

1868-009

ALEXANDER SAVAGE VS COMMITTEE OF EDWARD H. DARDEN

1868

NANSEMOND COUNTY
(SUFFOLK)

CHANCERY CAUSES

SURNAMES: LEE, BEAMON, LANGSTON, COHON, EVERETT, WRIGHT, COPELAND

Costs

Clark	\$10:00
Atto: Gen	15:50
Shiff.	1:80
Commer	30:00
Mary A. Lee. (Witness)	50
R. H. Beaman do	50
J. E. Langston	1:78
W. E. Cohoon	50
E. Everett	50
H. S. Darden	50
Sylvester Wright	50
Elisha Darden	50
Jas. R. Copeland	50
	<u>\$63:08</u>



The Commonwealth of Virginia,

To the Sheriff of Nansemond County---Greeting:
YOU ARE HEREBY COMMANDED TO SUMMON *William Eley, Sheriff*
and Committee of Edward L. Warden deceased,

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

and unless *he* 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 *21st* day of *December* 1866, and in the *91st* year of
the Commonwealth.

Peter B. Prentis Clerk.

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

Kelly. p. 9

Alexander Savage

to { Sum. in Chy.

10m. Ely. Shff. & Commrs.
of Edwards & H. Garden died
To Jan'y. Rules 1867

Service of this process, is hereby
acknowledged - Decr: 22. 1866

Wm. Ely. Shff. & Commr.
of E. H. Garden died

Prob. No. 1. Page 17

At a Circuit Court held for Nausemond County, on
the 18th day of April, 1867:

Alexander Savage Complainant:
against $\frac{1}{2}$ In Chancery
William Eley, Sheriff and Com-
mittee of Edward H. Narden, deceased: Defendant:

This cause came on this day to be heard on the
Complainant's Bill, the answer of the defendant,
this filed by the consent of the Court, and general
replication thereto, and was argued by Counsel:
On consideration whereof the Court doth ad-
judge order and decree that a Commissioner
of this Court take an account of the trans-
actions of the Plaintiff and Edward H. Narden
in the distillation and sale of brandy, and make
report to Court with any matters specially sta-
ted deemed pertinent by himself or required by
the parties to be so stated.

A Copy

Teste:

Peter B. Prentiss. Clerk

Xnd

Alexander Savage

Toth J^r Co: Moore

Wm: Eley, Sh^l & Comm^r of
Edward H. Warden decd

1 copy

Friday -

July 12th.

Commissioner's Office.
Suffolk, Va., May 30th 1867

To

Alexander Savage . . . Complainant
and J. M. Chauncy
William Eley, Sheriff and Committee
of Edward H. Darden, deceased . . . Defendant.

You are hereby notified that I have fixed upon Friday, the 12th day of July, next, if fair, if not, the next fair day thereafter (Sunday excepted) to take and settle at my office, the following accounts, required to be taken by the decree of Nausimond Circuit Court, rendered on the 18th day of April 1867, in a suit in Chancery depending in said Court, and in which you are parties, Complainant and Defendant, to wit:

An Account of the transactions of the Plaintiff and Edward H. Darden in the distillation and sale of Brandy:

At which above mentioned time and place you are required to attend.

Given under my hand as Commissioner in Chancery of the said Court, the day and year first aforesaid.

W. L. Riddick
Commr.

in acknowledgment of this notice

June 3^d 1867.

John R. Kilby p. v.

Jm Ely Shff & Comt
of C. H. (Parden decd)

Charge

Mr. Shon. Hester

Ely, Shff &c.

Commissioner's Office
Suffolk, Va. July 12th 1867

The Taking and settling the account re-
quired by the annexed decree, and pursuant
to the annexed notice, having this ^{day} been begun,
is adjourned and continued to the 13th day of
August, next, at the request of counsel, and
for the examination of witnesses.

W. L. Radcliff

Cour.

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF NANSEMOND COUNTY—*Greeting.*

YOU ARE HEREBY COMMANDED TO SUMMON

Willis E. Bohoon, Elisha Everett, Dr. R.
H. Beamon & Tim. E. Langston -

to appear before ~~the~~ me ~~the~~ a Commissioner in Chancery
of the Circuit — Court of Nansemond County, on the 13th
day of August — to testify and the truth to say in behalf of
Alexander Savage — —

in a certain matter of controversy in our said Court, *in Chancery*-
depending and undetermined between *the said Alexander Savage*
and Wm. Cley, Sheriff and Committee of Edward H. Darden
deceased.

And this *They* shall in no wise omit, under the penalty of £100.
there this writ.

And have then

Witness, ~~John J. Riddick~~ *W. L. Riddick, Comr.* of our

Witness, ~~William L. Adams~~ Clerk of our said Court, at his Office, the 20th day of July 1867, in the 92nd year of the Commonwealth.

W. L. Riddick, Com^r

Wm. M. Savage.

W. J. Burr.

Wm. Eley, Chff. &c.

August - The 10th 1864 Executed and
a true copy submitted to the within
named Willis C. Cookson, Alasha
Everett - Dr. R. H. Baman and
John C. Langston

W. a. Phelps.
By for Wm. Eley shff.

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF NANSEMOND COUNTY—Greeting.

YOU ARE HEREBY COMMANDED TO SUMMON *Hening S. Darden,*
Ed. B. Darden, Sylvester Wright, N. P. Phillips, & John
R. Copeland

to appear before ~~the~~ *me* ~~as~~ *a Commissioner in Chancery*
of the Circuit Court of Nansemond County, on the *13th*
day of *August* to testify and the truth to say in behalf of *Wm. Eley,*
Sheriff & Committee of Edward H. Darden, decd.

in a certain matter of controversy in our said Court, *in Chancery*
depending and undetermined between *Alexander Savage and the said*
Wm. Eley, Sheriff & Committee of Edw^d H. Darden, decd.

