard of the existence of such a paper some time after his death in the winter afterwards - when I heard a portion of such paper read by Thomas J. Ashburn, at the residence of the late Elisha Ashburn decd. in the presence of my late husband, and some of the small

Children. As well as I recollect of its contents it gave the house side of his plantation to Margaret, and the other side of the road to Jermina, and they two were to make Barbary equal with them. The chattel estate was to go to all of his brothers and sisters. I think, I was engaged about dinner at the time and don't recollect anything further.

Some time afterwards I heard my late husband say that the paper had been destroyed, and also heard Thomas J. Ashburn say to him that he had told him not to destroy it, as it might give him trouble. Addison Ashburn died, as I understood, about the 22nd of May, 1864, at Chimborazo Hospital, near Richmond, Va.

And further this deponent saith not.

Rebecca Ashburn

Margaret Ashburn, one of the plaintiffs, was only sworn and deposed and saith as follows:

1st Question by Plaintiffs' atty:

What relation are you to Addison Ashburn decd. and Elisha Ashburn decd.?

Answer: I was ^{sister} ~~daughter~~ of the one and daughter of the other.

2nd Question by same

state all you know of the existence & execution of any last will and testament by your brother Addison Ashburn decd, and whether it was ever in your custody (if any existed) and its contents & what became of it and all you know concerning it?

Answer: I know nothing of the original execution of any such will, and knew nothing of its existence until after Addison Ashburn's death, when opening a box containing his papers, that had been in my custody and was then, I found among his papers, one purporting to be his will, signed by him, which I read and found its contents to be - that I was to have the house side of the land and Jermina was to have the other, and Barbary was to be made by us equal with us, by payment of money. His chattel estate was to be sold, and I think, was to be divided among the other four of his own brothers and sisters. Between the lines was written, that he wanted his three single sisters to have his three negroes. It was about two months after I heard that my brother was dead, that I read ^{the} will and kept it for several months until the beginning of the following year, when my brother Thomas J. Ashburn came home on furlough, when I gave him the paper, and he read it

to my father, in the presence of my stepmother
and some of the small children. The paper
was left with my father; and some time after
~~to~~ I heard him say that he had destroyed it.
3rd Question by same:

When was the paper (Exhibit "A" filed with
with the bill ~~was~~ shown to witness) purporting
to be a letter from "Addison Ashburn" to you
received?

Answer: Within two weeks after its date?

(Counsel for defence excepts to the
above testimony of Margaret Ashburn, ~~as~~
~~since~~ as not being proper to be taken in
this form - she being ^{one of} the plaintiffs - and in
such cases the law requiring such testimony
to be taken in open Court.)

Cross-Examined -

Question by Opp's Atty:

You say in your Examination in Chief, that
you ~~say~~ did not ~~read~~ know of the existence
of any paper purporting to be the will of
Addison ^{until about two months after his death.} Ashburn? Did you know, or learn
from reading the letter before mentioned that
there was a will?

Answer: I did learn from that letter that
there was a will, but did not open the box
containing that and other papers, until about two

months after his death, when I first saw the paper.

Question by same:

Why did you not follow the directions contained in that letter, — to look in said box and find & burn the paper your brother stated to be his will?

Answer: Because I did not think he wanted it destroyed, and was advised to hold on to it.

And further this deponent saith not.

Margaret Ashburn

State of Virginia
Nansemond County, to wit.

I, W. L. Radick, a Notary Public for the County aforesaid, in the said State, do hereby certify that the foregoing depositions were duly taken, sworn to and subscribed before me at the times and places mentioned therein.

Given under hand this 3rd day of April
1867.

W. L. Radick
N. P.

Notary's fee \$6.00



Margaret Ashburn Tal.

vs ¹¹ Depositions

Thomas J. Ashburn Tal.

Come to hand Sept: 3^d 1867
under cover, sealed. *CHG*

Know all men by these presents, that we, Michael King and John F. Pinner  are held and firmly bound unto the Commonwealth of Virginia, in the sum of Five Hundred Dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 28th day of September, One Thousand eight hundred and sixty-six.

