1880-012
Nansemond Co. (Suffolk)

Chancery Causes: John P. Cowling vs Commercial Bank of Suffolk & Mills Rogers Jr

Whitney, Tynes, Durden, Elem, Kilby

And whereas the said sum of Money, ($) together with all the interest which had accrued thereon, has been paid, in full to the said Theodore King, by the said who desires to have and is entitled to a Release Deed, release Deed releasing said property from the lien of said Deed of Trust, and conveying the same to him: and Whereas the said Clark Chatfield, Trustee as aforesaid, has removed beyond the limits of the State of Virginia.

Cash -

Clk -- $15.00 pd P.B.B.
Atty: Stone 14.50
Sheriff: - - - 1.00
Comm. w[illegible] days $10.00 pd P.B.B.

$42.50

Clk's & Comm's fees
$15 & 10 = $25
have been paid to me
in full by the Phillips Alleys
Myer Withers & Prentis
P.B.B. Clk
May 13/80

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON The Commercial Bank

Suffolk, Va. and Miles Rogers Jr

to appear at the Clerk's Office of the Circuit Court of Nansemond County, at the Rules to be held for the said Court, on the first Monday in March *next, to answer a Bill in Chancery, exhibited against them in the said Court by* John P. Cowling

and have then and there this Summons. Witness, PETER B. PRENTIS, Clerk of our said Court, at his office, this 26th *day of* February *1879, in the* 103rd *year of the Commonwealth.*

Teste: Peter B. Prentis *Clerk.*

Withers. f. 9

John P. Cowling

vs

Summers Cly.

The Commercial Bank
of Suffolk, Va and Mills
Rogers. &c.

To March Rules, 1879

Pro: B. No: 1. page 129.
Cir: Co:

Executed a copy of the within order
Bank of Suffolk & Mills Rogers &c
J. A. Bridgham D.S.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON Mills Rogers, Jr., J. F. Whitney, Wm. C. Whitney and Henry L. Sykes,

undersigned, one of the Commissioners in Chancery, *to appear before the* ~~Judge~~ *of the* Circuit Court of Nansemond County, at the Clerk's office ~~Court House~~ *of said County, on the* 25th day of September, 1879 (this instant) ~~next~~, *to testify and the truth to say on behalf of* The Commercial Bank of Suffolk, Virginia, Ltd:

in a certain matter of controversy in our said Court, depending and undetermined between

John P. Cowling *Plaintiff*

and said

Commercial Bank &c *Defendants.*

And this the witness shall in no wise omit, under the penalty of $100 each: and have then and there this Summons.

Commissioner in Chancery

Witness, PETER B. PRENTIS, ~~Clerk~~ *of our said Court, at his Office, this* 17th *day of* September *1879, in the* 104th *year of the Commonwealth.*

Peter B. Prentis Comm'r ~~Clerk~~.

Copy for,

Wm. C. Whitney

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON Mills Rogers, Jr.; J. F. Whitley, Wm. C. Whitley and Henry L. Symes,

the undersigned, one of the Commissioners, in Chancery Clerk's Office to appear before ~~the Judge~~ of the Circuit Court of Nansemond County, at the ~~Court House~~ of said County, on the 25th day of September, 1879 ~~next~~ this month, to testify and the truth to say on behalf of The Commercial Bank of Suffolk, Virginia & al:

in a certain matter of controversy in our said Court, depending and undetermined between

John P. Cowling Plaintiff

and

Commercial Bank &c Defendants.

And this the witness &c shall in no wise omit, under the penalty of $100 each: and have then and there this Summons.

Commissioner in Chancery

Witness, PETER B. PRENTIS, ~~Clerk~~ of our said Court, at his Office, this 17th day of September 1879, in the 104th year of the Commonwealth.

Peter B. Prentis, Commr ~~Clerk~~

Copy for,

Henry L. Tynes

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON Mills Rogers Jr, J. F. Whitney, Wm. C. Whitney and Henry L. Symes,

undersigned, one of the Commissioners in Chancery, Clerk's Office

to appear before the ~~Judge~~ *of the* Circuit *Court of Nansemond County, at the* ~~Court~~ ~~House~~ *of said County, on the* 25th day of September, 1879 ~~next~~ (This month), *to testify and the truth to say on behalf of* The Commercial Bank of Suffolk, Virginia &c.

in a certain matter of controversy in our said Court, depending and undetermined between

John P. Cowling *Plaintiff*

and said

Commercial Bank &c *Defendants.*

And this the witnesses shall in no wise omit, under the penalty of $100 each: and have then and there this Summons. Commissioner in Chancery

Witness, PETER B. PRENTIS, ~~Clerk~~ *of our said Court, at his Office, this* 17th day of September 1879, *in the* 104th *year of the Commonwealth.*

Peter B. Prentis, Comm'r ~~Clerk~~.

Copy for
Mills Rogers Jr:

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON Miles Rogers, Jr., J. F. Whitney, Wm. C. Whitney and Henry L. Tynes,

undersigned, one of the Commissioners in Chancery Clerk's Office

to appear before the ~~Judge~~ *of the* Circuit *Court of Nansemond County, at the* ~~Court~~ ~~House~~ *of said County, on the* 25th. *day of* September, 1879 ~~next~~ This month, *to testify and the truth to say on behalf of* The Commercial Bank of Suffolk, Virginia Ltd.

in a certain matter of controversy in our said Court, depending and undetermined between

John P. Cowling *Plaintiff*

and said

Commercial Bank Ltd *Defendants.*

And this the witness es shall in no wise omit, under the penalty of $100 each: and have then and there this Summons. Commissioner in Chancery.

Witness, PETER B. PRENTIS, ~~Clerk~~ *of our said Court, at his Office, this* 17th *day of* September *—* 1879 *. in the* 104th. *year of the Commonwealth.*

Peter B. Prentis, Comm'r. ~~Clerk.~~

Copy for,

J. F. Whitney

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON Mills Rogers, Jr. J. F. Whitley, Wm C. Whitley and Henry L. Fynes,

undersigned, one of the Commissioners in Chancery Clerk's Office
to appear before the ~~*Judge*~~ *of the Circuit Court of Nansemond County, at the* ~~*Court*~~
House of said County, on the 25th: *day of September 1879* ~~*next*~~ (this month), *to testify and the truth to say on behalf of* The Commercial Bank of Suffolk, Virginia Ld.

in a certain matter of controversy in our said Court, depending and undetermined between

John P. Cowling *Plaintiff*

and

Commercial Bank &c *Defendants.*

And this the witness ~~*or*~~ *shall in no wise omit, under the penalty of $100 each: and have then and there this Summons.*

Commissioner in Chancery

Witness, PETER B. PRENTIS, ~~*Clerk*~~ *of our said Court, at his Office, this* 17th: *day of* September *1879. in the* 104th: *year of the Commonwealth.*

Peter B. Prentis, Comm'r: ~~Clerk~~

The Commercial Bank of
Suffolk, Va. Lal:

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als } Spa:

John P. Cowling.

To 25th: Sept: 1879, at the
Clerk's Office of Nansemond
Cir: Co:

Cir: Co:

To the Commercial Bank of Suffolk.