And this *they* shall in no wise omit, under the penalty of £100.
there this writ.

And have then

W. L. Riddick, Comr.
Witness, ~~James H. Riddick, Clerk~~

July

1867

, in the

92nd

year of the Commonwealth.

20th

day of

W. L. Riddick, Comr.

Eley, H. H. & Co.

Atty. S. J. Burns,

Lawyer -

August the 10th 1867 Executed and a
true copy delivered to the within nam-
ed parties except E. S. B. Gardner who
is a non resident of this common-
wealth

J. A. Phelps
By for Wm. Eley & Co.

Act of Brandy Sold to James & Cherry & others

Aug 2	80 gals	29 th	84 gals	at 3/2 ^d	\$574 00
Sept 2	82 "	10	85 "	" "	584 00
" 13	77 "	20	79 "	" "	546 00
Oct 6	55 "			" "	194 50
" 8	5 "	To Wingate & Co \$4			20 00
4	43 "	D. B. Wyatt			150 50
6	41 1/2 "	" " "			148 75
Cash rec'd by Mrs Savage					123 56
"	"	E. H. Darden for 100 ^{lb} Key			4 00
					<u>22348 31</u>
					1176 65

Amt Rec'd by Mrs Savage

Cash from E & H Darden \$300 00

" "	Mrs Capps	38 06
" "	Tammy Capps	2 00
" "	Mrs Capps	56 00
" "	Tammy Capps	2 00
" "	Mrs Capps	25 00
" "	Mrs Doughty	50
" "	E & H Darden	600 00

\$1023 56 1023 56
2153 09

Amt paid for work & c by E. H. Darden \$76 54

Cash paid Mrs for stelling night

" "	Theroly	2
" "	Theroly	1
" "	Sundry purposes	10
" "	Mrs Langston	15
" "	Mrs for Cutting wood	150 35 50

(A.)

Salts of Potash
made by E. H. L.
at Mrs. Savages
1862

(A.)

Savage

vs: } In Chy.
Eley, Shff. & Com. of
Edw. H. Darden decd.

The depositions of Mary A. Lee
and others taken before me W. L. Riddick
a Commissioner in Chancery, pursuant to the
annexed notice and adjournment, and the sum-
mons of witnesses, on the 15th day of August
1867, between the hours of 6 A. M. & 6 P. M.
of that day, to be read as evidence in the
suit in Chancery depending in the Circuit
Court of Maryland, between Alexander
Savage Plaintiff and Wm. Eley Sheriff and
Committee of the Estate of Edw^d. H. Darden
decd.

Present: Mr. R. Kilby, Pltff's Counsel
 C. B. Hayden Def't's Counsel

Mrs. Mary A. Lee, being first duly sworn
and examined on the part of the Plaintiff, de-
poseth and saith as follows:

1st Question. by Pltff's Counsel.

Are you the widow of John R. Lee deceased
Answer. I am.

2nd Question.

State what you may know of any a-
greement or arrangement between Edward

H. Darden deceased and Mrs. Savage for her husband, the plaintiff, relative to stilling Brandy - how the compensation to Darden was to be paid for his services and how much, and generally all you know of the matter.

Answer: My husband, and Mr. Edward H. Darden, made the bargain about saving the apples & stilling the brandy on Mr. Savage's farm. The bargain was that Mr. Darden was to save the apples, and whatever my husband Mr. Lee, said, was right, should be the compensation. Mr. Darden would not take any responsibility, but was to be paid for his trouble if every thing should be lost: that he would not agree to take any part in it unless he was so paid for his services. It was during the late war - I think in 1862, and such operations were liable at the time to be stopped and destroyed by the Yankee soldiers. Mr. Darden boarded with Mrs. Savage, but I don't know of any bargain about this. Mrs. Savage furnished all the materials for saving the apples, and furnished a part of the labor for saving them - as well as the apples - including her labor & that of her children & small negro children. After the brandy was made, Mr. Lee & Mr. Darden tried to ~~fix~~ ~~at~~ settle it, but they got into a difficulty about it and didn't settle it. Mr. Darden claimed half of the brandy, but

Mr. Lee offered him only a third - and they quit at that.

(Crop Examined by Deft's Counsel)

1st Question:

Were you present at more than one conversation between your husband & Mr. Darden, in which this bargain was spoken of?

Answer: I was, as Mr. Darden was often at my husband's house, and the subject was frequently spoken of.

2nd Question:

At the time alluded to, as that when the bargain, as you say, was made between your husband and Mr. Darden, was any ^{one} present besides yourself.

Answer: I don't remember. The bargain was not made directly at any one time, but they were talking over it for some several times.

My husband was the father of Mrs. Savage and was acting as her Agent, her husband being in the Confederate Army.

3rd Question:

State particularly the terms of the agreement - how many hands each were to furnish, and upon what terms, and what was to be done by each party under the Contract?

Answer. I don't know that I can do that. I only know that each was to furnish their part

of the labor. I know that Mrs. Savage furnished a negro woman & her children - two - and Mrs. Savage herself and her four children - the oldest being seven teen next birthday - (December) and the youngest was nine last July. I know she hired two negro men & a woman part of the time. I know that Mr. Darden was there himself and a negro man who aided him in stilling, but what other labor he employed I don't know. Mr. Darden mended up the old presses, and heard him say that it would have been better to have made new ones. He got a press-beam from Mr. Savage's land. The reasons why I know better what force my daughter furnished was that I saw Mrs. Savage & her children and other force ~~and that~~ I could see them coming and going in the orchard, and I did not see Mr. Darden's because I did not go in the orchard. My daughter staid a great part of the time at the still, where I frequently saw her. Mrs. Savage was an active, energetic woman, and Mr. Darden was afraid to stay about the still without her, for fear of interruption from the Yankees.