The Condition of the Above Obligation is such, that whereas the above bound Michael King on his bill in Chancery against Elisha Ashburn, Rufus Butler and Abraham Dukes addressed to the Honorable Richard M. Baxter, Judge of the Circuit Court of Hanover County, has obtained from the Honorable Thomas C. Jabb, Judge of the Corporation Court of Norfolk City, an injunction to enjoin and restrain the said Elisha Ashburn, Rufus Butler and Abraham Dukes, or either of them or the agents of either of them from further trespass or wash, or cutting of timber from the land of said Michael King until the further order of the Judge of the said Corporation Court of Norfolk City: And, whereas it is provided by the order of the said Judge awarding the said injunction, that the said Michael King, the Plaintiff, in said Bill shall not have the benefit thereof until

he shall enter into a bond, before the Clerk of the Circuit Court of Hanseman County, in sufficient Security, in the sum of Five Hundred Dollars, payable to the Commonwealth of Virginia, conditioned to pay all such damages and costs as shall be awarded against him, by reason of suing out said injunction. Now therefore, if the said Michael King shall pay all such costs as may be awarded against him, and all such damages as shall be incurred in case the said injunction be dissolved, then this obligation to be void, or else to remain in full force and virtue

Executed in the Presence of { Michael King 
Peter B. Prentiss { John, Jr., Pinner 

In the Clerk's Office of the Circuit Court of Hanseman County, the 28th day of September 1866.

This day Michael King and John Jr. Pinner ~~and~~ signed and acknowledged the foregoing bond - and the said John Jr. Pinner, the Security there to, made oath before me, Clerk of the said Court, that his Estate, after the payment of all his just debts and such liabilities as he has incurred for others, is worth the sum of Five Hundred Dollars.

Given under my hand this 28th day of September 1866.

Peter B. Prentiss, Clerk.

Virginia

At Rules held in the Clerk's Office
of the Circuit Court of Nausemond
County on Monday the 3rd day
of June 1867.

Michael King Complainant
against } In Chancery.

Thomas J. Ashburn administrator of
Elisha Ashburn deceased Rufus Butler, }
Abram Dukes, the said Thomas J. Ashburn
in his own right, Rebecca Ashburn James }
C. Vaughan and Elizabeth his wife Marg
aret Ashburn, Lemima J. Ashburn Barba
ra Ashburn Peter Ashburn, Henry Ash- }
burn and Joseph P. Mary A. Robert Fran
cis and Buck Ashburn, the last five, S
being infants Defendants

On the motion of the Complainant by Counsel,
Peter B. Prentiss, is appointed guardian ad litem
to defend the infant defendants in this suit and
it is ordered that notice be given the said guard
ian of his appointment by serving on him a copy
of this order.

Teste.

Peter B. Prentiss. Clerk

1867 June 3rd I acknowledge service of the foregoing order
and that I have received a copy thereof.

Peter B. Prentiss. govt. at Nausemond

Michael King

To Order of ptg: god: ad litem

Thomas J. Ashburn, Admin^r
of Elisha Ashburn dec'd & al:.

King v. Ashburn &c.

This cause came on to be heard
on the original & amended Bills filed
in this cause taken for confessed as to
Rebecca Ashburn, James C. Vaughan
and Elizabeth his wife, Margaret
Ashburn, Jimima J. Ashburn,
Barbara Ashburn, Peter Ashburn, &
Henry Ashburn, on whom process had
been duly served and they still failing
to appear and make defence, and
on the answer of ^{Mr. R. Butler} Elisha Ashburn, to
said original Bill, and of Thomas
J. Ashburn admt. of Elisha Ashburn
to said ^{amended} Bill & on the answer of the ^{defendant} Defendants,
Dec'd ^{by their} ^{gracious} ^{and} ^{learned} ^{counsel} Replikations to said answers
and on Examination of Witnesses
and was argued by Counsel: On
consideration whereof the Court doth
Judge, order & decree that the injunction
granted in this cause be perpetuated.
and that each party pay his own costs.
and that the cause be removed from
the Docket.

