

1893-008

Nansemond Co. (Suffolk)

Chancery Causes: F.W. Rawles vs A.J. Robey

Turner, Duke, Babb, Rawls, Voight, Foster, Boyett, Arline, Reby, Savage,
Langston, Wright, Munn, Byrd

E. E. Holland per

J. W. Rawles

vs

A. J. Raby

1893 Octo 12th
Dismissed

5,47
Shff 50
Pay 150
Net 150

22,47

The answer of A. Q. Raby the defendant
to a bill of complaint filed against him
in the Circuit Court of the County of
Harrison by L. W. Rawles complainant,
The Respondent reserving to himself the
benefit of all just exceptions to the said bill,
for answer thereto, or to so much thereof as he
is advised that it is material he should
answer, answers & says, your Respondent
most positively denies that L. W. Rawles the
Complainant, is the fee simple owner and
is lawfully in possession of "a certain tract
of land in Harrison County Va. containing
Fifty Seven acres more or less and adjoining
the lands of David Henderson, Lem Frost, the
Somerset County road others" and says that he
has not a legal ^{title} thereto, your Respondent also
denies that he took possession of said land
in the absence of said L. W. Rawles the Complainant
or that he has at any time trespasser upon the
said land. It is true that your Respondent
has plowed up certain portions of said land
and has hauled rails, moved fences and cut
wood upon the said land, but this was done
to put land in proper condition to be
cultivated and it is also true that your
Respondent did intend to move some of the
buildings upon said land to a different

point upon said land, but this was all
done by the Authority of the lawful owner
of said land Mrs. Missouri Turner, who
obtained her title as follows: The land then
in controversy formerly belonged to the father of
said Missouri Turner Hardy Duse who departed
this life sometime about the year 1842 leaving
a will, in which he devised said parcel a tract
of land aforesaid to his widow during her
life and at her death to his living girl
children, his widow whose name was
Christian after the death of said Hardy Duse
her husband married one Dempsey Babb
(under whom your Respondent understands the
said F. M. Rawles Complainant claims title to said
land, but your Respondent avers & charges that
said said Dempsey Babb never had any title to
said land & could therefore convey none to any
one else) and the said Christian Babb formerly
Christian Duse died sometime in the year 1883
and at the time of her death the said Missouri
Turner was the only living girl child of
the said Hardy Duse and therefore under the
provisions of said will of said Hardy Duse
the said Missouri Turner inherited said
land - The will of said Hardy Duse was
duly admitted to probate after his death
in the Clerks office of Hannibal County Mo.

but said clerk's office was destroyed by
fire in the year 1866 or 7 and all records there-
lost but your respondent is able to prove
the contents of said will as above alleged
which will show that F. W. Rawles has no
title to said land but that it belongs
absolutely to said Merioun Turner. your
Respondent would never have been so foolish
as to undertake to take charge of said land
by force as alleged in said complainant's bill
and as to the charges contained in said bill in
reference to spirituous or in the past of your
respondent, he considers them too trivial to
answer but simply denies all such charges and
allegations & says that everything he has done
in taking charge of said land, plowing, moving
rails &c was done by the express authority of
the legal owner of said land. And your
respondent denies all fraud, unlawful
combination and conspiracy, and having
fully answered the complainant's bill, prays
that the injunction heretofore awarded in the
way of 1890 in this cause may be
dissolved, and to be hence dismissed with his
reasonable costs by him in this behalf expended
the will ever pray &c.

R. W. Rawles }
Minnie Briggs } Ad.

A. I. Raby

State of Virginia

County of Hanover

This day personally
appeared before me R. H. Rawles a
Notary Public for the County and State aforesaid
A. D. Raby who answers is above written
and made oath that the statements contained
in the said answer, so far as made of
his own knowledge or true, and so far
as made from knowledge or information
derived from others, they are believed to be
true

Given under my hand this 27 day of
January 1891

R. H. Rawles
Notary Public

Answer.

Edward C. Riddick

and

Emmie his wife

To { Deed B & S

Frank W. Rawls

This Deed Made this 25th day of November, 1870, between Edward C. Riddick and Emmie, his wife, of the first part and Frank W. Rawls, of the second ^{part} all of the County of Nansemond and State of Virginia; Witnesseth, that these the said, E. C. Riddick and wife, for and in consideration of the sum of Five hundred Dollars, lawful money of the United States, to them in hand paid by the said Frank W. Rawls at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath bargained and sold and by these presents doth grant bargain and sell unto the said Frank W. Rawls his heirs or assigns forever with general warranty the following property, to-wit, First, a certain Tract or parcel ^{of} land, it being in the County and State aforesaid and bounded as follows, to-wit, on the East by Edward C. Riddick, and North by the Lands of James Babb Estate, East by James Smith, and South by Wm. F. Riddick line containing by estimation Eighty-six acres, be the same more or less, Second Tract of land could the Dempsey Sanger Land lying and being in the County aforesaid containing Twenty-nine

acres more or less and adjoining the lands
of William Traust, Estate Richard Sanger
and Tho^s Ellender, and both sides of the
County Road from Suffolk to Somerton,
Third all the right title and interest which
he the said E. C. Riddick, has in the land
on which he the said Dempsey Babb now
resides containing Fifty seven acres more or
less and bounded by the lands of William
Traust, Estate, David Henderson and Willy
Spivy and the Somerton Road South, Three
beds bedstead and furniture one buffet one
side board, one clock one looking glass, one
Buggy, one sow and seven pigs, five shoats,
three head of cattle Ten Bbs. of corn, four
hundred lbs bacon one bay Horse, cart and
wheels, and the said E. C. Riddick covenants,
that he has the right to convey the said lands
and other property to the grantee that he
has done no act to encumber the same
that the grantee shall have quiet possession
of the same free from all encumbrances, and
that he the said E. C. Riddick will execute
such further assurances of the same as may
be requisite, witness the following signature:

and Seal

E. C. Riddick (Seal)

Emmie Riddick Seal.

George H. Babb
Joseph ^{his} Ellender
Charles ^{his} Henry ^{his} Brinkley
Mark

State of Virginia

Hammond County Court:

I, Peter B. Drontis Clerk of
the Court of the County of Hammond, in the
State of Virginia do certify that Edward C. -
Riddick, whose name is signed to the foregoing
deed, bearing date the 25th day of November 1870;
has acknowledged the same before me in my
county aforesaid, and I do further certify that
Eunice Riddick, the wife of the said Edward
C. Riddick, whose name is likewise signed
to the said Deed, bearing date as aforesaid -
personally appeared before me in my county
aforesaid and being examined by me privily
and apart from her husband and having the
Deed aforesaid fully explained to her, she the said
Eunice Riddick, acknowledged the said Deed to
be her act and declared that she had willingly
executed the same and did wish to retract it,
given under my hand this 15th day of December
1870.

Peter B. Drontis, Clerk.

In the Clerks office of Hammond County
Court the 15th day of December 1870,

This Deed, was received and with the
certificate written thereon, admitted to record

(the requisite stamp of 58¢ having been
fixed and cancelled).

Teste:

Peter B. Duntis Clerk.

A. Copy

Teste:

R.R. Smith Clerk

Rawls

} In Chy.

Raby

Exhibit "A"
Filed with Bill

Read in Office
Sept 5th

To the Hon. C. W. Hill, Judge of the Circuit Court of the County of Nansemond.