4th Question

Were you ever present at any division of money or brandy, between Mrs. Savage and Mr. Darden?

Answer: I was not present at any such division. As the ~~money~~ brandy was sold, Mr. Darden brought the money ^{me to} ~~to~~ keep for him, and I afterwards gave it up to him.

And further this deponent saith not.
 Mary A Lee

Dr. Rich^d. H. Beaman being called on behalf of the plaintiff, after being duly sworn deposes and saith as follows:

1st Question by Pltff's Counsel.

State all you know (if any thing) of the Contract between E. H. Darden and Mrs. Savage, relative to the matters in dispute.

Answer: I know nothing of any contract between the parties. I was at the distillery and heard him say, that nothing would induce him to undertake to take care of the liquor or brandy: That he would not be responsible for its safety, and that all ^{such} responsibility was on Mrs. Savage.

2nd Question by same.

How near do you live to the premises of Mrs. Savage, and state what you may know of the services of the parties.

Answer. I live about three quarters of a mile from Mrs. Savage, and know nothing of the services rendered by the parties. I frequently

saw Mrs. Savage at the still, and if absent, if the Yankees made their appearance, Mrs. Savage was sent for as somewhat a protection.

I was there frequently, attending a negro, and saw Mr. Darden sitting.

And further this deponent saith not.

Rich^d D. Darnon

~~William E. Cochran~~ being called

Timothy E. Langston, being called on behalf of the plaintiff and being duly sworn deposeseth and saith as follows:

1st Question: by Pl^{ff}'s Counsel.

Are you familiar with making brandy and the Custom of the Country as to making it?

Answer: I am familiar with making it and somewhat familiar with the general Custom as ^{to the terms of} making it.

2nd Question.

If the owner of the farm were to furnish the apples, cider press, still & fixtures, and one half of the labor ^{and board of superintendent}, and have all the risk of loss from the Yankees during the late war what would be a fair compensation to the person superintending the making the Brandy & furnishing the other half of the labor.

Answer: Under such circumstances, I should

think one-third of the brandy to the person thus superintending would be a fair compensation.

I have been engaged in such business for a long time, and the custom ~~for~~ has been, when the apples were brought to my press and still, I charged one-half, ^{of the brandy.} for grinding and stilling. When I picked up and hauled the apples myself, I charged two-thirds of the brandy. When cider is brought to my still to be made into brandy, I have charged one fifth for my share.

(Crop Examined by Dist. Council.)

1st Question:

In stating in your answer to the last question that one-third of the brandy would be a fair Compensation, did you take into consideration the personal risk run by the person engaged in distilling?

Answer: I would not have stillled it for the whole during the war, and my answer has reference to ordinary time of peace.

2nd Question:

Would you consider one third a fair compensation to the distiller, where, in addition to the services mentioned, he made extensive repairs to the mill and other works?

Answer: In good times I could make a new mill & fixtures and make brandy profitably upon the terms I have before mentioned. It would greatly

depend upon the amount or extent of repairs done.

(Re-Examined)

3rd Question:

If Mr. Darden at the time referred to, ~~had~~ was on peaceable terms with the Yankees, should his services be considered to ^{be} worth more than one-third.

Answer: I should think not.

And further this defendant saith not.

Timothy, C. Langston

Willi E. Cohen on behalf of the Plaintiff being called & duly sworn, deposes and saith as follows:

1st Question by Plff's Counsel:

Where did you reside in 1862 and how far from the plantation of Plaintiff?

Answer. I resided in Wauseon County about one mile from Mr. Savage's place.

2nd Question:

State all you know about the making of brandy on the farm of the Plaintiff in 1862 by Mrs. Savage and E. H. Darden, and the terms on which it was made, and the payments made and how, & how the ~~business~~ proceeds of the business were disposed of and all you know about the matter.

Answer: I know that brandy ^{was made} there during the
 year 1862 - being frequently there on business -
 and assisted in measuring & delivering the brandy
 to Mr. Cherry, who purchased some of the brandy
 and to Jno. B. Wyatt, who was also a purchaser.
~~Mr. Darden~~ I know nothing of the terms upon
 which this brandy was made, but heard Mr.
 Darden say that Mr. Lee told him that he
 should be satisfied. I think I was present
 whenever the brandy was sold and the money re-
 ceived, and made the calculations and wrote the
 due bills & notes given by the purchasers. The
 brandy was sold for cash, but Mr. Darden told
 me he did not know what he should do with
 his share of the money, and upon my sugges-
 tion, only collected half the money and took
 notes for the remainder, which he retained.
 After the final sale, the money having been
 deposited with Mrs. Lee in the meantime, I
 went with Mr. Darden to Mrs. Lee's, got the
 money from her, and then went to Mrs. Sav-
 age's for the purpose of having a settlement
 with her. I made a statement of the amount
 of money received and made an equal division,
 being told by Mr. Darden that was ^{how} he understood
 it should be settled. After doing so, Mrs. Sav-
 age refused to settle on those terms, saying
 that her father, Mr. Lee, thought that half

was too much for Mr. Darden's share. Mr. Darden replied that if that was not the contract, why had they ^{they} previously divided small sums of money for brandy sold at the still, and ~~for~~ the brandy left on hand. Mrs. Savage still stated that her father thought he charged too much. The statement I made at that time, I herewith file - marked (A.) -

I took out six hundred dollars from the money that Mr. Darden had and gave it to Mrs. Savage, leaving about one hundred and fifty dollars retained by Mr. Darden. The principal part of the money was in North and South Carolina Bank Money - which was then the best money we had in use. The brandy remaining on hand was divided equally between the parties; but Mrs. Savage said that she was afraid to let her portion remain there, and asked Mr. Darden to take it home with him, but he declined to do so, and I then took it to Mr. Jno. R. Lee's house and put it away in a closet. This division of the brandy was made ^{to divide} before they attempted to settle the money - a few days - and I heard no objection at the time raised by either party.