Take notice, that we shall on Thursday the 25th day of September A.D. 1879 at the Clerk's Office of Nansemond County in the Town of Suffolk between the hours of 6 a.m. and 6 p.m. of that day proceed to take the depositions of Henry L. Lyons & others to be read as evidence in our behalf in a certain suit in equity depending in the Circuit Court for the County of Nansemond wherein we are plaintiffs and you defendants: and if from any cause the taking of said depositions be not commenced on that day or if commenced be not ~~concluded~~ 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 Yours

John P. Cowling

per Written Atty.

1879 Sept. 16th. Service of the within notice is hereby acknowledged by us

The Commercial Bank of Suffolk Va. and Mills Rogers Jr. By Wilbur J. Kilby. Atty.

Petition &c

The Depositions of John P. Cowling and others, taken before me, a Commissioner in Chancery, of the Circuit Court of Nansemond County, pursuant to Notice hereto annexed, at the Clerk's Office of Nansemond County Court, in the Town of Suffolk, on Thursday, the 25th day of September, A.D. 1879, between the hours of 9 A.M. and 6 P.M. to be read as evidence, on behalf of John P. Cowling, in a certain suit in Equity, depending in the Circuit Court of the County of Nansemond, wherein said John P. Cowling is Plaintiff, and the Commercial Bank of Suffolk, Virginia and Mills Rogers, Jr. are Defendants.

Present. A. C. Witthers. Counsel for Plaintiff
William J. Kelly. Counsel for Defendants.

John P. Cowling, being duly sworn on the Holy Evangelists of Almighty God, deposeth and saith as follows:

1st Quest by Counsel for Plff. What is your age?
Answer. 31 years.

2nd Quest & same. Do you know the parties to this suit?
Answer. I do.

3rd Quest " What was your occupation in 1876?
Answer. A Lumber Contractor.

4th " State whether or not you furnished the Lumber in the Bill in Chy. mentioned, to Henry L. Myers, Jr. at his Request; whether or not the said Henry L. Myers ever heard you in words or in Court for the said Lumber; & whether any other persons, for him, has ever heard you

for the same, & also state, for what purpose the said Lumber so furnished to the said Henry L. Tyus was used?

Answer - I did furnish said Lumber to said Tyus, at his request - he has hauled me in part & on account of said Lumber $96:57½ - leaving a balance still due me of $90.00 as appears by Note (the Exhibit "A") filed with said Bill in Ch) & no one has ever paid the said Bal: of $90.00 - The purpose for which said Lumber was used, was that of building a Barn, which Barn was commenced on said H.L. Tyus' Lot in the Village of Chuckatuck, & when removed, upon its completion, to said Tyus' farm, it has not been completed, as yet, only so far: Miles Rogers Jr. who is now the owner of the said farm, has done so.

5th Interr: State wherein the Barn referred to, was incomplete & whether such incompleteness, existed on the 19th: day of Nov: 1878, the time of filing your Mechanic's Lien on the said Barn?

Answer - It lacked, Doors, (4) & floor was not under-pinned - at the time of filing said lien.

6th Interr: Was the Lot in said Village, (whereon) the habitation of said Tyus' at the time the said Lumber was furnished, and was the land to which it was afterwards removed, also owned by the said Tyus' at the time of its removal

Ans: Yes.

7th: Interr: State whether or not you ever made application to the Cashier of the Commercial Bank of Suffolk Va: for payment of the said note (Exhibit "A")

and whether or not, you did not notify the said Cashier that you would hold the purchaser bound for the lumber so furnished by you, until the said debt were paid?
Answer — I made application to said Cashier of said Bank for payment of the said note, which was refused, when I notified said Bank, that I should rely upon my Mechanic's lien — this occurred 19th Dec: 1878.

8th Quest: State whether or not, you notified Miles Rogers, before he became the purchaser of said Farm, that you claimed the lien, on said barn, for said bal: of $90.00?
I did — which notification was made about 10 days before the sale of said Farm, by W. J. Kelly, Agent, to the said Council of said Bank.

Cross examined by Defts Counsel

1st Quest: When did the Contractor or workman, building said Barn, stop their work?
Ans: In the Fall of 1878.

2d Quest: When was said Barn removed from the Lot in Chuckatuck to said Farm?
Answer — In the Fall of 1877.

3d Quest: What was the nature of the work done on said barn by said Workman, in the Fall of 1878, & for whom was it done?
Answer — It was prized up & leveled with a jack-screw, by whom I do not know.

4th Quest: Was any work then done by J. F. & W. C. Whiting, (the Contractors) & when, sir, they last work on said Barn?

Answer — Not that I know of — I do not know when the Messrs: Whitney did their last work on the barn:

5th: Quest: How long prior to the Fall of 1877, had it been, since the said Whitneys (Contractors) stopped their work?

Answer. I do not know what time they stopped.

6th Quest: Have they, the said Contractors, done any work on said Barn, since the Fall of 1877.

Answer. Not that I know of — but others have.

7th Quest — Were the said Whitneys, Contractors, to build the said barn?

answer. Yes.

8th Quest — How far do you live from the said Village of Rockaway, & were you frequently there, whilst said Barn was being built?

Answer — I live 1½ miles from said Village, & was frequently there while the said work was going on — my average visits were about Once a week.

9th: Quest: If said Whitneys had done any work on said Barn, since the Fall of 1877, would you have known it?

(Facts to be irrelevant)

Answer — I reckon I would —

10th Quest: Why did said Contractors stop their work?

Answer — Mr: Tynes concluded to move the Barn from the Lot in the Valley — to said Farm, where he (Tynes) would complete it —

11th Quest: Did said Tynes, again, put said Contractors to work on said Barn, after its removal to said Farm?

Answer — No — but he put others to work on it, but they did not complete it.

12th: Quest: When did he put others to work on said Barn

Answer — I know he put others to work on said barn after its removal ~~but~~ I think in 1878,

13 Quest ~~Was~~ were these other men put to work on said barn, employed to underpin said barn & set it in its place soon after its removal to said farm?
Ans. I ~~don't~~ don't Know when it was done.

14 Quest. Was the note for $90. given in full of the Balance of your acct. for all the lumber which you had furnished said Dynes for said Barn
Ans. Yes. of course it was.

15 Quest. At the sale of said farm on 11th. Jan. 1878 by said W. J. Kilby Trustee, did said Mills Rogers buy said farm & if not. who did?
Ans. As he did not. The Commercial Bank bought it as I understood.

16 Quest Did you prior to said sale or on the day thereof give said Bank or said Trustee notice of your alleged claim?
Ans. I don't think that I did.

17 Quest. Did you ~~Know prior~~ see or Know of the notice for said sale prior to the day of sale?
Ans. Yes, I Knew it.

18. Quest: Did you Know, at the time you took the said note of $90.00 that you could file your mechanic's lien on said Barn? (Excepted to)

Answer — I satisfied that I could — as the Barn was, still incomplete.

18. Quest: Had said Contractors ceased to work on the 27th day of January, 1877, when the last item of Lumber in your bill, was furnished?

Answer — No, they had not.

19th. Quest: Had they ceased their work — on the 5th. April: 1877, when you took your note for $90.00?

Answer — They had not fulfilled their contract

20th. Quest: Were said Contractors actually engaged in their ~~contract~~ work on said Barn, on or about the 5th: April: 1877 ~~when~~ or during the months of March or April, 1877?

Answer — They might have been. (at the Barn)

21st. Quest: Were you there, or in Chuckanut Village, during the months of March or April 1877.