Your complainant, F. W. Rawles, of the County of Nansemond, in the State of Virginia, respectfully represents that he is the *fee simple* owner and lawfully in possession of a certain tract of land in the aforesaid County and State, containing fifty seven acres, more or less and adjoining the lands of David Henderson, Wm Frost, the Somerton County road and others, as will appear from a copy of a deed ~~herewith~~ filed from E. C. Riddick and others, herewith filed and asked to be read as a part of this bill, *marked, Exhibit "A"*.

That being in possession of the tract of land aforesaid and the legal owner thereof one A. J. Rabey, while your orator is absent from the said place, is in the habit of trespassing upon the said land and cutting wood therefrom and hauling dirt from said land, *marked, Exhibit "A"*.

That said A. J. Rabey has within the last few days gone upon said land, and in your orator's absence, plowed up a certain portion of said land, and is now engaged in hauling rails and wood therefrom, in cutting wood therefrom, moving the fences on said land and otherwise trespassing thereon. And the said Rabey threatens to pull down the buildings on said place and otherwise to trespass thereon, with the full knowledge that he has no interest in the said land. Your orator further states that the said Rabey threatens to do these things by force, and desires that he may be restrained from doing such acts by the order of this Court, your complainant being a lawabiding man and not desiring to do personal injury to

another unless it be ~~taxxx~~ absolutely essential to protect his property. Your orator further states that the said Rabey is notoriously insolvent and not responsible pecuniarily for his acts, and that he could not recover from him anything for all the damage he might do to the property of your complainant, and this the said Rabey very well knows, and is thereforereckless in his actions. The said Rabey is, as your orator verily believes, determined through spite and meanness to do your orator in this way irreparable injury and damage, unless he is prevented therefrom by an order of this Court. Your complainant states that the said Rabey being perfectly desperate in his spite, he is unable without doing him personal ^{injury} ~~damage~~ to prevent such trespassing on his part; and being notoriously insolvent has it in his power unless forcibly prevented therefrom to do irreparable damage to your orator's property by his lawless trespasses thereon without your orators being able to recover anything therefor.

Your orator states that said Rabey has absolutely no interest in said land.
Forasmuch then as your orator is remediless save in a Court

of equity your orator prays that the said A. J. Rabey may be made a party defendant to this bill and required to answer the same; that the said A. J. Rabey, his agents, attorneys, em-

ployees and all others may be enjoined and restrained from proceeding by force ^{or otherwise} ~~to~~ ^{from committing waste thereon,} take possession of said property, [^]

from attempting to cultivate the same, from removing or otherwise interfering with the buildings on said place, from removing wood and rails therefrom or cutting the same thereon, and from any trespass whatever of any kind upon said land or otherwise until the further order of this Court; that proper process issue; and all proper orders be made; and that all such other, further and general relief may be afforded your ^{orator}

as the nature of his case may require. or to equity shall
seem meet. And your orator will ever pray &c

E. E. Holland, per.

F. W. Rawles

Virginia, County of Nansemond, to wit:

This day personally appeared before me the undersigned, a notary public for the County of Nansemond, F. W. Rawles, and made oath that he believes the statements made in the foregoing bill are true.

Given under my hand the 20 day of Jan'y 1890

E. E. Holland,
N.P.

Rawls

} In Charge

Raby

Bill

Frank Rawls

vs } In Chancery

Andrew J Raby,

1890. Jan'y 23rd. Process issued returnable to
Rules 1st Monday Feby 1890
Injunction awarded by Hon.
C. W. Hill judge and injunction
Bond executed and copy filed with
the papers

" Feby 3rd. Process returned executed.
Bill with one exhibit filed and
Decree nisi against the defendant

" " 17 Decree nisi Confirmed and
cause set for hearing.

Rawls

} In Chip

Raby

Chancery Notes
Pm

Know all men by these presents,
that we, Geo. W. Turner and his
wife Missouri Turner, and only sur-
viving daughter of Hardy Duke, dec'd.,
of the County of Staunton and State
of Virginia, Constitute and Appoint A.
J. Rabey our true and lawful attorney
for us and in our name to take possession
of, caused to be occupied, exercise full con-
trol and proprietorship of the piece, parcel
or tract ^{of land} and its appurtenances - which
was given by the Will of Hardy Duke, dec'd.,
to his wife ^{during her natural life &c.} Christiana, and upon which he
the said Hardy Duke, dec'd. seized and pos-
sessed containing Fifty Seven (57) acres
more or less, and bounded by the lands of
W^m Fresh, David Henderson, Matthew
Munn, the lands of the Est. of Theophilus
Spirey, dec'd. and others, situate, lying and
being in the Upper Parish, Cypress Township
of Staunton County. - With power to sell
or let out the same, collect the rents thereof,
protect the said property against the depreda-
tions of all persons and also, to demand and
recover by legal process, if need be, from one
Frank. W. Rawles the rents, uses, privileges
and emoluments which he has assumed to take
and ~~wrongfully~~ enjoy, wrongfully, in the removal

of soil, timbers &c: from said land -
(With power also an attorney or attorneys)
under him for that purpose to make
and substitute and do all lawful acts
requisite for effecting the premises:
hereof ratifying and confirming all that
my said attorney or his substitute shall
do therein by virtue hereof - And the
said A. J. Naby, our attorney, or ^{his} admin-
istrator or assigns, is hereby further
granted the privilege and power to re-
imburse him or themselves for all monies,
services and every expense which may be
incurred in performing what he or they may
deem prudent to serve our interests in every
relation touching the said realty - by subject-
ing the said realty to the payment of the
expenses thereof - And after paying all
such said expenses, the residue, if there be
any, arising from the sale of said land
shall be subject to the further order of
our selves, administrators or assigns - And
we agree to waive the benefit of our Home-
stead Exemption on all our realty - that the
purpose hereof intended may be fully met -
In witness whereof we have hereunto set our
hands and seals. This 4th day of January 1890

Witness

Emma L. Turner

Lura A. Turner

Geo. W. Turner

Missouri Turner

Be It Known, That on the 18 day of
February in the year 1890. before ^{me} came
Geo. W. Turner and his wife Missomi
Turner and acknowledged the foregoing
letter of attorney to be their act and
~~and~~ and Contract to be their act and
deed.

W. M. Stevens
Notary Public

Genl. Wm. T. Smith
20 1st of Apr
Contract

at Albany

Exhibit

No. 3

18th Feb. 1886.

Judge Vrentas.

Mr & Mrs G. W. Turner will
call at your Office with Deed. Take their
Acknowledgements to the same and place the
Deed upon record. I have given money into
their hands to pay recording fee.

With respect &c;

A. C. Raby

For

Emeline C. Raby

5 Shubert

2,

Judge. P. B. Reutis.