I think Mr. Darden made the proper view, as he bound my oxen to haul out the timber. I saw him at work on them and the principal work was done by his hands. Mr. Darden had five or six hands, that I saw, at work there - also his son Henning. Mr. Darden

told me that fitting up the press etc. cost him about \$30 - and that he should leave it and that he expected Mrs. Savage would pay him for it. Mr. Darden frequently slept at the still. I knew that he had (~~Crop Examined~~) protection from the Yankee authority; on condition that he would only sell to officers and furnish the Provost Marshal with a gallon or so at times.

(Crop Examined)

1st Question.

You have stated that Mr. Darden said that the expense of repairs would be about thirty dollars. Did you understand that amount to cover his own labor also, or only a cash outlay.

Answer. I think that he meant that the whole value of the work was thirty dollars.

2nd Question.

When the equal division of the brandy was made, did Mrs. Savage object in any way to such equal division?

Answer. No. When I was present I heard no objection, and I was present at such division.

3rd Question:

Do you remember if Mr. Henning Darden was present at the division of the brandy?

Answer. Yes. I think he was.

4th Question.

You have stated in your examination in Chief that Mr. Darden, said the understanding with Mr. Lee was that he should be satisfied for his trouble and labor. Did you ever hear him so say in Mr. Lee's presence?

Answer. I never did.

3rd Question:

From what you know of the services rendered by Mr. Darden in connection with distilling the brandy, can you say that one half would be more than a fair compensation for such services?

Answer: I do not consider that half was more than just and fair, and I would not have done it for the whole ^{myself}, for I could not ^{have done} it at all. Mr. Darden was the only man who could have done it - his servants were with him and if he had not saved the apples, it would not have been done. This is only my opinion.

6th Question

State, whether or not, Mr. Darden was not opposed to saving & distilling the apples, and only consented to ^{do so} at the urgent solicitation of Mrs. Savage.

Answer: I know nothing of my own knowledge.

7th Question.

Did you hear him say anything about it at the time you stated Mr. Darden told you about

the contract?

Answer: No, I did not at that time.

(Re-Examined)

3rd Question:

Have you ever had any experience in brandy making yourself?

Answer. I never stills myself - having had no experience.

4th Question.

When you speak of being present at the division of the brandy, do you know whether objection had been previously urged by Mrs. Savage to such division.

Answer. I do not.

5th Question:

Was there any other party in the neighborhood so well situated to make brandy as Mrs. Savage?

Answer. No. Mrs. Savage was the only party I knew of who was at all in a situation to make brandy.

6th Question:

At the time this brandy was sold what was the relative value of North Carolina Bank notes and greenbacks?

Answer: One dollar in greenbacks was worth two in N. Carolina Bank notes.

7th Question -

What did the brandy referred to sell for per gallon.
Answer: It was all sold at three dollars and a half
per gallon, ~~in~~ State money - Bank money - except
small quantities sold in the neighborhood, which
was sold at higher prices.

And further this deponent saith, not.
H. E. Lickorn

Elisha Everett, called for the plaintiff,
being duly sworn deposes and saith as follows
1st Question:

During the year 1862, where did you reside?
Answer: About five miles from Suffolk &
thirteen from Savage's house.

2nd Question:

State what you know of the business of
making brandy in 1862 by E. H. Darden
& Mrs. Savage, and all that you may
~~know~~ have heard E. H. Darden say about
the business.

Answer. I was at Mrs. Savage's on a visit,
while this brandy was being made, and asked
Mr. Darden upon what terms he was making
it, and he replied that he & Mrs. Savage had
agreed to leave that to Mr. Lee to say what
was right. He said that Mrs. Savage was the
smartest woman he ever saw - that she could

have more apples picked up with her for
than he could.

3rd Question -

Do you know what Mr. Lee decided it should
be Mr. Darden's Compensation for his services?

Answer. I heard Mr. Lee say that he thought
one fourth would pay him. Mr. Darden was
not present when this was said. Mr. Lee
is since dead. Mr. Lee further at the time
said, that if he was Sarah (Mr. Savage)
that before he would give him one half which
he had demanded, he would settle it by law.
This conversation took place while I was ena
visit to Mr. Lee

4th Question.

Describe the fixtures at Savage's at the time
the brandy was made, and what improvements
were made by Darden.

Answer: He made three foundations for the
presses - three ^{common} ~~logs~~ logs. flattened - one new
beam - I can't ^{say} if any more - and made some
press-baskets - I don't know how many. All the other
fixtures for the Mill & Still were on the place
belonging to Savage

(
And further this deponent saith not.

Elisha Corbett

Heuring J. Darden being called for the defence, was duly sworn and deposed and saith as follows:

1st Question: by Deft. Counsel.

Were you present at any division of any brandy between Mr. Darden & Mrs. Savage, & if so, state what took place it was divided & what took place at the time.

Answer: I was present at one division. It was divided equally. Mrs. Savage proposed to my father Mr. Darden for him to take her half & carry home with him and take care of it for her. He replied that he had enough work in taking care of his own share. Mr. Cohoon, my father, a negro man, & myself put the brandy in the carts. Mr. Cohoon started to carry Mrs. Savage's part to Mr. Lee's, and I carried my father's home.

2nd Question.

Did Mrs. Savage make any ~~division~~ objection to this equal division of the brandy?

Answer. None whatever.

3rd. Question:

State as particularly as you can, the labor and services rendered by your father in the saving of the apples & making the brandy in question, and generally what you may know

5.

of the subject in dispute.