Answer. I was there enough to see the Barn still incomplete (in March or April: 1877) at all,

22d. Quest: If you were there to see the Barn, Carpenter or mechanic, could you not, at the same time, see whether the Carpenters' were actually at their work?

Answer — I could, if they had been there, when I was there.

23d. Quest: Are we to understand, by your last answer that they — they were not there, when you were there?

Answer. They were not (Question objected to) that I recollect.

Re-examined by Pltff's Counsel

Quest: Were there flooring plank & doors furnished for the said Barn, by yourself or any one else?

Answer — I do not think they were — he might have gotten them from the Mill — but I do not know. (Tynes)

2nd Quest: Did Mr. H L. Tynes, cancel the workmen to abandon their work before it was completed?

Answer) Not that I know of.

Last Quest Did said Tynes pay the workmen in full for the service which they promised to render in building said Barn?

Answer — (Testified to) they told me, that he did.

and further this deponent saith not.

(Signed) John P. Cowling

J. F. Whitney being duly sworn on the Holy Evangelists of Almighty God deposeth and saith as follows:

1 Quest. by Defts Counsel. What is your age

Ans. I am 31 years old.

2 Quest Do you know the parties to this suit?

Ans. I do.

3 Quest. Where do you reside and what was your occupation in 1876.

Ans. I reside near Chuckatuck and in 1876 was a carpenter

4 Quest. Were you employed by contract in 1876, to build for Henry L. ~~Tynes~~ Tynes, the barn, mentioned in these depositions on his lot, in the Village of Chuckatuck, L of S.

what were the terms of the contract, when did you commence to build the barn, & when did you stop your work on it, & why did you stop?

Answer— In July, 1876. I and my brother W.C. Whiting entered into a written contract with said Tyng to build said barn which was 30 X 40 feet— in October 1876 we went to barn commenced the work, but began did not begin until Jany: 1877 because the lumber was not furnished in time— Between the 4th & 8th of Jany: 1877 I built the barn, with the exception of laying one of the shed floors, ~~running the sleds, cutting & sawing through the partition~~, & hanging ~~& locking~~ the doors, & this work I have never done.

5th Quest: Have you done any work at all on said Barn, since the Fall of 1877 (under your contract?)

Answer— I have not, nor has my brother, who owns my fractional

6th Quest: Were you compelled, by the action of said Tyng, to abandon the work?

Answer. I was— for account of the failure to have material on hand for me.

7th Quest: Was this fact, commonly known in the neighborhood of Churchstreet?

Answer: I do not know.

Cross examined by Pltff's Counsel.

Quest: Did Mr: Tyng compel you to abandon the work, or did you stop, simply, because, he did not have the lumber ready for you to complete the job?

Answer— I stopped on account of the want of material

Ques't: Were you not ready & willing, at all times, to go on with the work & complete the barn, if Mr: Tynes had furnished you the lumber & requested you to do so?

Answer – I was – & having all my men & tools to complete the job.

Ques't. Did not Mr: Tynes conclude, not to furnish the Barn, on the lot, in Churchland, but to furnish it, after it had been removed to his Farm, where it is now located, & did not he say to you or your partners, that after it was removed, he would buy & procure the necessary lumber, & get you to furnish it on the Farm?

Answer – I do not know what Mr: Tynes concluded to do – He did not say to me, that he wished us to furnish it, after it removed to the farm.

Ques't. How did Mr: Tynes compel you to abandon the work, & how long did your tools remain, at the said Barn, waiting for lumber, before you removed or carried away your tools?

Answer – For the want of Material – My tools did not stay in the Barn, at all – I put them in an adjacent house, one night, I do not remember how long they remained there, but not more than one week.

Ques't. Did Mr: Tynes, ever tell you or your partners that he wanted you to abandon the work, or, did you, simply, abandon it, to be completed in the future, whenever, he Tynes, should procure the necessary lumber, & request you to complete it?

answer – No, he never told me to abandon it – but he has ceased to work on account of the want of material – I would have finished the job, at any time, when the material was at hand

2nd Q: Did Mr: Tynes pay you in full for making a complete job of his barn?

Answer – Mr: Tynes has paid me in full for all the work which I have for him.

3rd Q: Did this payment include payment for laying the floor in the Shed-room & hanging the Doors to the said Barn?

Answer – Our contract was for building a Barn similar to Mr: Cornelius Hall's: which was 30 X 49 & 8 feet pitch – 1 Slaw-way – 7 doors & 1 Window: Common frame, plank & boards for flooring – nailed down – Slaw-way – weather-boarding – & the boards and roof – Mr. Hall's barn was underpinned with brick.

4th Q: How long after the barn was removed to the farm, was it, before the farm was sold by W. J. Hall Trustee for the Commercial Bank of Va:

Answer – I do not Know –

5th Q: Do you Know, whether it was the fault of Mr: Tynes or some one else, that the Material were not ready?

Answer: I do not.

And further this deponent saith not.

J. T. Whitney

1 1

Algernon S. Darden, being duly sworn on the Holy Evangelists of Almighty God, ~~[illegible]~~ deposeth & saith, as follows:-

Quest: by Defts: Counsel — What is your age, where do you reside and do you know the parties to this suit?

Answer — My age is 50 years. I reside in Suffolk, Va. and I know the parties to this suit.

Quest: by Comp. — How long have you been President of the Commercial Bank of Suffolk, Va: & were you President of said Bank, on the 11th: day of November: 1878: & if so, did said John ?. Cowling, give you notice, of his alleged lien on said Bank, on that day, or on any time previously thereto?

Answer — Since Feby: 1878, I have been, continuously, since I obtained this knowledge — I was President of said Bank, Nov: 11th 1878 — The said Cowling gave me no notice of his alleged lien on said Bank, on that day or on any other day previously thereto: and I had no knowledge of said lien, from any source, until after the purchase of said stock, with said Bank on it, by said Bank

and further this Deponent saith not.

(Signed) A. S. Darden

Thomas G. Elam, being duly sworn on the Holy Evangelists of Almighty God, ~~[illegible]~~ deposeth & saith, as follows:

Quest: by Defts: Counsel — What is your age, where do you reside, and do you know the parties to this suit?

Answer — My age is 33 years, I reside in Suffolk, Va, & I know

the parties to this suit.

2 Quest. How long have you been Cashier of the Commercial Bank of Suffolk, Va: & were you Cashier of said Bank on the 11th: day of November, 1878, & if so, did said John P. Cowling give you notice of his alleged lien on said Barn, on that day, or at any time previous thereto?

Answer. Six (6) Years — I was Cashier of said Bank on the 11th: day of November, 1878 — the said Cowling gave me no notice of his alleged lien on said Barn on that day or any day previous thereto.

~~Cross Examined by Pltff's Counsel~~

3d Quest. Did you have any notice of said alleged lien, from any other source, prior to the 11th: day of Nov: 1878?

Answer. Not, that I remember. The first intimation that I had of said alleged lien, was from Miles Rogers Jr, after the purchase of said Farm by the said Bank, when I was trying to sell the farm to him, for the Bank.

And further this deponent saith not.

(Signed) Thos. G. Shaw.