Respect

To Mrs. Turner

This Deed, MADE this, the *16th* day of *February*
 in the year eighteen hundred and eighty-*six*, between *Geo. W. Turner*
 and *Missouri Turner, his wife*
 of the *County of Fauquier*, in the State of Virginia,
 of the first part, and *Miss Emeline C. Rabey,*
wife of A. J. Rabey,

of the second part,

WITNESSETH, That in consideration of the sum of *Two Hundred*
(\$200⁰⁰) dollars, the said
Geo. W. Turner and Missouri Turner, his wife
 do grant, with general warranty, unto the said *Mrs Emeline C.*
Rabey, wife of A. J. Rabey,
 the following property, to wit: *The tract, piece or parcel of land, with*
all appurtenances and with all rents, profits and emoluments
accruing to the same, by reason of the illicit tenure
exercised by Dempsey Babb and others. — Known
as the dower assigned to the widow of Hardy Duke
under his last will and testament: which in pursuance
to said Will, at the death of the said widow, the said
Dower were given or bequeathed by the said Testator
to such of his "girl children" as should survive at the
death of their mother, who was then Christian Duke,
but who, after married the aforementioned Dempsey
Babb, and continued to occupy and enjoy said
Dower until her death — which occurred on the 13th
of June 1883. And said tract, piece or parcel of
land or said Dower, situate, lying and being in

Naus? Co., Cypress Dist., near Turnersville, di-
rectly on the New Somerton road, about 7 miles
south of the town of Suffolk. Containing fifty acres
more or less. And bounded by the lands of the said
Mrs. Emeline E. Laby, R. J. Frost, D. W. Henderson
and others. And whereas, it is that, the said
Missouri Turner of the first part, the wife of Geo: W. Turner,
also, of the first part, being the only surviving "girl
child" of the body of the said Testator, at the
death of her mother, and thereby, in obedience to the
fiat of the last Will and Testament of the said
Testator. the only legal owner of the said
Estate: Both, jointly, with her husband, the said
Geo: W. Turner, Execute this Indenture, ac-
cording to law.

The said Geo: W. Turner and Missouri Turner, his wife,
covenant that they are seised in fee of the said land that they have the right to
convey the said land to the grantee; that the grantee shall have quiet possession of the said land free
from all encumbrances; that they, the said parties of the first part, will execute such further assur-
ances of the said land as may be requisite; and that they have done no act to encumber the
said land.

Witness the following signature and seal the day and year first above written:

SEAL.

SEAL.

State of Virginia,

COUNTY OF

, To wit:

I,

, a Notary Public 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 , 188 .

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

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 day of , 188 .

NOTARY PUBLIC.

State of Virginia,

COUNTY OF

, To wit:

I,

, a Notary Public in and for the said

county, in the State of Virginia, do certify that

whose name signed to the writing above, bearing date the day of

188 , ha acknowledged the same before me in the county aforesaid.

Given under my hand this day of , 188 .

NOTARY PUBLIC.

Geo: W. Turner & wife

3 Dec
13th

Mrs. C. E. Raby

5th Dec 1

COUNTY OFFICERS.

HON. WILBUR J. KILBY, County Court Judge.
 R. R. SMITH, Clerk County Court.
 A. P. GOMER, Clerk Circuit Court.
 E. E. HOLLAND, Commonwealth's Attorney.
 A. H. BAKER, Sheriff.
 H. E. SMITH, County Treasurer.

◁CLERK'S OFFICE▷

NANSEMOND COUNTY.

Suffolk, Va., 189

Rawles
 ps
 Raby

CHausey Clerk	80
APGomer "	4.67
Tax	1.50
Atty	15.00
	\$21.97
Shff	.50
	(22.47)

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON *A. J. Robey*

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 *February* next, to answer a

Bill in Chancery, exhibited against *him*
in the said Court by *F. W. Rawles*

and have then and there this summons.

Wm. B. Causey,
Witness, ~~PETER B. PRENTIS~~, Clerk of our said Court, at his office, this *23rd* day of
January 1890, in the 11⁴th year of the Commonwealth.

Teste:

Wm. B. Causey

Clerk.

Memo: On motion of plaintiff, by Counsel, and
for good cause shown, an injunction is awarded
him to enjoin and restrain, the defendant, A. J.
Raby, his agents, Attorneys, Employees and all
others from committing waste on the tract of land
in the line mentioned, from proceeding by force or
otherwise to take possession of said land, from attempt-
ing to cultivate the same, from removing or other-
wise interfering with the buildings in said place,
from removing or cutting any thing from it, and
from any trespass of any kind upon said place
until the further order of this Court.

Teste:

Wm. B. Causey Clerk

J. W. Rawles

Is memo in Chy

A. J. Raby

For Return Rules

First Monday

Sept 24/90

A. J. Raby

in person

By serving a true copy
of the within order
within named

Recorded this 23 June
1890

Know All Men by These Presents, That we, Charles E Summer
Principal and E E Hall and Sincerely

A I Raly

are held and firmly bound unto the ~~COMMONWEALTH OF VIRGINIA~~ in the just and full
sum of *One Hundred and fifty* DOLLARS,
to the payment whereof, well and truly to be made to the said Commonwealth, we bind ourselves,
and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly
by these presents.

Honestead

The obligors herein hereby waive the benefit of our exemption as to this obligation, ~~and also~~
~~waive any claim or right to discharge any liability to said Commonwealth arising under this bond~~
~~or by virtue of the~~ ~~herein mentioned, with coupons detached from bonds of said Com-~~
~~monwealth~~

Sealed with our seals, and dated this *23rd* day of *January* in the year
of our Lord one thousand eight hundred and *ninety* and in the *114th* year of
the Commonwealth.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That ~~if the above bond~~
Whereas J W Rawls has sued out a writ of Injunction in
the Circuit Court of Nansmond County against A I Raly
restraining said Raly from committing waste on the tract of land
in the bill mentioned from proceeding by force or otherwise to
take possession of said land from attempting to cultivate the same
from removing or otherwise interfering with the buildings on said place
who has this day qualified before the Court of Nansmond County,
from removing and cutting anything from any from
any trespass of any kind upon said place until the
further order of this Court.
Now if the said J W Rawls shall pay all such Costs
and damages as may be awarded against him in said
Cause, in Case said injunction shall be dissolved,

~~shall faithfully discharge the duties of his said~~
~~or else to remain in full force and virtue~~

then the above obligation to be void,

Executed in presence!
of the ~~Court~~ *Clerk*

C E Summer
E E Halland



A Copy Teste J P Gomer

At a Court held for Nansmond County, at the
Courthouse thereof, on the day of , 18 .

The above bond was executed and acknowledged in open Court by the obligors to the same
(the seenrit justifying), and ordered to be recorded.

Teste :

C E Sumner &
E E Holland
To } Inspection
 } Bond
A S Roby

1890
Lang 2nd Executed
Copy of Inspection Bond

On motion of the plaintiff~~s~~, by Counsel and for good cause shown, an injunction is awarded him to enjoin and restrain, the defendant~~s~~, A. J. Rabey, his agents, attorneys, employees and all others, from committing waste on the tract of land in the bill mentioned, from proceeding by force or otherwise to take possession of said land, from attempting to cultivate the same, from removing or otherwise interfering with the build-
ings on said place, from removing and cutting anything from it, ~~until~~ and from any trespass of any kind upon said place, until the further order of this Court. But said plaintiff is not to have the benefit of this order until he or some one for him, shall enter into bond, with sufficient security, in the penalty of \$ 150., payable to said defendant and conditioned to pay all such costs and damages as he may sustain in consequence of the said injunction, in case the same shall be dissolved.

L. White
July 4
To Clk Cir Court
Hausmann Co - Jan 22 1880.

Racols

} In Chancy.

Raby

Order granting
Injunction

The depositions of F.W.Rawles and others taken the 18th day of March, 1890, by consent of all parties to be read as evidence, in behalf of F.W.Rawles, in a certain chancery cause now depending in the Circuit Court of Nansemond County, wherein F.W.Rawles is plaintiff and A.J.Rabey is defendant.

Present. R.H.Rawles, Att'y for Defendant.