King
N
Archiburn

1869
Oct. Ct. Decree

To be entered
R. H. Butler

Entered

The answer of Thomas J. Ashburn as admr. of
Elisha Ashburn dec'd to a Bill in Chancery filed
by Michael King in the Circuit Court of
Harrison County against Elisha Ashburn
Jr.

This Respondent says that since
the said suit was commenced, the said Elisha
Ashburn has died & this Respondent has duly qualified
in Harrison County Court as his administrator —

That he knows nothing personally of the
allegations in said Bill, but supposes that
the plaintiff is not entitled to his demand,
and that the mill pond & land thereon were
the property of said Elisha Ashburn & on his
death descended to his heirs at law — This
Respondent relies on the answer of said Elisha
Ashburn to which he refers, and prays that the
Complainant's Bill be dismissed, because of
the want of proper parties, & the want of merit in the
case. This Respondent has heard, tho: he does not

know it to be so, that the plt. purchased his land
adjoining the said mill pond of one John
Simon, Comr. and that no title was conveyed
thru him for any land below high water mark
He therefore denies the right of the plt. to claim
any ^{such} rights or set forth in his Bill

Thos J Ashburn Administrator

Sworn to before me this 16th day of
April, 1867.

N. L. Ridgwick
Comr. in Chy.

King

v

Eliza Ashburn &c

Answer of
Thomas J. Ashburn
adw.

The Joint (and separate answers of Rufus
Butler and Abraham Duke, to a Bill of
Injunction exhibited against Elisha Ashburn
and themselves, by Michael King, in the Circuit
Court of Hansemond County -

These Respondents, say, that know
nothing about the title to the mill, mill pond
(and timber standing in said Pond, nor of any
of the matters connected with the ^{controversy} ~~matters~~, except
that they have known the mill for a number
of years as belonging to Elisha Ashburn, and
that they contracted with him to cut some of the
Cypress timber within the limits of said mill
pond, for the purpose of making Rail road
crossties, and that they were proceeding to
cut the same, and were arrested in their business
by the plaintiffs' Injunction -

and having answered, pray to be hence dismissed &
signed

Sworn to before me, in my Office
by W. R. Butler & Abram Duke
Octo: 18th 1866.

W. R. Butler
Abram Duke

Peter B. Priddy, Clerk

King
n.

Asylum Lab.

answer of
Rufus Butler &
Abm. Duke

Dec. 5th Nov. 1866. c. H. K.

The joint and separate answers of Joseph P. Mary A. Robert, Francis and Buck Ashburn infants under the age of twenty one years by Peter B. Prentiss, their guardian ad litem to a Bill in Chancery exhibited against them and others by Michael King in the Circuit Court of Nansmond County.

These Respondents, answering say that so far as they know or believe, the facts set forth in said Bill, are true, but as they are ignorant of their rights. Being infants, they submit the same to the Court, and pray that no order or decree may be made inconsistent therewith.

(Signed.)

Peter B. Prentiss.

guardian ad litem

Michael King

vs { Ans: of infant depts:

Thomas J. Ashburn, adm^r of
Elisha Ashburn dec'd &c

To the Hon Richd B Baker Judge of the
Circuit Court of Hanseman County.

Complaining, sheweth unto the Court, your
Complainant. Michael King: That your
Complainant, did, at October Rules 1866, exhibit
his original bill of complaint in this honor-
able Court against Elisha Ashburn, Rufus But-
ler and Abram Duke stating: - That some
time in or about the year 1790 as your
Complainant believed Solomon Bair did erect
a water grist mill on a small branch run-
ning through the lands of Parker, Moore et als.
in the upper parish of Hanseman County.