Answer: My father made every part of the Cider works new. there were three presses and a new mill. the latter he got from Mr. Jos. Jones in the upper part of the County. whether he or Mr. Savage paid for the mill I don't know. He had five hands employed all the time and some portion of the time seven. He also furnished apples enough to make fifteen barrels of cider from his own farm. Several of the barrels were coopered. Some of the barrels were bought by my father, at least fifteen. He had the still bricked up & repaired - very few repairs to the large still.

4th Question.

Would you consider half the brandy more than a fair compensation for the services rendered by your father?

Answer: No, Sir,

5th Question.

Who performed most of the labor in saving the apples & stilling this brandy?

Answer. My father had more than three fourths of the labor done, as far as I could see. I frequently still'd them myself, and had an opportunity of knowing. My father generally still'd ~~at~~ himself, and ~~was~~ frequently remained at the still all night, ~~when he~~ ^{had} ~~chilly~~, and some

times when he had chills on him. I think the exposure experienced at this still hastened my father's death.

(Crop Examined.)

1st Question.

What do you mean by the Cider ~~works~~^{works}, you say your father made new.

Answer. I mean the beams, platforms, swords and weights - every thing belonging to the mill to make Cider - except the mill, and whether Mrs. Savage paid for this I can't say.

2nd Question.

By whom were the barrels furnished?

Answer: There were some few barrels at the place - not more than ten. My father bought about fifteen barrels that I hauled, and others at other times. I don't know who paid for them.

3rd Question:

How many hands were furnished by Mrs. Savage?

Answer: There were two women - & several children very small - Mrs. Savage sometimes & her children. One of the women did not work in picking up apples more than one fourth of her time - and there were not more than two of the ~~big~~ children large enough to do anything.

4th Question:

Did Mrs. Savage furnish a horse to grind the apples and did she board your father's horse while he was there.

Answer: She did furnish a horse to grind the apples, but she did not board my father's horse.

5th Question:

Have you had any experience in branding, making yourself, and do you know what the custom is as to Compensation?

Answer: But very little experience. I understand the custom to be when a man who has the still & hauls the apples himself, he has half.

6th Question:

Did Mr. Lee attend to any stilling?

Answer: I saw Mr. Lee about there frequently, but never saw him stilling.

(Re Examined)

6th Question:

What fact can you mention to show the custom you allude to - that of hauling & stilling a man's apples for half.

Answer: Mr. Elisha Darden, in 1862 - hauled my father's apples ground & distilled them & gave him half - and does the same this year.

And further this deponent saith not.

H. S. Darden

Sylvester Wright, called for the definer,
being duly sworn deposes and saith as
follows:

1st. Question:

Have you experience in grinding & distilling fruit
on shares, and if so, what is the custom of
the Country?

Answer. I have made a great deal of brandy
on shares, and when apples were hauled to me
I ground & distilled them and gave the other
party half of the brandy. I have had
some twenty two or three years experience. I
sawed fruit on the terms mentioned in 1842.

(Cross Examined)

1st. Question.

If you were to furnish the still & fixtures
& one half of the labor, and board of the party,
and all the apples, ^{horse to grind them} what would be a fair por-
tion for the party's services, who superintending the
grinding & distilling.

Answer. I think a third would be fair.

(Re-Examined)

2nd Question:

Suppose in the case above mentioned the
party attending to the distilling, had put a good
deal of labor on the fixtures and, in a time of
war, would one third then be a fair com-

6.

pensation.

Answer: I would not at that time run the risk of it for half pit. I wouldn't have run the risk that Mr. Darden run for the whole pit.

And further this deponent saith not.
Sylvester ^{his} Wright
mark

Elisha Darden, called for the defence,
being duly sworn, deposes and saith as follows.

1st Question:

Did you, in the year 1862, grind & distill the fruit of Edward H. Darden, if so, upon terms?

Answer: I did. I ~~hailed~~ picked up hauled, ground & still'd the apples of Edward H. Darden in 1862 for one half the brandy.

2nd Question:

Was it worth more to distil when you worked than when Mr. Edward H. Darden did?

Answer. It is my impression that it was worth more ~~the~~ to distil when Edward H. Darden did, than when I did, as he was surrounded by the enemies.

3rd Question: (Cross Examined)

1st Question:

Suppose there was no personal danger to E. H. Darden from the Yankees and that Mr. Savage furnished all the apples, a horse to grind the same, the mill & fixtures, and one half the labor, ^{& boarded Mr. Darden} what would be a fair part to E. H. Darden to superintend the work & furnish ^{half} the labor.

Answer: Under such circumstances, one third would be a fair compensation.

(Re-Examined)

3rd Question.

Suppose Mr. Darden had put extensive repairs on the mill & fixtures, and had furnished five hands all the time and sometimes seven, and Mrs. Savage had only one woman & two & three children constantly, and one woman & a negro man a part of the time - would one-third have been sufficient to compensate Mr. Darden?

Answer: It is not. I should not half would be too much.

And further this deponent saith not
Elisha H. Darden

John R. Corbitt, called for the deponent, being duly sworn, deponent and saith as follows:

1st Question:

Have you had experience in saving fruit on shares, if so, what is the custom in such cases?

Answer: I have had very little experience myself. I believe the rule in peaceable times is ^{as} to saving the fruit & making the brandy, - one half to each party. ~~In 1864~~ In this case one party distilling - picking up ^{hauling}, grinding, & distilling, has one half - the other party furnishing the apples doing nothing else. In 1864 I let out my apples - I furnished apples, mill, press, cask & still - but no labor, - and I received something over a third.

And further this deponent saith not.

John H. Cepeland

Elisha Everett recalled by the Plaintiff.