,, E.E.Holland ,, ,, plaintiff

F.W.Rawles being duly sworn deposes and says as follows:

1st Q. What is your name age residence and occupation and do you know the parties to this suit?

Ans. F.W.Rawles, live in Nansemond County; am a farmer; and am the plaintiff in this suit.

2nd.Q. How long have you been in possession of the land in controversy?

Ans.Since about eighteen hundred and seventy.

3rd.Q.Have you been in continued ^{possession} since that time?

Ans.I have

4th.Have you rented out the land and otherwise exercised ownership in it?

Ans.I have.

5th Q.To whom have you rented it and to whom was it rented in 1889?

Ans.Robt.R.Boyett.

6th.Q.Was R.R.Boyett in possession of this land as your tenant at the time A.J.Rabey claims to have gone upon it and taken possession?

He was.

7th.Q. Did you collect rent from Boyett?

Ans.I did.

Boyett moved there in 1885, and has been there ever since, until

the first of the year 18390 when he moved away.

8thQ. Have you paid taxes upon this property'?

Ans.I have since I have had it in possession.

9th.Q.Have you ever consented that A.J.Rabey should take possession of it,either as your tenant or otherwise?

Ans.I never have.

10th. Did Rabey go upon the land withh your knowledge?

Ans. No,he did not.

11th. Did he give you any notice that he claimed it?

Ans.He never did.

12th. Was his alleged going upon the land a trespass upon your rights of possession?

Ans.I so regarded it.

Have you in any way ever relinquished your possession of the land?

Ans.I have not.

13th.Q. Was not the defendant Rabey aware that you were in possession?

Ans.He knew that I was

14th.Was there any cut cord wood on the place?

There was.

15th.Q.Has any of it been moved,and by whom if you know?

Some of it has been moved.I never saw any moving it,but Mr. Frank Turner told me he was going to move it.Frank Turner is the son of Mrs, Turner ,the party under whom the defendant claims.

16 th. In what way did you get possession of this land'?

Ans.I purchased the land from Capt.E.C.Riddick in 1870 I think,and I hsve a deed for it.

17th.State anything else you may know about the land in controversy?

Ans. I know at the time that Rabey claims to have tried to get a deed from Turner and wife for Dempsey Babb that Babb and Rabey didnot speak and had no dealings with each other.

Was Dempsey Babb related to you?

I married his daughter.

Did you have a deed for the land at the time Rabey claims to have been trying to get a deed from Turner and wife for D. Babb?

Ans. Yes, sir.

Did Babb so far as you know always claim that he had a right to sell this land?

Ans. He did.

Cross-examination.

Do you know when the Clerk's office was burned?

I think it was burned the 7th day of February, 1866. I was married on that night and therefore remember it.

You say you bought this land of E. C. Riddick, what did you pay him for it?

I paid him Five hundred dollars.

Did you pay him cash?

Yes, or its equivalent.

Please state what you mean by equivalent.?

I paid him in that which would satisfy him as much as the money.

Please state exactly how you did pay him?

I paid mostly in money.

And further this deponent says not.

J. W. Rawls

John T. Voight, another witness being duly sworn deposes and says as follows:

1st Q. What is your name age, residence, occupation, and do you know the parties to this suit?

Ans. I was born in 1832; John T. Voight; live in Nansmond; am a farmer; and know the parties to this suit.

2nd. Q. Do you know the location of the land in controversy?

I do.

3rd. Q. Please state all you may with reference thereto.

Ans. I have heard Sam Baker say that Josiah Duke's wrote Hardy Duke's will. Josiah Duke came into Court and acknowledged before the Court that the will he wrote was not Hardy Duke's will. I have heard a very large number of others say so. There was a suit over the will and the property was divided and she took her portion in fee-simple. All I know is hearsay. I have heard some of the heirs say that when their mother died none of the land would be theirs that their mother took in fee-simple I mean Hardy Duke's. Have heard Laura Ann Duke say so, who was one of Hardy Duke's daughters. Laura Ann is now dead. It appeared that at the time of the suit, so I have heard numbers of people say that when the property was first divided she drew a piece of land on the West side of the Somerton road as a portion of her dower. There was a suit and a part of the land was sold, and she then took a fee-simple.

Because defendant objects to answer for reason that the witness says, thus the answer is entirely hearsay.
And further this deponent says not.

John T. Voight

Wm. Frost another witness being duly sworn, deposes and says as follows;

What is your name age, residence occupation, and do you know the parties to this suit?

W. J. Frost, age, 49; am a farmer; live in Nansemond County and know the parties to this suit.

Do you know the location of the land in controversy?

~~I do not know anything about the land in controversy~~

I do; have known the land all my life; know nothing about the suit.

Who has been in possession of the land?

Dempsey Babb up to his death and F. W. Rawles since.

State all you may know about the land in controversy?

I know nothing

Who have you known to claim the land?

Mr. Babb claimed it in his life time.

Have you had any conversation with Rabey about this land?

Well, Mr. Rabey ran his fence out there on the road opposite this place and made the road too narrow. I told him he must move it. He asked if he moved the other side if it would not do as well. I told him it would be the same. He told me he had a paper from the heirs giving him or me the right to move it. I told him he must move it.

Did you see the paper he said he had?

No, sir, I did not read the paper

Was it read to you?

Yes he read it

Who did he say the heirs were?

He called Mrs Turner's name, I think the names of Becca Duke, Peter Duke and others.

And further this defendant says not, W. J. Frost

R.R. Boyett, another witness being duly sworn deposes and says as follows,

1st.Q. What is your name age residence occupation and do you know the parties to this suit?

R.B. Boyett, age, about forty two; live in Nansemond County; and know the parties to this suit.

2nd.Q. Do you know the land in controversy?

I do.

Did you ever rent it? if so from whom did you rent it?

I rented it from Dempsey Babb for three years and one year from Mr. F.W. Rawles.

To whom did you pay your rent?

I paid two years to Babb and two years to Rawles

What years did you occupy it as a tenant?

I moved there in 1885, the day before new-years day, and there four years.

When did you surrender possession of it to Mr. Rawles?

I left there ~~the last day of~~ the last of January, of this year, 1889

Did Mr. Rabey come upon this land while you were in possession of it?

He came over there I reckon a month before I left and asked me the privilege of moving a fence on the road. I told him I had no objection either one way or another.

Were you not there by permission of Mr. Rawles? and

Yes, sir I rented the place the year 1889 from Mr. Rawles.

I was in possession under this renting from Rawles when Rabey came over, and asked the privilege of moving the fence. One day when I was not at home some time afterwards Rabey came over there and posted the land, and sowed the garden in oats. They were all gone when I came home.

Did you give Rabey any permission to do this?

Rabey asked me to give up the keys to him when I left, Said he expected to take possession of the place. I told him there were no keys to give up. He said I should not be bothered at all, that all he wanted was possession of the place. I told I would not like to be bothered, ^{when} ~~because~~ about the buildings. I told Rabey I had not been notified by Mr. Rawles or any body else to leave the place, and I did not wish to be bothered about the buildings. Rabey told me I should not be interfered with.

Did you not rent the lands of Rawles for the year 1839?

Yes, sir.

Were not in possession as Rawles tenant?

Yes, sir, I rented from him.

If Rawles had given you notice to give up the place would you not have done so?

I certainly should.

Then you regarded Rawles as the owner of the place?

Yes, sir, I thought so. I paid him my rent and if he had notified me to leave I should have done so.