The said Parker and others, moved by a desire to
have a mill erected for the benefit and accommo-
dation of the neighborhood, but not being willing
to sell the land or ^{timber} ~~land~~ to be included in the back
flow of the water formed by the dam of said mill,
did retain the same; and the right to cut and
sell the same; and did only agree to part with
one acre as a mill site, and for the establishmt.
and repairs of said dam: All of which to the
best your Complainants knowledge and belief was
fully recorded in a deed, destroyed by fire in the
Clerk's office of Hanseman County, on the 7th day of
February 1866. which deed your Complainant had
occasion to examine very closely, before its destruc-
tion, in consequence of damages about to be done

to some of his land, by the threatened raising of the said Mill dam, some ten years ago, by one Elisha Ashburn. At that time, and long before, and ever since, the timbers included in said mill-pond have been cut, sold and otherwise disposed of, at the will and pleasure of the holders of the land on each side of the said mill pond, without let or hindrance from the holders of the mill and site of one acre; it being a distinct neighborhood understanding, as well as a clearly established fact by the deed, then on record, that such were the clear provisions of the tenure of either party, their title to the timber never being questioned. (Your complainant accordingly, has regularly and uninterruptedly for years past cut and floated ashore such timbers from the pond as stood on his land covered by the pond to the middle of the same, his neighbors owning land on the pond doing the same, and sold to others, such timbers, situated on his land in the same way, as they wished to purchase, for making shingles, staves, or for other purposes, without restriction. To have the other land holders on the pond whose right to the timbers in the pond has never been controverted or assailed before the bringing of this action

This mill was destroyed by the Federal forces in 1863, and the dam was cut. Since that time Carr Parker and others have cut and sold

valuable timber from the pond, as they did before the war and no objection was raised by the owner of the mill and its site. Your complainant preferring to hold his timber and land similarly situated as an inheritance for his children, had been approached with offers for the purchase of the same quite recently and repeatedly, but had steadily refused to sell the same. He was finally told, by parties in this action, that he might as well sell it, for they would have it any way, but he dreaded no such threats feeling perfectly secure in the soundness of his long standing and unquestioned title. But the records which would have effectually guarded your complainant's rights being destroyed by fire, these parties under what they assumed to be good legal authority, had entered upon the lands of your complainant and were cutting, destroying and making way with very valuable timber thereon. Your complainant is advised that these parties were acting under the supposition that legislation since the war had given them privileges which they did not possess or exercise before the war; And he is further advised that their error probably originated from an erroneous construction of an act passed by the Virginia legislature February 19th 1865, which simply extends the time formerly allowed for rebuilding mills destroyed or burnt during the war; but, nevertheless, said

parties were attempting to Exercise rights, never
heretofore Exercised on the domain of your complain-
ant, and ~~was~~ ^{were} ~~then~~ trespassing upon his land,
cutting paths across the same, and cutting down,
destroying, and making way with, very valuable
timber thereon, though repeatedly warned to de-
-sist; And praying, therefore, that the
said Defendants Elisha Ashburn, Rufus Butler and
Abraham Dukes or either of them or the agents of
either of them might be enjoined and restrained
from farther trespass or waste, or cutting of timber
from the Plaintiff's land, until the further order
of this Court.

And your Complainant further shows that the
said Defendants were duly served with process, and
the case was prepared and set for hearing, when the
Defendant Elisha Ashburn departed this life, in-
-testate on or about the - day of - 1866; and
Thos J. Ashburn duly qualified as his administrator
in Stansford County Court, and the cause
duly revived by scire facias as to him. And
your Complainant being advised, that the heirs at
law of said Deceased should be made parties
Defendant hereto, does accordingly say, that the
said Elisha Ashburn left the following heirs at
law, to wit: Thos. J. Ashburn, Rebecca Ashburn,
James C. Vaughan and Elizabeth his wife, Marg-
aret Ashburn, Jemima J. Ashburn, Barbara Ashburn