Question:

Suppose there was no personal danger from the Yankees to E. H. Darden, and that Mrs. Savage furnished all the apples, a horse to grind the same, the mill, press, & fixtures and one half of the labor, ^{& board of Mr. Darden} what would be a fair proportion to E. H. Darden to superintend the work & furnish one half the labor, and do the stilling?

Answer. I have had but little experience in brandy-making, but from what I know of it, and under these circumstances I would be willing to take

a contract to make brandy for one third.
Elisha Everett

State of Virginia

Nansemond County, to wit:

I, W. L. Riddick, a Commissioner
in Chancery for the Circuit Court of Nansemond
County, in the said State, 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 13th day of
August, 1847.

W. L. Riddick

Comm. in Chy.

Costs: witnesses.

Mrs. Mary A. Lee - attendance 50^c

Dr. R. H. Beamon do. 50^c.

J. E. Langston do. 50

Same - mileage 16 miles - \$1.28

Willis E. Cohon attendance 50^c

Elisha Everett do. 50^c

Heuning S. Darden do. 50^c

Sylvester Wright do. 50^c

Elisha Darden do. 50^c

Jno. R. Copeland do. 50

\$5.78

Shff. Nausd. Co. Wm Ely - being 9 cts. per line. 1.80

\$7.58

(A.)

Dr. Alexander Savage & Edward H. Darden,
In Acct: with Edward H. Darden Cr.

1862: Oct: 6	By	amts of sales of Brandy, during the months of August, September & October, up to date, on account of partnership between Alex ^r Savage & Ed. H. Darden (as per paper filed with W. E. Colborn's deposition) made in Bank and State money, valued at the time at 50 p ^{ct} . in Greenbacks, or U. S. Currency -			\$ 2343. 31
"	"	"	amts of brandy on hand and unsold - 2 barrels - say 66 gallons - at \$3.50 per gallon in Bank or State Money -		231. 00
"	"	To	paid for work as per bill -	\$ 35. 50	
"	"	"	Bal. due partnership	2538. 81	
				\$ 2574. 31	\$ 2574. 31

1862: Oct: 6	By	Bal. due partnership brot down			\$ 2538. 81
"	"	To	this amount, or one third. to Edward H. Darden as his share	\$ 846. 27	
"	"	"	this amount, or two thirds. to Alex ^r Savage, as his share	1692. 54	
				\$ 2538. 81	\$ 2538. 81

over.

(B.)
Dr. Alex^r. Savage:

In Account with Edward A. Darden Cr.

1862: Octo: 6	By This amount. A. Savage's share of partnership assets - as per Acct: (A.)				\$1692.54
" "	To paid for work - including E. A. Darden's labor - to fit up presses, stills, &c. & remaining on the place - as per statement (see W. E. Cochran's dep.)			\$30.00	
" "	" amts. of cash recd. by Mrs. Savage, from E. A. Darden & small sales of brandy			\$1023.56	
" "	" One barrel - say 33 gallons of brandy - Recd. & kept by Mrs. Savage - at \$3.50 per gal.			\$115.60	
" "	" Balance due Alex ^r Savage			\$523.48	
				\$1692.54	\$1692.54
1862: Octo: 6	By Bal. due Alex ^r . Savage brot down - it being in Bank or State money				\$523.48
" "	" Bal. as above reduced to U. S. Currency - at the rate of two dollars for one - (see statement of W. E. Cochran)				\$261.74
1867: Octo: 12	" Int: on \$261.74 - from Octo: 6 th 1862 to Octo: 12 th 1867 - 5 yrs. & 6 days.				78.78
" "	Total bal. due A. Savage to date -				\$340.52

Commissioner's Office,

Suffolk, Va. August 31st 1867

To the Circuit Court of Nansemond County:

Pursuant to a decree of the Circuit Court of Nansemond County, rendered on the 18th day of April, 1867, in a suit in chancery depending in said Court between Alexander Savage, Complainant, and William Eley, Sheriff and Committee of Edward H. Darden ^{defendant} dec'd, the undersigned, one of the Commissioners of the said Court, to whom was referred for settlement by said decree, "an account of the transactions of the Plaintiff and Edward H. Darden in the distillation and sale of brandy": reports to the Court, that on the 30th day of May last, he issued notices against the several parties aforesaid requiring them to attend the settlement of the said account before him, at his said Office, on the 12th day of July, next thereafter, which notices were duly acknowledged by the parties aforesaid, and returned to your Commissioner. That the parties aforesaid by their attorneys appeared before the Commissioner in obedience to said notice, and at their request, the further taking and settling said account was adjourned and continued to the 13th day of August next thereafter. That on the said 13th day of August aforesaid, the parties, with their attorneys, and the witnesses who had been summoned, appeared before your Commissioner, and he thereupon examined the said witnesses, and the vouchers of the parties, and has

states and settled the aforesaid account of the transactions of the parties as required by said decree, up to the 12th day of October, 1867, and on that day finds a balance due Alexander Savage, the Plaintiff, by Edward H. Darden, of (\$340.52) Three Hundred & forty dollars and fifty two cents; of which (\$78.78) seventy eight dollars and seventy eight cents is interest.