Alban J. Kilby, Esq. being duly sworn on the Holy Evangelists of Almighty God, deposeth and saith as follows:

On the 11th: day of November, 1878, as Trustee for Henry L. Lynn, in a Deed of Trust dated the 1st. Jany: 1877, & of record, the 16th: day of January, 1877, I sold said Farm with said Barn under said Deed of Trust & after advertisement of the sale, for 2 or 3

weeks to the Commercial Bank of Suffolk Va: for the gross sum of $2650.00 — After paying the expenses of the sale there was left the net sum of $2434.73 which was applied to the payment of the debt secured by the said deed of Trust: leaving a balance of $770.84 of the debts secured by said deed of Trust on said property on the day of sale now at any time, heretofore, thereto, did the said Trustee or otherwise have notice of said Cowling's alleged lien.

Cross-Examined by Pltff's Counsel

Quest: To whom was the above balance of $770.84 due? Were you, at that time, are you, now, Counsel for the said Commercial Bank of Suffolk, & did you, as Trustee or Attorney, hold any lien or know of any lien upon the said farm, prior to the 9th: day of July, 1876?

Answer: Part of said balance of $770.84 was due to W. L. Daughtry, & the remainder thereof was due to the said Bank (11th Nov: 1878) assignee of Jno. R. Kelly. I was not, at that time, Counsel for said Bank — I did not as Trustee or Attorney, hold or know of any lien upon the said farm, prior to the 9th: day of July, 1876, or on that day — Nor afterwards, until I first heard of said Cowling's alleged lien, on the 19th day of November, 1878, when he mentioned it to me, himself, [redacted]

Quest: Do you know whether W. L. Daughtry has since received either from W. L. Wyatt or any one for him, the amount of the balance due him, on said farm, after paying said Commercial Bank?

Ans: I do not know the fact — I have only heard

~~that~~ that some settlement of the balance due has had been made - but how & of whom I do not know.

and further this deponent saith not

Wilbur J. Kilby

Miles Rogers, Jr: being duly sworn on the Holy Evangelists of Almighty God, deposeth & saith, as follows:

Quest: What is your age?

Answer 45 years

Quest: Do you know the parties to this Suit, and are you the present owner of the farm, in the possession, mentioned?

Answer: I know the parties to this Suit, & I am the present owner of the farm in question.

Quest: Did you have any conversation with the vendors of the said Farm, in relation to the alleged lien of the Pltff: & did they say to you that they would save you harmless, from any loss which you might have sustained, by reason of the said alleged lien?

Answer - I told the Vendor, that I had learned, that there was a Mechanic's lien on the said Farm Mr: Elam, the Cashier of the Bank (the Vendor) with whom I dealt, said that was all right - that he would give me a clear Deed, & I made the Loan & I bought, with that understanding

Quest: What work have you done on the said Barn since you came in possession of the same, & what work remains to be done on the same, in order to make it like Mr: Cornelius Hall's barn?

Answer - I have hung 3 of the Doors, I leveled it & put about 26 blocks under it - but I do not know what is necessary to be done to it, to make it like Mr: Cornelius Hall's - as I never saw Mr: Hall's barn.

Quest: Is the floor in the Shed of the Barn laid; are there 7 doors:

barn. Lis it underpinned with brick?

Answer. The floor is not laid — nor the doors hung (there are not any doors to it), nor is it underpinned with brick.

Cross Examined

Quest: ~~XXXX~~ When did said Plaintiff (Cowling) tell you that he had a Mechanic's Lien on said barn?

Answer — It was before the sale of the Farm with the barn on it; a few days before the sale and on the day of sale, at the Co. Ho. Mr. Cowling the Pltff. remarked to me, that he had a Mechanic's lien on the Barn, & if I bought the barn, he should hold the barn responsible for the amount due him on said barn — I told him, that I did not know whether or not, I should buy it: & in fact, I did not buy that said Masters Sale.

And further this Deponent saith not

(Signed)

Wells Rodgers Jr

Henry L. Squier, Sr. being duly sworn, on the Holy Evangelists of almighty God deposeth & saith.

Question: I am 32 years old, reside in Hanover and Engaged — I know the parties to this suit — I contracted

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with J.H. Whiting & Bro: to build me a Barn, on my Lot in Chuckatuck - I also contracted with said Cowling (the Pltff) to furnish the Lumber therefor - He (Cowling) furnished the Lumber as Sheriff in his account - for which I have not paid in full, but gave my note (Exhibit A") for the balance - in closing up the Account - The Messrs: Whiting & myself went to look at the Barn of said Cowling's ~~Pltff~~ Hall, when they agreed to build a barn similar to it ~~for me~~, for me, on my Lot in Chuckatuck - for $125.00 - I to furnish all the materials - They undertook to build the said barn, under a contract made the 8th or 9th: of July 1876 - They were to have begun the work in October 1876, but did not begin until the Janry: 1877 - I paid them, in advance, for the work, at the time the contract was made - They began the work about the Middle of Janry: 1877 & went on with the work until they were stopped for the want of lumber - During its ~~unfinished~~ unfinished condition, I concluded to remove the barn, being my said Lot to my Farm, a distance of about 300 Yards - This was in the Fall of 1877, when I had moved the said ~~Pltffs~~ Barn - but did not complete it, after it was so removed, for the reason, that, I failed to make sale of some property, to satisfy debts due & owing on said farm - my idea being, ~~that~~ not to complete the barn, if the farm had to be sold to pay the debts due on it

Quest: Did you compel the Messrs: Whitney (the contractors) to abandon the work on the barn, & any act on part of yours, or did they stop work for want of lumber? & did you not consider that, under their contract with you, you having held them for the whole job, that they were bound to complete the said barn at any time when you might have had the materials & had made the request of them to do it?

Answer— I did not compel them to abandon said work, & any act of mine — they stopped for the want of Materials — & I understood, that whenever the materials were at hand, that they were to complete the job — No time having been stipulated within which to complete the same.

Cr/s examined — & Defts Counsel

Quest: When you say that you did not compel the Contractors to abandon the work, what do you mean?

Answer— I mean to say, that the said Contractors having made out the bill of lumber, furnished by J.P. Cowley (the Pltff), that if there were any deficiency, it was not my fault.

Quest: When you say that you did not compel the Contractors to abandon the work, do you mean, that you did not desire or request them to stop the work?

Answer— I did not tell them to stop — I did not know, that there was a lack of material, until they told me

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Questn. Was the debt due on said Farm, at the time the loan was removed to the farm, secured by Deed of Trust &c. & so, was the sale of the Farm, afterwards, to the Commercial Bank, made, under said Deed?

Answer. Yes, it was the secured by Deed of Trust &c. sale by the Trustee, W. J. Kelly, to the Commercial Bank of Va, under said Deed.

And further this deponent saith not.

(Signed) H. L. Tynes, Sr

State of Virginia.
Nansemond County, to wit:

I, Peter B. Prentis, a Commissioner in Chancery, of the Circuit Court, in and 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 time & place mentioned therein.

Given under my hand, this 20th: day of September, A.D. 1879.

Peter B. Prentis.
Commr. in Chy.

John P. Cowling

vs

Depositors

The Commercial Bank

of Suffolk, Va: &al

1879. Septr: 26th: Filed

CK

Sing Dep from the clerks of this decree pay to the said plaintiff the debt interest & costs & thereby in the proceedings

John P. Cowling
vs. } In Chancery
Comr. Bank. & Miles Ropes Jr.