Peter Ashburn, Henry Ashburn, and Joseph P.,
Mary A. Robert, Francis and Buck Ashburn, the
last five being infants; To whom the real estate
of said decedent passed and descended by law—
And your Complainant therefore prays, that the
said Thos. J. Ashburn, Rebecca Ashburn, James
L. Vaughan and Elizabeth his wife, Margaret
Ashburn, Priscilla J. Ashburn, Barbara Ashburn,
Peter Ashburn, Henry Ashburn, and Jos P.,
Mary A. Robert, Francis and Buck Ashburn
the last five being infants, may all be made
Defendants hereto and answer the allegations in
said original and this amended Bill; And
that the relief prayed for in said bill, and as
above stated, may be granted; and that all
other relief necessary and proper may be
granted consistent with Equity &c

And your Complainant will ever, &c

Richd O'Whithead. p. q.

Michael King

vs ⁴Amend Bell

Elisha Ashburn's Adm^r
bal:

Filed June 3^d 1867
clerk

The answer of Elisha Ashburn to a Bill
of Injunction, exhibited in the Circuit Court
of Hansemond County, by Michael King against
this Respondent and others.

This Respondent, saving reserving &c.
for answer to said Bill, says —

That he was born in the year 1797, and that
before he was born, the Mill referred to in said
Bill now owned by your Respondent, was established,
(and that he knows nothing of, and therefore denies
the allegation in said Bill which says, that "the said
"Parker & others moved by a desire to have a mill
"erected for the benefit and accommodation of the
"neighborhood, but not being willing to see the Sand
"or timber likely to be included in the back flow of the
"water formed by the dam of said mill, did retain the
"same and the right to cut and sell the same, and
"did only agree to grant with one acre as a mill site
"(and for the establishment and repairs of said dam".

That your Respondent knows nothing about
any ^{such} deed ^{as is} referred to in said Bill, and does not
believe that any deed as referred to was ever
recorded — The only matter resembling any such
matter that he ever heard of, was that one ~~Nathan~~ ^{John}
Parker who owned land adjoining the Mill Pond, gave
up to Nathan Leary, who first erected the mill, all
further claim to damages, provided the said Nathan
Leary would find his (Parker's) Corn free of toll,
and which your Respondent has understood was done,
but that, that such arrangement ceased before your
Respondent became the owner of the mill, and which
arrangement was simply in place of money damages
nothing more, not in any way changing the rights

of the owner of the mill — Your Respondent has always understood and believes and charges that the said mill was established according to law by regular proceedings had in court and damages regularly assessed by a jury and paid, and that under such proceedings the owner of the mill, became under the law entitled in fee simple to all the lands, condemned by said proceedings, and entitled to the absolute use of the mill pond, & soil under the same (and the trees & timber growing on the land within the limits of the mill pond — subject only to be deprived thereof, in the event the mill should be down and not used for grinding for the number of years limited by law —

Your Respondent says that the said mill was erected by said Nathan Leary, and as his death descended to his son Solomon, and that the said Solomon died & it descended to his only son, also named Solomon, from whom your Respondent purchased the same on the 15th day of January 1848 — by deed duly recorded in the clerk's office of Tauxemond County — a copy of which duly certified is filed herewith, as part of this answer & marked (A.)

Your Respondent is surprised to see that the plaintiff should now assert title to the timber in the said mill pond, because he has occasionally been permitted to cut some cypress & get a few shingles for his own use, by the permission of your Respondent, who has, as a near neighbor to the plaintiff never thought of objecting to these small privileges —

Your Respondent knows nothing about any ap-

proaches to said plaintiff to purchase any of said timber — certain it is, that this Respondent never made any such approaches, never thought of offering to purchase of another, that which he considers as his own — Your Respondent has also occasionally allowed several of his neighbors to get a few shingles & logs out of his pond, as the timber, until recently, was not valuable, and he protests against being deprived of his legal rights through his neighborly kindness —

Your Respondent says, that his mill was burnt by the Federal troops, in the year 1863 and that in consequence of his reduced means he has, as yet been unable to rebuild the same, but that the time limited by law has not yet expired (and until it does, all his rights are complete.