And further this deponent says not.

Witness

A. P. Robey

R. B. ^{mis} Boyell
made

C.E. Sumner, another witness, being duly sworn deposes and says as follows;

1st. Q. what is your age, name residence, occupation, and do you know the parties to this suit?

Ans. Age. 69 next birthday, live in Nansmond County, am a farmer and merchant, my name is C.E. Sumner and I know the parties to this suit.

2nd. Do you know the location of the land in controversy?

Ans. I do. I have known it ever since 1856.

3rd. Who has been in possession of the land since that date?

Ans. Dempsey Babb and F.W. Rawles

4th Q. Have they since that date to your knowledge claimed title to said land?

Ans. They have.

5th. Q. Have they been in continuous possession of the land all the time

Ans. All the time. Mr. Babb before his death and Mr. Rawles since

6th Q. Have they cultivated it, rented it out, and otherwise exercised acts of ownership over it all the time?

Ans. They have; they have cultivated it and have rented it out.

7th. Q. Have they or their tenants to your knowledge ever at any time been out of possession

Ans. No, sir, I do not think they have. It has been in their possession or their tenants.

8th Q. Did Dempsey Babb to your knowledge claim title to this land during his life time?

Ans. Yes, he claimed title to it. Of course he claimed title to it by living there all the time.

9th Q. State anything else you may know with reference to this island?

Ans. I know nothing, but I have heard something about a will.

and further this deponent says nothing.

C. E. Sumner

Taken, subscribed & sworn to before ^{me} E. E.
Holland, a notary public, in and for Kan-
saw and County, Virginia, this The 18th day
of March, 1890.

E. E. Holland
N.P.

Rawles .
20 Depositions —
Raby

1

The depositions of J. W. Arline and others taken before me W. H. Stevens a Notary Public for the County of Hanseman Va. by consent of the parties at the office of Merritt Briggs at Suffolk Va. on the 14th day of February 1890 between the hours of six o'clock A. M. and six o'clock P. M. to be read as evidence on behalf of A. J. Raby in a certain suit in equity depending in the Circuit Court for the County of Hanseman wherein J. W. Rawles is Plaintiff and the said A. J. Raby is defendant

Present

E. E. Holland Attorney for Plaintiff
Merritt Briggs " " Deft

J. W. Arline being sworn deposes and says as follows

1. 2.

What is your age, name, residence occupation and do you know the parties to this suit?

A.

J. W. Arline, about 75 years of age, residence Hanseman County Va. occupation farmer. and knows the parties to this suit

2 Q Do you know the land in controversy in this Suit?

A Yes,

3 Q How long have you known it?

A About 50 years

4 Q To whom did it belong when you first knew it?

A Handy Duke.

5 Q Were you personally acquainted with Handy Duke?

A. I have known him since 1842

6 Q Do you know whether or not he made a will?

A Yes, I know who wrote it and all about it

7 Q Who wrote it?

A Josiah Duke

8 Q Were you present when it was written?

1
A They commenced before I got there, the old man sent for me to come and witness the will

9 Q Did you go?

A Yes.

10 Q Then am I to understand that you were a witness to the will?

A Yes.

Note [Plaintiff's counsel here called for the production of the will or a properly authenticated copy thereof.]

[Defendants counsel replies that the deft in his answer, sets up affirmatively that the said will was duly admitted to probate after the death of Hareb, Duke in the Clerks office of Haremand & Co. which said Clerks Office was destroyed by fire some time in the year 1866 or thereabouts, and the record of the will and the original will was destroyed in that fire, this being the case it is perfectly competent for the deft to prove the contents of said will by secondary evidence.]

Plaintiffs counsel replies, that there is no evidence in this record to show that the will has been destroyed ^{and} none to show, that the so-called will referred to by witness was not afterwards revoked and destroyed, and for other reasons. And plaintiff renews the call for the original will or a properly authenticated copy thereof if such is in existence.

[To which deft replies that the answer in this case, alleges that the said will was destroyed by fire and is now proceeding by the witness on the stand to show, that it was the last will of Hardy Duke, and that he as an attesting witness went before the Court to prove the will.]

11 Q Was this will read in your presence ^{and} in the presence of Hardy Duke, ~~and the other attesting witnesses~~

A Yes,

12 Q Was there another witness present, if so who was he

A Yes, John C. Goodrich

13 Q How long was this before the death of Hardy Duke

A. A very short time, he was sick then and never got up again

14 Q After Hardy Dukes death, did you and Mr. Goodrich the other witnesses to the will, appear in court and prove the same

A I disremember about that, I dont recollect about coming to court, I reckon I did

15 Q Can you state about how long this will was made before the death of Hardy Duke.

A I dont recollect it might have been a week or two.

16 Q I understand you to say that he never got out after this will was made

A. May have gotten out of doors but not to do any thing

17 Q Will you now state, the contents of said will?
Note [Counsel for pliff excepts to this question on the grounds 1st that there is no evidence to show that the will referred to

was the last will and testament of Hardy Duke. Andly because there has been no evidence introduced to show that the last will and testament of Hardy Duke if he had any, has ever been destroyed, and I rel because there is no evidence to show that the will referred to by witnesses was ever proved and admitted to probate, the witness himself stating that he has no recollection of ever coming to court for that purpose he being an attesting witness as he alleges]

A The land was to be given to his living girl child at the death of his widow. I don't remember any further

18 Q No I understand you to mean by this, that his widow was to have the land during her life and his living girl child at her death?

Note [Plaintiffs Counsel excepts to this question on the ground that Counsel should not have so understood because witnesses have not so stated.]

A That's so.

19 Q Please explain, your remembrance of the will in full

A I have told about them girl children I don't know any more. the land was to go to his widow for her life and at her death to his girl children

20 Q At the death of his (Hardy, Duke's) widow, how many daughters of Hardy Duke were living?

A I don't know

21 Q At the time of Hardy Duke's death, to whom did this land in controversy belong?

Note [Objected to on the grounds that if there is any record it is the best evidence and for other reasons]

A Hardy Duke owned this land when he died

Cross Examined

1 Q When did Hardy Duke die?

A In April 1842

2 Q When did Hardy Duke's widow die?

A I don't know about seven years ago

Note [Counsel for Plaintiff without waiving objections to the introduction of evidence to prove the

contents of so-called will referred to by witnesses and the other exceptions made to questions with reference to said alleged will proceeds to examine him with reference to said will]

3 Q How many wills did Hardy Duke make?

A Only one that I know of. I lived close to him. never heard of but one

4 Q Are you prepared to swear that the will to which you were a witness was the last will he ever made

A He never made one after that he was ill - but dead

5 Q What land did he own at the time this will was made

A He had two tracts one on each side of the road, I don't know how much was in either. He gave one to Frank and the other is the land now in controversy

6 Q Who is now in possession of each of these tracts of land?

A Frank Rawles the plaintiff is in possession of

and A. J. Raby, is in possession of the other

7 Q How long has Rawles been in possession of said tract?

A Ever since the death of his father-in-law Dempsey Babb about two years ago

8 Q Who was in possession before the death of Dempsey Babb

A Hardy Duke's widow who married Dempsey Babb

9 Q When did Hardy Duke's widow die

A About six or seven years ago

10 Q Who was in possession from the death of Hardy Duke's widow until the death of Dempsey Babb

A Dempsey Babb himself

11 Q To whom did Hardy Duke give his personal estate if any he had

A I don't know, I was at the sale

12 Q

You have said in your examination in chief that the land was given by Handy Duke in his will to his widow for her life and at her death to his living girl-child or children - was it given to such child or children in fee simple or for life