This cause came on this day to be heard on the Bill and Answer of the Comr. Bank Miles Ropes failing to answer, on Exhibits filed and depositions read & was argued by Counsel
On consideration whereof the Court doth adjudge order and decree that Robt. R. Prentis who is hereby appointed a Special Commissioner for that purpose proceed to advertise the barn & a sufficient amount of land connected therewith for its convenient enjoyment in the proceedings mentioned, in some newspaper published in the town of Suffolk, and sell the same to the highest bidder provided the said defendants do not within & 1 reserving a Commission for his services, and pay over the amount to the plaintiff the debt in the proceedings mentioned, together with his interest & costs in this suit, But this decree is not to take effect until the said Robert R. Prentis shall give a sufficient

bond in the penalty of Two Hundred dollars & conditioned according to law,

And after the said Sale & distribution is made make report to Court.

John P. Lansdown
vs
Commercial Bank and Miles Rapson Jr.

13th April Term 1854

To be entered,

Geo. H. Beall

Entered J. C. B. No. 1 p. 83

The joint and several answers of the Commercial Bank of Suffolk, Virginia, and Mills Rogers Jr. to the Bill of complaint exhibited against them in the Circuit Court of Nansemond County, by John P. Cowling, Complainant.

These defendants now and at all times hereafter saving and reserving unto themselves and each of them the benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said Complainants said Bill of complaint contained, for answer thereto or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants answering say:

That it is true as alleged in said Bill, that in the latter part of the year 1876 said John P. Cowling furnished materials to Henry L. Tynes which the latter used in the construction of a barn, that said materials consisted of various pieces and parcels of lumber and that so far as these defendants know

the correct number of pieces and kind of lumber and feet may be given in said Bill, and that said Tynes may have become indebted to said Cowling for the same in the sum of $186.51½ and may have paid said Cowling the sum of $96.51½ in part thereof leaving a Balance of $90. still due to said Tynes.

And these defendants further say that it is absolutely true as stated in said Bill that said Tynes on the 5th. day of April 1877 executed his negotiable note for said sum of $90.00 in full of the balance then due and owing by him to said Cowling for and on account of all said lumber or materials, which said note was negotiable and payable at the Commercial Bank of Suffolk and was accepted by said Cowling and by him endorsed to and made payable to John R. Kilby who placed the same at said Bank for collection at its maturity on the 7th. day of June 1877: that at its maturity it was not paid

and was left still at said Bank after its maturity until the 28th. day of November 1877. when ~~at the request of said John R. Kibby~~ it was returned by said Bank and delivered to said Cowling, who still holds the note as a valid and good note against said Tynes by whom the same is yet due, - the same being filed by said Cowling with his said Bill as Exhibit A.

That said lumber & materials were used by said Tynes in the construction of a barn on a small lot of his in the Village of Chuckatuck, and not on his farm sold as herein afterwards stated.

These Respondents deny that said barn was not completed, but on the contrary say it was completed in the early part of the year 1877 ~~and the last part of the year 1876~~ on the lot on which its erection ~~was~~ had been commenced, and that no further work has been done on it nor additions made to it since: That at or about the time of its completion said barn was removed from the lot in said

Village where it had been built to a ~~farm~~ spot ~~more than~~ about a mile distant on a farm then owned by said Tynes one-half of a mile or a mile from said lot: That here said Tynes continued to use and enjoy said Barn from the early part of 1877 to the 11th. of November 1878 (a period of more than a year), when said farm with said Barn was sold ~~as stated in said Bill~~ by Wilbur J. Kilby, Trustee of said Tynes; That said farm with said Barn was sold on the 11th. day of November 1878 after 30 days' advertisement and with free knowledge thereof on the part of said Cowling and the same was purchased on that day by said Bank as stated in said Bill for $2650, and a deed made on the 28th. day of November 1878 conveying the same to said Bank, a copy of which deed is alleged to be filed with said Bill as part thereof and marked "C", but the same is not so filed and nowhere appears ~~in~~ with said Bill.

That it is true as stated in said Bill that said Bank afterwards sold said farm on the first day of January 1879

to Mills Rogers Jr. one of these defend-
ants and conveyed the same to him
by deed of that date which has been
duly recorded in ~~said~~ the Clerk's office
of said County, and that said Rogers
and his wife executed a deed of trust
to secure; on the same day. the purchase-
money to said Bank, or that part thereof
remaining unpaid. on said farm which
is correctly described and bounded in
said Bill.

That no such exhibit as exhibit "D"
is filed with said Bill as alleged
therein.

And these defendants deny that said
Tynes was the owner of said farm
and Barn at the time of the filing
of said Complainants Bill which
was filed on the 3d. of March 1879.

And these defendants say and
charge that said Barn for the building
of which said materials were furnished
by said Cowling as alleged in said
Bill, was not only completed in
the early part of the year 1877 for
said Tynes on the lot aforesaid whence
it was removed soon thereafter to
said farm, but that ~~first~~ previously
to said removal and at the time of the completion of said Barn
said Tynes dis-

charged all the workmen, builders or contractors who had been engaged in erecting said Barn and compelled them ~~by~~ to abandon the work, the same being a complete piece of work ~~he~~ ~~to do~~ on the spot where it then stood, and settled with them and paid them for all the work they had done and labor they had performed ~~by them~~ to that time on said barn, and shortly afterwards or about the same time closed his the said Tynes' account due to said Cowling for said materials by giving the latter his note, which is filed with said Bill as exhibit "A" and which was accepted by said Cowling; and of all these facts said Cowling had full knowledge, he living in the same neighborhood with said Tynes and in frequent intercourse with him and said facts being matters of public notoriety and well-known to said Cowling.

And these defendants further say that they deny that said Wilbur J. Kelly Trustee ever proceeded to sell the lot on which said Barn was built, and say that he only proceeded to sell

and said sees
the farm to which it was removed
& that, before ~~after~~ the mechanic's lien of said Cow-
ling was admitted to record - a copy of which
said lien, taken by said Cowling on
said Barn for said materials is filed
with said Bill and marked exhibit
"B" That said farm was sold to said
Bank on the 11th. day of November 1878
from which day its title dated & that
said lien was not recorded until
the 19th day of November 1878, and that
said farm and barn had been the property
days prior
of said Bank for eight ~~days~~ to the record of said lien and was not
then the property of said Tynes nor
his subsequently on the 3d. of March
1879 the time of the filing of said
Bill, nor at any time after 11 Nov. 1878.

These defendants further say that
it is true, as alleged in said Bill,
that said Cowling filed his said Me-
chanic's lien (Exhibit B.) ~~upon said Barn~~
on the 19th. day of November 1878, ~~for the~~
~~balance due him as alleged, for the~~
~~materials furnished by him as aforesaid~~
~~for building said Barn~~ but these
the validity thereof and
defendants utterly deny, that said
Cowling has any right to any benefit
thereof, or privilege thereunder, or any

security by reason thereof, or any right in a Court of Equity to subject said barn and so much of the land of said farm as may be necessary for the convenient use and enjoyment thereof, to a sale for the satisfaction of said lien;
1. Because when said ~~Tynes~~ Cowling settled with said Tynes, more than 30 days after the completion of said Barn and the abandonment of the work by the workmen or contractors by default of said Tynes, and took said note for the balance in full of all moneys due him (~~said Cowling~~) ~~by said Tynes on account of~~ for said materials, he said Cowling waived his right to said mechanic's lien, and forfeited the note to the lien and cannot now set up his claim under the lien.
2. Because having elected to take said note, and still holding the same as a valid and good claim and demand on said Tynes, he must resort to his remedy on said note, and will not be allowed to disturb said Rogers in the enjoyment of said barn which with said farm had passed from said Tynes before the filing of said lien and will not at the same time be allowed to resort to the lien, both at once,
3. Because said ~~Barn had been com-~~

lien was not admitted to record within 30 days after the completion of said Barn, more than a year and a half having elapsed from the early part of 1877 & ~~19th. Nov. 1878~~ the time of the completion of said Barn to the 19th. of Nov. 1878 the time of the filing of said lien.