The Commissioner deems it pertinent to state the reasons which have induced him to report this balance. All the testimony which touches that point, agrees in stating that the operations of the Plaintiff and Edward H. Darden in question, were undertaken by the latter for a prospective share of the profits to arise from the business - and this share or compensation was to be fixed by a third party - Mr. John R. Lee - the father in law of the Plaintiff, and that Mr. Lee stated that one fourth of said profits was a sufficient remuneration for Edward H. Darden, but consented to allow him one third. These facts imply that there was a contract binding upon the parties, the terms to be determined by a referee. But if these facts did not amount to a legal and binding contract, which held Edward H. Darden to receive only a particular share of the partnership profits, it seems to your Commissioner that ~~the~~ ~~with~~ all the facts elicited by the evidence would justify the decision of the umpire. It is shown that the Plaintiff furnished all the apples, the mill, presses, stills &c. with some, if

not half of the labor - a horse to grind the apples - the horse's board while so engaged - and E. H. Darden's board while employed in the business. That E. H. Darden as a preliminary, stipulated that in the event of obstruction or loss to be apprehended from the public enemy, that he should not lose anything - that is, he should be paid for his time labor &c. which might have been expended in the partnership operations; and furnished only the other half or more of the labor, and his own time and services in superintending and distilling the brandy and selling the same. It is shown that E. H. Darden had acquired protection from spoliation by the military authority, and it seems only apprehended danger from marauding ^{parties} ~~parties~~ of the enemy; and it appears this protection was purchased, partially at least, by promised donations of brandy & money, arising from, and a portion charged to partnership account. The Evidence adduced to fix the custom of the Country where parties make brandy on shares is not determinate as to any settled usage; but the witnesses seem to agree - those who profess experience in brandy-making - that in a given state of circumstances, very similar to the one in question, that one third of the profits would be a fair Compensation to the party superintending and distilling the brandy.

It is upon these opinions, in addition to the evidence showing that an agreement had been made between

the parties, the shares of each to be fixed by Mr. John R. Lee, that your Commissioner has arrived at his conclusions as presented, and the account (A. + B) as stated and returned herewith. Your Commissioner has allowed interest on the amount or share due to the Plaintiff, from the time the partnership closed and was dissolved, which seems to him proper as the money then was in Edward H. Darsen's hands.

The Commissioner further reports to the Court that after the completion of the said Account, he retained the same in his office for ten days for the examination of the parties, during which time no exceptions were filed thereto, and now, the said Account, with the decree and notices, and the evidence relating thereto are herewith returned.

Given under my hand, as Commissioner aforesaid, the day and year first aforesaid.

W. L. Radick
Cm'r in Chy.

Costs:

Commissioner's fee \$ 30.00

Witnesses & mileage. 5.78 (see depositions for details.)

Chff. Naud & Co: 1.80

\$36.78

Alex. Savage

ii: Comm. Rept.

Wm. Eley, Secy. & Com.
of Ed. H. Darden Secy.

Aug: 31st 1867 Filed
clk:

Cont.

31 Aug.

Saraght. v. Darden, adm'r

This cause came on this day to be again heard on the papers formerly read and on the Report of W. L. Riddick Comr. made pursuant to the decree of the 18th of April 1867 - to which report there is no exception, and was argued by Counsel; On Consideration whereof the Court both confirm the said Report, and both adjudge order and decree that Wm. Ely, Shff. & Comr. of Edward H. Darden dec'd, out of the assets of said decedent in his hands to be administered pay to the plaintiff the sum of three hundred and forty dollars & fifty two cents with Interest on \$261.74 part thereof from the 12th of Octo. 1867 till paid, and also the costs incurred by the said plaintiff in prosecuting this suit - and it is ordered that the cause be removed from the docket.

Savage
n

Warden Rep. &c

1868

April Court, Secre

To be entered

R. H. Baker

Entered

Alexander Savage

Plaintiff

vs
William Eley Sheriff
& Committee of Edmund
H Garden Dec'd -

Ex dkt -

This ^{cause} came on this
day to be heard on the complainant's bill,
the answer of the defendant, this day
filed & the comment of the Court & general
replication thereto was argued by
counsel, on consideration whereof the
Court doth adjudge order & decree that
a commissioner of this Court take an account
of the transactions of the Plaintiff & Edmund H
Garden in the distillation & sale of brandy & make
report to Court with any matters specially stated
deemed pertinent of himself or required by the
parties to be so stated -

Alexander Sanger

18

Am Clay & Co

Committee of

Edw and H. Sanger

In
Chancery

18

North Decree

April Term 1867

To be entered -

To be entered

R. H. B.

Entered

To the Honorable Richard H Baker Judge
of the Circuit Court of Harmond County,
The Answer of W^m Eley, sheriff of said
county & as such committee & administrator
of the personal estate of Edward H Garden dec'd
to the bill of complaint in said court exhibited by
Alexander Savage against him.

This Defendant saving Reserving all right of
exception to the many errors & imperfections in
said bill contained, for answer thereto, or to so
much thereof as he is advised it is material or
necessary for him to answer; answering says
that he admits to be true the general allegations
of said bill as to the death of said Edward H
Garden & the qualification of this respondent
as his administrator & that the said Edward
H Garden in his lifetime did enter into an
arrangement with the wife of said complain-
ant as his agent to distil brandy, but he utterly
denies that the said Edward H Garden
made any such contract as that set forth
& alleged in said bill under which the pa-
tion of the proceeds of sale of the brandy to be re-
ceived by said Garden was to be determined
by the arbitration of said John R Lee or any
other person; ~~but~~ that it was understood
that the said Garden was to receive one
half of the proceeds of sale, ^{& to be compensated further} that in pursuance
of the agreement of putting in a paper & order the ~~other~~
of said a agreement as admitted in the bill
of complaint, was to be in the court of the distribution of the brandy by
the court.