A

So far as I understand it was given in fee-simple but they haven't got hold of it yet

And further this deponent saith not
J. W. Arline

A. J. Raby being duly sworn
deposes and says as follows

1 Q

What is your name, age, residence occupation and do you know the parties to this suit

A

Name A. J. Raby, Age 52. Residence Houseman and Co. Va. Farmer, and am the defendant in this suit

2 Q

State all you know in reference to the subject matter of this suit

1
A Whereas being fully under the impression that such heirs of Hardy Duke deceased as were living at the death of Christian Babb who was the wife of the deceased, that the real estate upon which she died, were the rightful property of the girl-children of Hardy Duke which children survived her, and receiving what I considered legal authority from the same, and also from the tenant residing upon said property, I did proceed on the 18th day January 1890 to invest myself with the possession of said property. Whereupon after doing so a few days thereafter I received notice of an injunction restraining me from further use of said property. Said notice I have carefully observed

(3) 2 State fully by what authority you came into possession of the land

A By authority of George H. Turner and wife his wife being the only surviving girl-child of the said Christian Babb and therefore under the will of the said Hardy Duke the legal heirs to said estate

Note Answer objected to so far as it contains any statement referring to any will of Hardy Duke it not yet having been proved that Hardy Duke made a will or that if he did it was ever proved and admitted to probate

4 2 Did you ever know Hardy Duke

A No.

5 2 Do you know whether or not he ever made a will

A I believe he did

6 2 Why do you so believe?

A From the fact that I had come to read from ^a the Will Book in the Clerks Office of Nassau and County prior to its destruction by fire the will of one Hardy Duke which had been regularly entered therein

7 2 From the reading of this will, did you notice the date thereof, or the attesting witnesses thereto?

A I must have done so, from the fact that I have been all the time impressed since, that said will was executed about the year 1842 and that the executor of said will was Josiah Duke deceased and that John W. Arline ^{and} John C. Goodrich deceased were the attesting witnesses

82

Please state the contents of said will as contained in said Will Book which you read in the Clerks Office of Hanscom County, to the best of your recollection

Voto

[Plaintiffs Counsel again calls for the production of the original Will or a properly authenticated copy thereof, and objects to the introduction of any parol testimony, to prove its contents if either of such are in existence being entitled to the best evidence as to the contents of said will]

[Defts Counsel replies that the deft in his answer states, that the original will was destroyed with the record of the same when the Clerks Office of Hanscom County was burned]

A

The cause which I had for examining said will was to ascertain more particularly the boundary of a portion of the real estate of the said Hardy Duke which had fallen in my possession, therefore I am not so fully prepared to state the contents of the will pertaining to the personal property devised therein as I am concerning the real estate mentioned in said will. Therefore I am prepared very positively

to say that the testator Hardy Duke deceased did seem to desire by the language of said will to divide his realty into two parts, first to his son and secondly to his wife and living girl-children at her death.

The said first part mentioned in said will to the said son was given in fee the second said part was given ~~for the~~ (it seemed by the language of said will anticipating that as the children of the said testator were very young the last child an infant babe that the said realty of the said second part was given more largely than it otherwise would have been to the said widow Christian Duke to enable her to care for and support the said infant children and after her death the said realty to be subjected to an equal division between his living girl-children.

Q 2 Did you know the widow of Hardy Duke?

A Yes

10 2 Did she marry after the death of Hardy Duke and if so whom did she marry?

A Yes, she married Dempsey Babb, both of whom are now dead, She died about 1883

11 At the time of her death, how many daughters of the late Hardy Duke were living

A Only one, which is Mrs. Missouri Turner the wife of George W. Turner Esq

12 Q Are there the parties under whose authority you took possession of the land in controversy

A Yes sir

13 Were you personally acquainted with Dempsey Babb

A Yes sir

14 Do you know whether or not he claimed this land in controversy during his lifetime

Note

[Question objected to on the ground that record evidence is the best evidence ^{and} there is record evidence to show that he did claim it during his lifetime.]

A I know he did not from the following facts first that he frequently remarked that he was too honorable to do such a thing knowing well what the will of Hardy Duke said upon the subject reciting the same to me, giving me many particulars concerning the manipulation of the said property since the death of the said Hardy Duke, stating reasons why he did not improve said property; why he did wish to remove therefrom a certain tenement which he had built from his own resources and which he wished to place upon his own land preparatory to establishing for himself a home when his wife should die which he yearly expected to occur.

The said tenement he did move upon his own land and is now occupied by the plaintiff to this suit.

At the death of his wife he the said Dempsy Babb did indulge in an angry quarrel with the sole legatee to the said land in question and became so irritated thereby, that he pledged himself that he would not yield said land or estate to the said legatee without force of law

claiming that he was in possession of said property, and his resistance thereby would be very effectual from the fact that the said legatee and her husband were impecunious or had no money with which to resort to legal proceedings. But about the year 1886 the said Nempsey Babb did engage (in the presence of two witnesses at least, one of whom is now dead the other is living) my services to purchase of the said legatee the said estate in question stating that she was the only heir thereto for such a sum of money as she and I might agree upon.

Accordingly I effected a contract with the said legatee Mrs. Turner and her husband, for the sum of two hundred dollars. A deed was accordingly prepared, five dollars having been paid to confirm the contract, the fee for recording the same placed in the hands of the said Mrs. Turner with a note to the Clerk of the County Court instructing him as to the matter. But just then the husband of Woods. Turner

believing that he would at an early day become in possession of the said Estate and would thereby realize more than the said sum of two hundred dollars refused to join his wife in the execution of the said deed. Therefore the land contract or bargain were null and void

Note

Witness examining

Counsel for plaintiff here called for the production of the contract and all the papers referred to in this answer of witness, thereupon the witness submitted the papers Marked Exhibits N^o 1 & N^o 2 and filed by the Notary with the record in this case]

Therefore my bargain proving abortive I acquainted Mrs. Nempsy Babb with what I had done & I had prepared a deed conveying the right and title of the said Mrs. Turner to Mrs. E. E. Raby for the sum of two hundred dollars but the parties failed to execute the deed legally I would inform

him that I desired to have
nothing further to do with the matter.
He then again stated that he should
hold on to the property as he had
been doing ^{and remove therefrom}
only as he was ~~or might~~ ^{until} he
should be lifted from the same
by death or by legal procedure

Note

Counsel for plaintiff objects to the above
answer in so far as it seeks to
detail conversations and transactions
had with Dempsey Babb, and
especially such as relates to the
deed which is alleged to have been
made in 1886 the land then being
in the possession of F. H. Rawles by
deed on record from said Babb

15

Do you know anything of a deed made by
Dempsey Babb to E. C. Riddick, if so
state all you know about it

A I know this - that a short while after
the 'late unpleasantness' that Dempsey
Babb desiring to protect himself
against the efforts of his creditors to
subject his property to the payment of
his debts and to further favor

himself by a conveyance of his distressable property into the hands of his daughter or son-in-law the plaintiff to this suit, enquired of me if a deed of gift to the said daughter or son-in-law would avail his purposes. He was informed that the law required a man to be honest before he should become generous therefore his deed of gift which he desired to make would not apply. But to meet his purposes he would have to convey by bargain and sale. He selected then as his friend (I refusing to act) Capt Edward C. Riddick, and accordingly proceeded to convey by deed to the said Edward C. Riddick his property with the distinct private understanding that the said property so conveyed should soon afterwards be similarly conveyed by E. C. Riddick to the destination first desired to wit: J. W. Rawles plaintiff to this suit ^{and} without valuable consideration. All the deeds here alluded have been effected as I have been informed I did not see them

Note

Answer objected to by Counsel for Plaintiff on the ground that every executed writing is presumed to contain the full understanding of the parties with reference to the subject matter thereof and parol evidence of any private understanding with reference to the contents of such writing contradictory to the instrument itself is inadmissible.]