4. Because said lien was not admitted to record within 30 days after the contractors or builders of said Barn and said Conling were compelled by the action of ~~the owner~~ said Tynes (the then owner), to abandon the work.

6. Because said lien was not filed at the 11th. day of November 1878, the day of the sale of said farm and Barn, and although said Conling had full knowledge of said sale for at least 30 days, yet he did not appear at the sale nor at any time previously thereto and give notice to the trustee who sold or to any one else interested of his claim or that he contemplated filing his lien which he did file 8 days afterwards, and the title of said Bank ~~dated~~ dating from the 11th. Nov. 1878 ~~is prior to~~ has priority over the lien of said Conling and he cannot now nor could he after the sale without prior notice of his claim, set

5. Because said farm with said Barn was sold by said W. J. Kilby Trustee under a deed of trust dated 1 January 1877 & recorded 16 January 1877 constituting a lien on said farm before said Barn was built and placed upon it, which lien would have been prior to that of said Conling had he filed his within the time required by law. And as the proceeds of said sale after paying expenses, paid only $2434.93 of the debt secured by said deed of trust & left $770.84 of it unpaid there would have been no funds left to pay said Conlings subsequent lien. And as Equity will not do a vain thing, said Conling's lien will not now be allowed, when if it had been allowed, there would have been nothing with which to pay it

up the same ~~of~~ by way of his alleged mechanic's lien against the said Bank. & an innocent purchaser without notice, ~~nor~~ against said Rogers claiming under said Bank, said Cowling having free knowledge of said sale and neither said Bank. ~~said Rogers~~ nor said Trustee having any notice or knowledge of his said claim prior to or at the time of said sale and not until 8 days afterwards.
And said complainants Bill ~~should~~ be dismissed.

And now, having fully answered the Complainant's Bill, these Respondents pray hence to be dismissed with their reasonable costs in this behalf expended and they will ever pray &c.

The Commercial Bank of Suffolk
By A.S. Darden, Pres.
Neill's Rodgers Jr

State of Virginia
Nansemond County. to wit

This day personally appeared before me Wilbur J. Kilby a ~~justice~~ Notary Public in and for the county aforesaid A. S. Darden President of The Commercial Bank of Suffolk, Virginia, and Mills Rogers Jr. whose answer is above written and made oath that the statements contained in said answer so far as made of their own knowledge are true: and that such statements as are made therein from knowledge or information derived from others, they believe to be true.
Given under my hand this 28th. day of August 1879

Wilbur J. Kilby
Notary Public

Bowling

vs. } In Chy

Commercial Bank Tal.

Answer

DEED OF TRUST. H. Anstice & Co., Stationers, 23 Nassau Street, N. Y.

This Deed,

made the first day of January one thousand eight hundred and seventy nine between Mills Rogers, Jr. and Ellen Rogers his wife, of the county of Nansemond and State of Virginia, of the one part, and Wilbur J. Kilby chosen as trustee for the purposes herein named, of the other part, **Witnesseth:** That the said Mills Rogers, Jr: and Ellen Rogers, his wife, do grant, with general warranty, unto the said Wilbur J. Kilby trustee as aforesaid, the following property, to wit:

(1) A tract of land in said County, near the Village of Chuckatuck, containing Ninety Three (93) acres, more or less, and bounded on the North by Chuckatuck Creek; East by the land of Anna G. Upshur; South by a road, (the dividing line between this land, and the land lately owned by Simon M. Laurence) and West by the land of Janet M. J. Godwin; and

(2) A parcel of land, being all woodland, in said County, about one mile from the said Village of Chuckatuck, bounded by the lands of John Beal, John Johnson and others; and also by the road leading from the said Village to Suffolk, and the road from said Village to Everett's Bridge, and containing fifty-three (53) acres, one (1) Rood and fourteen (14) poles: being the same two parcels of land which by Deed of this date, have been conveyed by the Commercial Bank of Suffolk, Virginia, to said Mills Rogers, Jr:

together with all and singular the appurtenances belonging to the same.

In trust to secure to the Commercial Bank of Suffolk, Virginia, the payment of five several sums of money of one hundred and eighty four dollars each, and one sum of twenty-three hundred dollars, in addition thereto:- all due and payable by said Mills Rogers, Jr. to said Bank, as evidenced by five separate Negotiable Notes, each for the sum of $184 and dated the first day of January, 1879, and signed by said Rogers, Jr. and held by and due to said Bank, and Negotiable and payable at said Bank, one two, three, four and five years respectively, after and from the date of each, and as evidenced by a Bond for said sum of twenty-three hundred dollars executed by said Rogers, Jr. and dated the first day of January 1879. and held by and due and payable to said Bank five years from and after the date thereof. And said Trustee is hereby authorized and empowered to sell said land hereby conveyed after due advertisement of the sale, at Public Auction before the Court House door of said County, according to law, should said Mills Rogers, Jr. fail to pay any one or all of said notes or said sums of money when the same shall have become due and payable, and with the proceeds of the sale to pay first all expenses of the sale, including a Commission of five per cent on the proceeds thereof to said said Trustee, and then to pay said sums of money as specified above, and the residue of the proceeds, to pay as the law directs.

Witness the following signatures and seals:

Mills Rodgers Jr. [SEAL.]

Ellen Rodgers [SEAL.]

State of Virginia,
County of Nansemond } To wit:

I, M. J. Penner, a Notary Public in and for the county aforesaid, in the State of Virginia, do certify that Mrs. Ellen Rodgers the wife of Mills Rogers whose names are signed to the writing above, bearing date the first day of January 1879, personally appeared before me in the county aforesaid, and being duly examined by me privily and apart from her husband, and having the writing aforesaid fully explained to her, she the said Mrs. Ellen Rodgers acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under my hand this first day of January eighteen hundred and seventy nine

M. J. Penner
Notary Public

Virginia:
County of Nansemond } To wit:

I, M. J. Penner a Notary Public in and for the said county, in the State of Virginia, do certify that Mills Rogers whose name is signed to the writing above, bearing date the first day of January 1879, has acknowledged the same before me in the county aforesaid.

Given under my hand this first day of January 1879

M. J. Penner
Notary Public

In the Clerk's Office of Nansemond County Court, the 4th. day of March, 1879.
This Deed of Trust was received, duly certified and thereupon admitted to record.

Teste: Peter B. Prentis. Clerk

A Copy: Teste: Peter B Prentis. Clerk

(Copy)

Xmtd

DEED of TRUST.

Mills Rogers, Jr. &
wife

To

Wilbur J. Kilby, Trustee
for The Commercial
Bank of Suffolk, Va.