one half of the unsold Brandy was delivered to the complainant's agent - that said Garden ~~only~~ sold Brandy to the amount of \$2343.83 in Bank Money, of which he paid over to said complainant's agent, as admitted in the bill \$1023.56, being complainant's share, ~~of~~ of said proceeds, less \$149.36 which it was not convenient to pay at the time, but which was subsequently tendered to & refused by said agent the having in the interval between said tender & the first division of the Brandy payment of the said \$1023.56 he came dissatisfied with the original agreement of an equal division of the proceeds of sale & hence refused to receive the above sum of \$149.36 the balance of complainant's share of one half of the proceeds of sale - that this defendant denies that said Garden made any sale of said Brandy, for individual kinds except for his own portion of the proceeds of sale - that the Brandy was under the authority of said complainant's agent to be sold for Bank Money & the complainant's full share thereof ^{was} paid to his agent ~~and~~ with the exception of the \$149.36 which was refused by said agent - that as before alleged the agreement was that said Garden was to distil said Brandy, make sale thereof & to receive one half of the proceeds as a compensa

tion for his labour & risk which was only a fair remuneration, as much labour & skill was necessary on his part to put & keep in repair the still, mill, casks & other apparatus used in distilling which were in very bad condition when he commenced operations - that said Garden settled in full with said complainant's agent the full amount due him under said contract, except the sum of \$149.35, tendered & refused as aforesaid as of its value at time of the said sale of the Brandy without interest -

This defendant having answered prays hence to be dismissed with his costs in this behalf most unreasonably expended & he will ever pray &c.

Signed - Wm. Eley Sheriff

& Committee of L. H. Garden and

Nancemond County, to wit:

I

a justice of the peace for the county aforesaid certify that Wm Eley whose name is signed to the ~~answer~~ answer this day personally appeared before me in said county & made oath to the truth of the statements contained in said answer to the best of his knowledge & belief -

Given under my hand this 17 day of April 1887

Benjamin Riedick J.P.

Gavape } In
is } Chanany
Garden }
Adult }

Assess of
Garden's Adult

To the Hon. Richard H. Baker, judge of the Circuit
Court of Harrison County.

Complaining shew unto the Court
your Complainant Alexander Savage,

Your Complainant respectfully represents
to the Court and says, that whilst he was in the
military service of the Confederates, states in the
year 1862, his wife Sarah E. Savage as his agent,
entered into an arrangement with Edward H.
Warden of Harrison County for the purpose of
making apple Brandy - The agreement and
understanding was that the apples were to be
furnished from the orchard of your Complainant
and that she was to furnish one half the labor
necessary to carry on the work, and was to board
said Warden some hand to be furnished by Warden
, and that the said Warden was to superintend
the work and furnish one half the labor, and
that the parties each should have of what
Brandy that might be made, should be
left to John R. Lee to decide on.

That accordingly the apples from your
Complainant's orchard were furnished, and
your Complainant's cider press, brandy still
cask, &c. were used in the manufacturing of Apple
Brandy. That a large amount of Brandy
was made and all sold except 114 gallons,
of which your Complainant's ^{wife} received 57 gallons,

from said Darden only - Your Complainant says that the said Darden assumed no risk and was to receive of Mrs. Savage, a compensation in money for his labor, if the Brandy should be lost, stolen or otherwise destroyed - That the Federal soldiers were stationed near the premises (the Gate was then being walled) and were on the premises almost daily & gave him much trouble to keep them from destroying or taking it, something but her presence prevented it, loss -

That the said Edward H. Darden took charge of the Brandy made and sold it, chiefly for Bank notes - That he sold \$2345.85 worth in such money and paid over \$1023.56 thereof to your Complainant's wife as aforesaid, and took Bonds from parties then solvent for the Balance without consulting your Complainant's said wife, which Bonds Darden preferred to the Bank money, and kept them as good solvent.

That after the Brandy had been made and sold Mr. Geo. R. Lee was called on by your Complainant's wife & by said Darden to determine according to previous understanding what portion of the proceeds each party should receive, when he, the said Lee, decided that the said Edward H. Darden should receive one fourth of the proceeds for his services, which ^{decision} the said Darden refused to abide by. your

Complainant says, that one fourth is the usual portion paid to a party for superintending & making brandy under such circumstances, and in this case was a liberal share, when it is considered that your Complainant's agent wife, furnished the apples, the paper, the casks, half the labor, and the Brand of Darden some hand and then gave the matter her personal attention without which but little could have been saved, and the fact that Darden was at no risk,

Your Complainant says That before any final settlement of said transactions, the said Edward H. Darden died to wit. on the

day of April 1865, Intestate, and that on the day of the estate of the said Edward H. Darden was committed to the hands of Wm. Eley, Sheriff of Aausemond County, for administration, a copy of which order of Court is filed herewith as part of this Bill & is marked (A).

Your complainant now desires a settlement of said matters, and calls on the said Wm. Eley Sheriff & Committee of said Edward H. Darden dec'd. to discover and set forth, the quantity of Brandy sold by said Deceased, and the amount received therefor, and he prays that the accounts of such transactions may be settled according to the just rights of both

parties, and that the said Edward H. Darden's Estate may pay to your Complainant such sum as may be found due to him -

In consideration whereof and as this Court has jurisdiction - to the End therefore your Complainant prays that W^m Eley Sheriff & Committee of said Edward H. Darden Dec^d, may be made Defendant hereto & answer the allegations herein and discover and set forth how much Brandy was sold by the said Darden and the price obtained for the same, and that all proper accounts may be taken, and whatever sum that may be found due your Complainant may be paid to him and that such other and further relief may be granted, Consistent with equity &c,
John R. Kilby p. v.

Kilby p. 4

Alexander Savage

n } Bice

Wm Eley, Sheriff & Comr.
of Edward N. Darden Dec?

Warrenwood Cir. Ct.

Stovage

¹¹
27

Quiden's Shff: & commce (Mr. Ely)

1866. Decr: 21st: Sum^s in Chy: if'd to Jany: Ruled 1867

1867. Jany. 7th. Bill filed

" " " Conditional decree vs["] defendant.

" Feb'y 5th: Conditional decree confirmed & cause set for
hearing, on motion of Plaintiff's atty:

" April 18th: Decree for acco:

" Aug: 31st: Counsel Report filed

" Octo: 15th: Continued

1868. Apl: 22nd: Decree for money & cause to be removed from docket

Chy: Notes