Cross Examined

- 1 When did Frank Duke die
 - A About 1855
- 2 How many children did Hardy Duke leave at the time of his death?
 - A Five, the oldest about 14 years of age
- 3 How long after Hardy Dukes death before his widow married Nemky Babb
 - A Something less than twelve months
- 4 Did Hardy Dukes children live with

their mother after her marriage to
Dempsy Babb

A I have learned that they did, from the
guardian of three of them Josiah Duke.

5

Did these several children have ^a sufficient
estate to furnish them a competent support?

A When they were deprived of the assistance as
anticipated by their father's will, the
care-taking of their mother assisted by
the real estate devised to her by said
will for their support during infancy
they must have had an insufficiency
for their support.

6

Give your reasons for saying that at that
time they must have had an insufficiency
for their support

A Because I have learned that some
friend of theirs complained that it was
a hardship for these children to be charged
board after their mother's second marriage
notwithstanding that mother was given
real estate to be ~~used~~ ^{used} for their benefit
and maintenance, and more real estate

than she would otherwise have been given

7 In what way was the board charged to these children paid

A I don't know of my personal knowledge

8 State your general information in relation thereto

A I have understood in the first place from the guardian Josiah Duke deceased in 1846 or 47 and that statement has been corroborated by various individuals since that time, among them Dempsey Babb, Peter B. Prentiss^{and} Christian Babb, that after the marriage of Hardy Duke's widow with Dempsey Babb, the said children continued a while to live with their mother, that the said step-father Dempsey Babb not only mistreated those children but charged them board in addition, their friends or friends became impatient with such a course and called upon the highest Court of Maureland County to consider the will of Hardy Duke deceased and if possible for that high functionary to redress the grief and hardship

imposed upon those children, to act in the premises. My informants already alluded to said that the Judge of the Circuit Court of Wausean and County R. H. Baker did intervene and so ordered that a certain portion of the real estate devised to the said Christian Babb for the purposes aforementioned should be sold and the proceeds of said sale should be equally divided among the said girl-children then living to wit: Peggy Ann; Laura Ann, Missouri and Ellen which order was complied with

9

Which part and how much of said land was sold

A

I also understood from the parties already mentioned that the said will of Hardy Duke deceased did give in the second division of his land already alluded to and which was for the benefit of his wife and living girl-children, (in addition to the land on which he resided ^{being principally} on the East side of the New Somerset road)

fifty Acres of Wood-land, lying about a quarter of a mile away it being heavily timbered, would furnish the necessary fire-wood and other farm timbers so necessary, the other portion being very deficient therein which said part was sold

10

Do you know of your own knowledge that the land in controversy, was not the land sold

A It was not

11

You have stated in your examination in chief that you have read what you believed to be the will of Hardy Duke. please state how many tracts or parcels of land was devised by him in said will

A I cannot say positively how many sundry tracts of land may have been consolidated in the landed estate of Hardy Duke deceased; but prominent among them were the lands which he derived from his father and the lands known as the Hewelley Jones lands, but as before said the will indicated that division alone

was made of the lands of which the testator died seized and possessed and that division set the one portion to his son S. J. Duke deceased and the other said portion to his said wife Christian and at her death to his living girl children

12

How many acres were included in the tract or tracts of land devised to his widow for life and at her death to the living girl-children

A. I am not prepared to say whether or not the will mentioned the number of acres in what I will call the "Home Tract" which is now in question, but I am prepared to say that the said tract of land has been variously estimated as shown by the land books beginning at the year 1846 to contain sometimes 55 acres and at others 57 acres. And in 1846 which was several years after the sale of the fifty acres of wood-land before-mentioned the said residue or "Home Tract" was charged upon the land books of 1846 as being

held in fee by the Estate of
Hardy Duke deceased

13

I understand you to say that
the tract of woodland containing
fifty acres was sold. Who was
the purchaser?

A Josiah Duke deceased

14

Can you state of your own knowledge
that the Home Tract of 55. Acres
referred to above was not sold?
At the same time the fifty acres
of wood-land were sold or at a
later date

A Through the same medium of intelligence
I can answer in the negative
because it has been made equally
plain to my mind that when
the honorable Judge of the
Circuit Court of Houseman
County decreed the sale of
the fifty acres aforementioned
a set of Commissioners were
also sent to examine the
said property and set apart
to the said Christian Babb

as a dower so much of the
real estate of the said testator
and from the portion which had
been assigned her by the will
for purposes before named
which is the identical land
now contended for by the said
Mrs Turner and the said
Commissioners proceeded in
obedience to the order of Court
to do the same and I was
sometime before the death of
Mr. Nempey Babb informed
by him that the original land
estate acquired by Hardy Duke
(deceased) by inheritance and
which land is now in question
did extend across the new
Somerton road; but such an
unimportant portion that
rendered it worthless to the
said dower about to be laid
off notwithstanding the
Commissioners had agreed
to assign as a dower the
whole of the original inheritance
alluded to of the said Hardy
Duke. That owing to the insignifi-
cance of this little strip across the road

and the difficulty of fixing a permanent line between the said lower and other lands in that direction, the Balib being present for his wife suggested that the County Road be made the permanent line just at that boundary to which the Commissioners acceded and there the line is so considered to this day

15 Are there so far as you know an authenticated copy of the will of Hardy Duke in existence

A I believe there is, but it is not in my possession

16 Do you know who has it

A I do not

17 Have you made any effort to find out who has it

A I did upon one occasion, but never found a written copy; but found an individual whose

recollection was so lucid that he could and did as he said recite that will (pertaining particularly to the land in question) verbatim and that man was so illiterate that he relied upon his memory as to all such facts and promised me that in case I should effect the purchase already alluded to from Mrs. Turner that he would go at once before a Notary Public and depose faithfully the will of the said Hardy Duke (deceased) in relation to the land in question and thereby assist in reestablishing the said will which was destroyed by fire in the Clerk's Office of the County and that there would not and should not be any doubt as to the title which I might obtain by purchase from Mrs. Turner and the man who imparted this information was Dempsy Babb himself

18

Do

I understand from some of your foregoing answers that Dempsey Babb and his wife occupied the land in controversy up to the time of her death

A They did

19

Have you examined the land books beginning about 1849

A I have not

20

Do you know to whom this land has been charged and who has paid the taxes for the past 15 years

A I do not

21

Who has been in possession of this land since the death of Dempsey Babb's wife about 1883

A

If I understand what possession is in this case I am forced to say that it has been in the possession of Dempsey Babb, Robert Boyett and the defendant in this cause

22

Who has received the rents and profits accruing from the same during this period since 1883

A As for my own knowledge I know not

23

You have said that you went upon this land with the consent of the tenant residing on the premises. Who was this tenant, and whose tenant was he?