("E")

This Deed, Made the fersh _____ day of January, A.D. 1879, ~~in the year of our Lord one thousand eight hundred and~~ _____ between The Commercial Bank of Suffolk, Virginia _____ _____ ~~his wife~~, of the one part _____ ~~and State of Virginia, of the one part~~, and Mills Rogers, Jr. of the County of Nansemond, State _____ of Virginia _____ _____ of the other part, Witnesseth: That in consideration of the sum of Three Thousand Dollars the said Commercial Bank of Suffolk, ~~and~~ Virginia, doth _____ ~~his wife, do~~ grant with general warranty, unto the said Mills Rogers, Jr. _____ _____ and to his heirs and assigns, forever, the following real estate, to wit: ~~All that tract, piece or parcel of land, situate, lying and being in the County of _____ in the State of Virginia, and bounded and described as follows:~~

(1) A tract of land, in said County, near the Village of Chuckatuck, containing Ninety three (93) acres, more or less, and bounded on the North, by Chuckatuck Creek, East, by the land of Anna G. Upshur, South, by a road (the dividing line between this land, and the land lately owned by Susan M. Lawrence), and West, by the land of Johnet M. J. Godwin; and (2) a parcel of woodland in said County, about one mile from the said Village of Chuckatuck, bounded by the lands of John Beal, John Johnson and others, and also, by the road leading from said Village to Suffolk, and the road from said Village to Everett's Bridge, and containing fifty-three (53) acres, one (1) rood and fourteen (14) poles, together with all and singular the appurtenances belonging to the same: being both the same tracts of land, which, by deed dated the 28th day of November, 1878, and duly recorded, was conveyed by Wilbur J. Kilby, Trustee, to the said, the Commercial Bank of Suffolk, Virginia

~~together with all and singular the appurtenances belonging to the same.~~

And the said, The Commercial Bank of Suffolk, Virginia, covenants that ~~it~~ has the right to convey the said lands to the said grantee; that the said grantee shall have quiet possession of the said lands; that ~~it~~ (said grantor) has done no act to encumber the said lands; and that ~~it~~ will execute such further assurances of the said lands as may be requisite.

In Witness the ~~following signatures and seals~~, the said, The Commercial Bank of Suffolk, Virginia, has, by its President, A S. Darden, hereunto annexed its Corporate name ~~and signature~~, and affixed its Corporate Seal. (SEAL.)

~~Witnesses~~:

A S. Darden, Prest.

The Commercial Bank of Suffolk, Va. Charter June 3. 1865 (SEAL.)

State of Virginia, } To wit:

County of

in and for the county aforesaid,

in the State of Virginia, do certify that

the wife of whose names are signed to

the writing above bearing date the day of

18 , personally appeared before in the county aforesaid, and being duly

examined by privily and apart from her husband, and having the writing aforesaid fully explained to her, she the said

acknowledged the said writing to be her act, and

declared that she had willingly executed the same, and does not wish to retract it.

Given under hand this day of

eighteen hundred and seventy

State of VIRGINIA: } To wit:

~~County of~~ Nansemond County

I, Wilbur J. Kilby, a Notary Public in and for

~~the~~ said county, in the State of Virginia, do certify that the said, The Commercial

Bank of Suffolk, Virginia whose name is signed to the

foregoing writing ~~above~~, ~~bearing~~ date the 1st day of January in the person of A S. Darden ~~its~~ President of the Commercial Bank of Suffolk, Virginia

1879, has acknowledged the same before me in the county aforesaid.

Given under my hand this first day of January 1879.

Wilbur J. Kilby.
Notary Public

In the Clerk's Office of Nansemond County Court, the

4th. day of March, 1879.

This Deed was received, duly certified, and thereon admitted to record.

Teste: Peter B. Prentis. Clerk.

A Copy: Teste: Peter B. Prentis. Clerk.

(Copy)

xmld

Deed of Bargain and Sale.

The Commercial Bank
of Suffolk, Virginia

To

Mills Rogers, Jr.

("D")

Whereas, on the first day of January, 1877, Henry L. Synes, by his Deed of Trust, bearing date as of that day, and duly recorded on the 16th day of January, 1877, in the Clerk's Office of the County Court of Nansemond County, Virginia, to secure to W. L. Daughtrey, in the first place, and to John R. Kilby, in the second place, the payment of the ~~payment of the~~ several sums of money specified in said deed of trust and interest thereon, to wit: to said W. L. Daughtrey one sum of $1500, two sums of $514.18 each, and one sum of $514.16, and to said John R. Kilby, the sum of $600: all bearing interest from the ~~first~~ day of January, 1877, and evidenced by separate Bonds, as specified in said Deed of Trust, did convey unto Wilbur J. Kilby, the Trustee named in said Deed of Trust, two parcels of land, in said Nansemond County, Virginia, as follows: (1) A tract of land in said County, near the Village of Chuckatuck, containing ninety-three (93) acres, more or less, and bounded on the North by Chuckatuck Creek, East by the land of Anna G. Upshur, South by a road, (the dividing line between this land and the land lately owned by Simon M. Lawrence), and West by the land of Jane L. M. J. Godwin, and (2) a parcel of Woodland in said County, about one mile from the said Village of Chuckatuck, bounded by the lands of John Beal, John Johnson and others, and also by the road leading from Chuckatuck to Suffolk, and the road from Chuckatuck to Everett's Bridge, and containing fifty-three (53) acres, One (1) rood and fourteen (14) poles. Together with all and singular the appurtenances belonging to the same: And Whereas, by said deed of trust

said Trustee was empowered to sell said tracts of land, in the mode as authorized by law: And whereas said Henry L. Tynes failed to pay said sums of money, and said W. L. Daughtry and John R. Kilby required the said Trustee and directed him to advertise said tracts of land for sale, and to sell the same to realize money for payment of said sums of money secured by said Deed of Trust: And Whereas, in pursuance of said requirement and direction, said Trustee, did, on the 19th. day of October, 1878, advertise said lands for sale by printed notices posted near said lands, and in conspicuous places in said County and by publication of said notice, once a week for three successive weeks in the "Suffolk Herald," a newspaper published in the Town of Suffolk, in said County, and did advertise said lands for sale for cash enough to pay the expenses of sale, and $1000. part of said sums of money, secured by said Deed of Trust, being about that part due and payable, and as to the remainder of the purchase money, did advertise said lands for sale on a credit of one and two years: And Whereas, in pursuance of said advertisement, said Trustee, on the 11th. day of November, 1878 (being County Court day) did sell said two parcels of land, according to the advertised terms as aforesaid, at public auction before the Court House Door of said County: And Whereas, at said sale, The Commercial Bank of Suffolk, Virginia, being the highest bidder, did purchase said two parcels of land at and for the sum of Twenty-Six hundred and fifty dollars, which said Bank has paid in Cash to said Trustee, preferring so to do, and now desires a Deed conveying said two parcels of land to it: — This Deed Therefore Made

This 28th. day of November A.D. 1878, between the said Wilbur J. Kilby, as Trustee aforesaid, of the one part, and the said The Commercial Bank of Suffolk, Virginia, of the other part, Witnesseth: That in consideration of the premises, and of the payment of the said sum of Twenty-six hundred and fifty dollars, the receipt of which is hereby acknowledged, the said Wilbur J. Kilby, as trustee aforesaid, doth grant with special warranty, unto the said the Commercial Bank of Suffolk, Virginia, the said two parcels or tracts of land above described, together with all and singular the appurtenances belonging to the same.

Witness the following signature and seal.

Wilbur J. Kilby, Trustee, (Seal)

State of Virginia
Nansemond County, to wit:

I, M. T. Penner, a Notary Public in and for said County, in said State of Virginia, do certify that, Wilbur J. Kilby, Trustee, whose name is signed to foregoing writing, dated the 28th. day of November, 1878, has acknowledged the same before me, in the County aforesaid.