Your Respondent is advised (and charges that in the absence of proof to the contrary, that the said mill was established by regular proceedings, that this court will presume that the same was legally (and duly established by regular proceedings, and that the lands overflowed by the erection of said mill, were regularly paid for, and that all rights under the law, that attach to the owner of mills thus regularly established, have attached ^{to} & now belong to your Respondent as the owner of said mill & pond & the appurtenances & franchises, pertaining thereto — And now having answered all the allegations in said Bill, material for him to answer, may hence to be dismissed &c.

Seam to before me, in my Office
Oct. 16th 1866, by Elisha Ashburn
Peter B. Prentiss.
Clerk.

Signed
Elisha Ashburn

Elshburn

ads { answer of debt.
Eliska Ashburn
King

filed 5th Nov. 1846
ek

To the Honorable Richard H. Baker, Judge
of the Circuit Court of Stansemond County.

Your Orator Michael King of Stansemond
County humbly complaineth to your Honor, that some
time ^{or about} ~~near~~ the year 1790 as your Orator believes, Solomon
Barr. did erect a water grist mill on a small
branch running through the lands of Parker. Moore & als.
in the upper parish of Stansemond County.
The said Parker & others moved by a desire to have a
mill erected for the benefit and accommodation of
the neighborhood but not being willing to sell the
land or timber likely to be included in the back flow
of the water formed by the dam of said mill,
did retain the same and the right to cut and
sell the same, and did only agree to part with one
acre as a mill site and for the establishment and
repairs of said dam; All of which to the best of
your Orators knowledge and belief was fully recorded
in a deed, destroyed by fire in the Clerk's office of
Stansemond County, on the 7th day of February 1866, which
deed your Orator had occasion to examine very closely
before its destruction, in consequence of damages
about to be done upon some of his land, by the
threatened raising of the said mill dam, some ten
years ago, by one Elisha Ashburn. At that
time, and long before, and ever since, the timbers
included in said mill pond have been cut sold
used and otherwise disposed of at the will and
pleasure of the holders of the lands on each side of
the said mill pond, without let or hinderance

from the holders of the mill and site of one acre, it being a distinct neighborhood understanding, as well as a clearly established fact by the deed, then on record that such were the clear provisions of the tenure of either party. Your orator accordingly, has regularly and uninterruptedly for years past cut and floated ashore such timbers from the pond as stood on his land covered by the pond, and sold to others, such timbers situated on his land in the same way, as they wished to, purchase for making shingles staves or for other purposes without restriction. So has Carr Parker, and other land holders, upon this pond cut sold and floated out the timbers, upon their respective sides of the pond, without let or hindrance from, or any pay or reward to, the holder of the mill and its site, this being well understood between him and them as their right recognized by the entire community, and under the old deed which reserved these rights and privileges, no damages ever having been paid for the same, but simply for the mill and its site of one acre. The old deed calling for 30 shillings, for one acre of land, below the dam, with the timber on it, and this was the extent of the land and privileges ceded by the original owners of the land, or ever paid for by the holders of the mill and its site.

This mill was destroyed by the Federal forces in 1863, and the dam was cut, it then being the property of Elisha Ashburn. Since that time Carr Parker has cut and sold timber from the old bed of the pond as was done before the war, and no interruption was attempted by the holder of the mill and its site.

Your orator preferred to hold his timber and his

land situated in the same way, as an inheritance for his children. He has been approached with offers for the purchase of this said timber quite recently and repeatedly, but has steadily refused to sell the same. He was finally told by parties, that he might as well sell it, for they would have it any way; but he made light of all such threats, feeling perfectly secure in the excellence of his title and possession. Since that time however, the records being destroyed by fire, these parties, having armed themselves with what they assume to be good legal authority, have entered upon the lands of your orator, and are cutting, destroying, and making way with very valuable timber thereon.

The lawyers have pointed them to an act passed by the Virginia Legislature February 19th 1866, which enacts; "That the owner or tenant of any mill &c. destroyed by fire or otherwise &c. during the late civil war, shall have three years from the passage of this act in which to begin and six years in which to finish the rebuilding or repair of the same, without being subjected to the forfeitures provided by law."

And the lawyers have rightly told them, that under this act, their privileges as to time of commencing and rebuilding were extended without any forfeiture of previously existing rights, which is all very true and is not disputed; but, the privilege of cutting or selling timber from the body of the pond, was not among the rights vested in the holders of the mill and its site, nor has the passage of this act of the Legislature nor any other act vested this right in the holder of the mill and its site.

Yet, nevertheless, they have attempted to sell this privilege to others who have entered upon the domain of your Orator, and are now trespassing upon his land, cutting paths across the same, and cutting down destroying and making way with very valuable timber thereon though repeatedly warned to desist. Your Orator therefore praying the protection of this Honorable Court asks that Elisha Ashburn, Rufus Butler, Abraham Dukes, and all others ~~tres~~passing upon his lands, may be made defendants to this suit, and saving and reserving &c. Your Orator humbly prays that your Honor may grant an injunction restraining the said Ashburn, Butler, Dukes or either of them or the agents of either of them from farther trespass or waste or cutting of timber upon his lands until they answer the premises, and show cause why they should not be restrained. And your Orator as in duty bound will ever pray This Honorable Court &c.



Michael King

This day personally appeared before me, a notary public, in the County aforesaid Michael King, plaintiff in annexed bill, and made oath that the statements made in said bill, so far as made of his own knowledge, are true, and so far as made upon information or information ~~derived~~ from others, he believes them to be true. Given under my hand, This 24th day of September 1866.



Richard O. Whitman.

Notary Public *(Seal)*

Michael King

vs. In Chancery

Ashburn, Butler et al.

An injunction is awarded, according to the prayer of the Plaintiffs bill, enjoining and restraining the Defendants, Elisha Ashburn, Rufus Butler, Abraham Dukis, or either of them, or the agents of either of them from further trespass or waste, or cutting of timber from the Plaintiffs land, until the further order of this Court: But before the Plaintiff shall have the benefit of this order, he shall enter into Bond, before the Clerk of the Circuit Court of Hanover County, in sufficient security, in the sum of Five hundred Dollars, payable to the Commonwealth of Virginia, conditioned to pay all such damages and costs, as shall be awarded against him, by reason of the suing out of this injunction.

To the Clerk of the
Circuit Court of
Hanover County

Thomas C. Webb
Judge of the Corporation Court
of Norfolk City

Michael King

25th { Bill of Injuriⁿ

Elisha Ashburnton

Michael King

vs J Chy: Notes

Elisha Ashburn vs.

1866. Sept: 28th: Injor: Bond executed & filed

" " " Sum: in Chy: with restraining order issued to Octo: Rules 1866

" Octo: 15th: Bill filed - Conditional decree vs defendants

" Nov: 5th: Answers of all the depts: filed, genl: repl: &

Cause set for hearing

1867. Jan: 25th: Sci: facias issued vs Tho: J Ashburn, no more

" Feb: 4th: Sci: fac: being return executed & cause set for hearing

" Apr: 19th: Continued

" May 30th: Sum: in Chy: issued to ans: orig: & amended bill

" Jun: 5th: Bill filed - & conditional decree vs adult depts -

" ~~July 1st~~: P. B. Prentiss applied for adm: ad claim to infant depts: who filed their ans: to which there was a genl: repl: & cause set for hearing as to them.

July 1st: Conditional Decree confirmed; & cause set for hearing, on ans: of P B Prentiss: Continued.

Aug: 3rd: Depts: filed

Octo: 15th: Injor perpetuated, each party paying his own costs, & the cause removed from the docket

Chy: Notes

July 8