Given under my hand, this 28th. day of November, 1878.

M. T. Penner.

Notary Public

In the Clerk's Office of Nansemond County Court, the 4th. day of March, 1879.

This Deed was received, duly certified, and thereupon admitted to record.

Teste:

Peter B. Prentis. Clerk.

A Copy:

Teste: Peter B. Prentis. Clerk.

Wilbur J. Kelby, Trustee.

To

Deed

The Commercial Bank
of Suffolk, Virginia

("C")

Henry L. Tynes

To Jno. P. Cowling Dr.

1876.

Nov. 1 To 3473 ft of lumber @ $15.00 p. M. $52.09½

Dec. 14 " 10144 " " " " $12.00 " $121.72

1877

Jan. 27 " 10 pieces 4X4X16 ft long $2.70

" " By cash on a/c $176.51½

$96.51½

Bal due $90.00

State of Virginia

Nansemond County to wit!

This day personally appeared before me A. E. Withers a Notary Public in and for the County aforesaid John P. Cowling, & made oath that the foregoing a/c is correct & just & has never been paid, and that the material therein named was used in the construction of a barn on the premises of Henry L. Tynes. Jr. - Given under my hand this the 19 day of Nov, 1878.

Know all men by these presents that whereas Henry L. Tynes did purchase of me John P. Cowling the lumber named in the foregoing account & did promise to pay the price therein named for the said lumber, & whereas the said lumber so purchased of me was used for the

for the construction of a certain barn for Henry L. Tynes the owner thereof. Now therefore I John P. Cowling of the County of Nansemond & State of Virginia do by these presents signify my intention of claiming the benefit of the "mechanics lien law" as provided for by law, & do by these presents establish such lien upon a sufficient quantity of land for the convenient the said barn, formerly the property of use of the said barn
the said Henry L. Tynes as is in such case made and provided, which barn is situate in the County of Nansemond, lying & being in Chuckatuck District & bounded as follows: by the lands of Mrs. Janet M. J. Godwin Anna G. Upshur & others and contains seventy three acres more or less, which said land is now owned by the Commercial Bank of Suffolk. Witness the following signature and seal.

John P. Cowling [L.S.]

State of Virginia
Nansemond County to wit:
This day personally appeared before me the undersigned, John P. Cowling and acknowledged the foregoing writing to be his act & deed. Given under my hand this the 19 day of Nov 1878.—

A. Elvington
Notary Public for
Nansemond Co.
Va

In the Clerk's Office of Nansemond County Court, the 19th. day of November, 1878.
The foregoing account, affidavit, statement and acknowledgment were filed by John P. Cowling, and admitted to record.

Vesle,
Peter B. Prentis. Clerk.

John P. Cowling

2nd } Mechanic's Lien

Henry L. Tynes

Nov. 19th 1878. Filed by John P. Cowling Esq.

Exhibit "B"

Recorded - Book No. 1. page 16

Issued 4/17

THE COMMERCIAL BANK.

#3133

$ 90 00 Suffolk, Va., April 5th 1877

Sixty Days after date I promise to pay unto

John Cooling or Order, negotiable and payable at the COMMERCIAL BANK OF SUFFOLK, in Suffolk. Va., without offset Ninety 100 Dollars, for value received; and we, maker and endorsers, hereby waive the benefit of our Homestead Exemption as to this debt.

Credit the maker.

Henry S. Eyres

All Available Text Successfully Captured

("A")

John P. Cowling

Waive the protest

John P. Cowling

Carding

11 5 } 5 Exhibits

Corinne Bank v Scaffold Co

To The Honorable George Blow Judge of the Circuit Court for the County of Hammond.

Humbly complaining sheweth unto the Court your complainant John P. Cowling, who respectfully represents to the Court and says: That some time about the 1st November 1876 did furnish material to one Henry L. Tynes, for the purpose of building a barn for the said Henry L. Tynes That the amount of lumber furnished and the price thereof was as follows

3473 feet of lumber at $15-00 per M. $52.09½
10144 " " " $12.00 " $121.72
10 pieces 4X4 & 16 feet long $2.70

making in all $186.51½, that the said Henry L. Tynes paid your complainant on the 27th day of January 1877 $96.51½ leaving a balance still due your complainant for the said lumber so furnished $90.00 for which said sum the said Henry L. Tynes gave his note in writing dated the 5th April 1877. & which is herewith filed & marked "A." That after the said timber & lumber & material were so furnished by your complainant it was used in the construction of a certain barn, which was at that time

in course of erection by the said Henry L. Lyons, but was not completed nor has the said barn been completed at this time, that on the 19th of November in the year 1878 your complainant made up a statement and filed his mechanics lien upon the said barn as provided by law as will be seen from exhibit "B" herewith filed & prayed to be taken as a part of this bill, that soon after the said lien was admitted to record W. L. Kelly Trustee proceeded to sell the land upon which the said barn was erected to the Commercial Bank of Suffolk for $2650, as will be seen by deed duly recorded, a copy of which is herewith filed marked "C". That afterwards to wit on the 1st day of January 1879 the said Commercial Bk sold the said land upon which the said barn was built to one Mills Rogers Jr. & the said Mills Rogers Jr and Ellen his wife executed a deed of trust on the same day and date to secure the balance of the purchase money, & that the said Mills Rogers & Ellen his wife are now the owners of the said land, Your complainant says that the lumber and material were furnished as set forth in the statement marked "B," that they

used in the construction of the barn aforesaid and that he has never been paid for the said materials. That the barn is situated on a certain piece or parcel of land lying & being in Nansemond Co. Chuckatuck district & bounded by the lands of Mrs Janet M.J. Godwin, Anna G. Upshur & others and contains Ninety-three acres more or less, & which said land is now owned by Mills Rogers Jr & Ellen his wife, but at the time of the filing of the bill was owned by Henry L. Lyons. as will be seen from exhibits "C" & D. herewith filed.

To the end therefore your complainant prays that the said Commercial Bank of Suffolk and Mills Rogers Jr. may be made defendants to this bill, and required to render a true perfect and complete answer to the same, That so much of the land adjacent to the said barn together with the barn may be sold to satisfy the said lien, as may be necessary for its convenient use & enjoyment & that such other further and general relief may be afforded your complainant as the nature of his case may require, or to equity may seem meet, And your Complainant

will ever pray. &c.

John P. Cowling
By A. Elwitus
Atty.

John P. Cowling & Others. Bill
vs.
In Chancery
Communicate Counsel
Suffolk & Mills Rpts

Bill

John P. Cowling

vs } Chy: Nodes

The Commercial Bank of Suffolk, Va:

Mills Rogers, Jr.

1879. Feby: 26th: Summs in Chy: issued to March Rules, 1879.

" March 3rd: Bill & Exhibits (2) filed

" " " Conditional Decree vs defendants

" April 7th: Conditional Decree confirmed & cause set for hearing on motion of Plffs Counsel.

" " 12th: Continued

" Sept: 26th: Depositions filed

" Octo: 16th: Continued

1880. April 13th: Decree for sale of bank &c. L. to [illegible]

Chy. Notes

Withers. p. q.

John P. Cowling

vs } Chy: Papers

The Commercial Bank of Suffolk, Va; and Mills Rogers, Jr:

1880

April Term.

Final decree.

Nansemond Cir: Co