A That tenant was Robert Boyett, I have ever regarded him as a tenant by sufferance

24

To whom did Mr. Boyett pay rent

A I do not know

25

You have said in your examination in chief that Henry Babb, in anger pledged himself that he would not yield said land or estate to the so-called legatee without force of law, claiming that he was in possession thereof. Has he to your knowledge ever surrendered such claim or said possession

A If your question was as full as it might be based upon ~~what~~ the answer that it is, I could readily answer yes because the threat made by Dempsey Babb was that he should hold on until he was lifted off by death or by force of law, consequently having died or been lifted off by death he accordingly by his own declarations surrendered the property to the said Mrs. Turner

26

Did not the said Dempsey Babb some years before his death convey to F. H. Rawles the plaintiff in this suit all right, title and interest which he had in said property

A I have heard so. I never saw the papers I heard he conveyed to Mr. Riddick and Mr. Riddick conveyed to Mr. Rawles

27

You have said that in 1886 the said Dempsey Babb in the presence of at least two witnesses engaged your services to treat with Mrs. Turner respecting the purchase of her interests in said land. who were these witnesses

A As I stated when I so said ~~any of~~
those. A niece of said Dempsy
Babb, named Mary A. Peele
since deceased, the other was a
neighbor of Dempsy Babb named
John Wilkins

28 Do you not know as a matter of fact that
at that very time Dempsy Babb had
conveyed all interest that he had in
said land to F. W. Rawles

A I do not.

29 Can you give the language of the will
~~as to~~ of Hardy Duke as to the disposition
of his entire estate

A I shall not attempt to quote the language
of the will, but I have already stated
substantially, what the reading of the
will impressed upon my recollection
of the property in question

The hour of six o'clock having arrived
the further taking of these depositions
is adjourned and continued until
Friday the ²¹ day of February 1890 at

the same place and between the same hours, the present witness being on the stand under cross-examination

W. M. Stevens
M. P.

Merritt Briggs Office, Suffolk Va
February 21. 1890

Present

E. E. Holland Counsel for Plaintiff

R. H. Rawles " " Left

[Note

At the request of plaintiffs counsel and
By consent of all the parties the
continued cross-examination of the
witness A. J. Raby is postponed for
for the present. And further this deponent saith not
A. J. Raby

Note

John W. Rline - Recalled
Plaintiffs counsel objects to the recall
of this witness after his examination
has been concluded and fully a week
has elapsed since the taking thereof
The plaintiffs counsel fully believes
that the witness will tell nothing but
the truth, but the policy of recalling
witnesses fully a week after they have
testified ought never to be allowed and
especially when witnesses recalled have
had an opportunity to converse with

defendant and defendants counsel
and to have their testimony shaped
and doctored in such manner as
defit and shifts counsel may deem
proper.]

[Defits counsel considers the
above as unworthy of notice.]

1 2

State whether you came to the Houseman
County Court to prove the will of the late
Hardy Duke and if so what circumstances
impressed that fact upon your mind?

A

Yes I came. On Saturday morning just
after my examination I was sitting by the
fire meditating as to who was the
Clerk of the Court in 1842 and it
came to me just as plain as run hand
before me who it was. I came to Court with
Mr. Goodrich and brought the will. Mr.
Joseph Prentiss who had a wart on his face
asked us if we acknowledge the will
when we answered yes. I didn't know
many of the people in the Court House I
had but recently came in this county

2

Do you remember how many wills you
ever proved in your life

A Two - one besides this

Q Whose wills were they?

A Hardy Duke's and Elisha Duke

Q State whether or not your reappearance on the stand is the result of your own uninfluenced desire

A I came at my own desire, and before my God no one ever told me about the case since 1842 and no one influenced me to come

Cross Examined

1 Q How many pieces of land were disposed of in this will

A Only one that I ever heard of

Q Was that the piece in controversy?

A Yes the same piece

Q Did he dispose of his other land prior to his death

A Yes, he gave that to his son together

with two negroes

Q Are you prepared to say that this piece of land in controversy, was not sold after the death of Hardy Duke under a suit?

A I have understood so, I don't know any thing about it

And further this deponent saith not
L. W. Arline

Jesse R. Savage being duly sworn deposes and says as follows:

Q What is your name, age, residence occupation ^{and} do you know the parties to this suit?

A Jesse R. Savage, farmer, 68 years, Houseman and County, ^{and} do know the parties to this suit

Q State whether or ^{not} you were ever called upon to write the will of Decemey Babb ^{and} if so upon how many occasions?

Note

1
[Plaintiff's counsel objects to this line of investigation on the ground that Dempsey Babb is dead.]

[To which counsel for deft replies that Dempsey Babb is no party to this suit and therefore the objection does not apply.]

[To which counsel for plaintiff replies that the land in controversy was once the property of the said Dempsey Babb who title to same is assailed in this suit.]

[To which counsel for deft further replies that the foregoing statement is denied that being the very gist of the matter here in controversy and the witnesses being no party to this suit and having no interest in the same.]

A I have been called upon twice. In writing those wills he never had any land to dispose of. He always stated that his land belonged to Chrissy, his wife and that he had nothing to do with it. He never did own or claim to own the land in controversy until about the time of the death of his wife. He never claimed any interest after her death and in all his statements he said

he did not own nor would he improve it by building upon it or repairing the buildings already on it. I frequently asked him why ~~he~~ didn't improve and he always said that as the place did not belong to him, and Chrisses, being feeble he did not know at what moment she might die he had no disposition to spend any money upon the place

Q Were you or not in any manner connected by blood or family relation to Mr. Dempsey Babb or his wife formerly, Christian Duke

A I was not to him; but she was my half-sister

Q State what offices you have held in this county

A My first office was Commissioner of the revenue for four years, was elected Sheriff twice two years each term, and also Magistrate about three years

Q When were you Commissioner of the revenue?

A In 1853-4-5 and 6

Q State whether or not you remember having transferred the land in controversy from the estate of Hardy Duke or Christian Duke to Dumpsy Babb

A My recollection is faint but I think I did. Mr. Babb said he had two tax accounts to pay and he wanted them brought into one; that he had Hardy Dukes estate as well as his own to look out for and he preferred to have them put into one tax ticket

Q Have you or not any knowledge as to whether the land in controversy has ever been sold or not or was it from your earliest knowledge up to the time of your transfer charged as the estate of Hardy Duke.

Note Plaintiff's Counsel objects to the question as leading
Def't's Counsel waives the question

Q Have you or not any knowledge as to whether the land in controversy has ever been sold or not.

A It never has within my recollection, I found it standing against Hardy Duke's estate if I did make the transfer in one of those dates while I was Commissioner of the revenue. There was a suit brought by Babb with regard to same

negroes mentioned in the will, but there was no land mentioned in that suit or sold

Q Were there any ^{other} land sold belonging to this estate

A There was, under an order of court a piece other than that in controversy,

Q Do you remember whether or not the land so sold was a part of the tract left to the widow by the will and on which she were to cut her rail timber - fir-wood and so forth

Note Objected to plaintiff's counsel as leading

A I don't know.

Cross Examined

Q When did Mr. Babb apply to you to write his will

A I think the first one was in 1845 and the second one in the latter part of 1846 or in 1847

Q Had there been any suit with reference to this will ^{that} at any time

A There had been and been decided, it was a suit to recover some negroes.

Q Has there been any suit with reference to this

1
since that time

A I have never heard of any

Q Did Mr. Babb to your knowledge ever make any conveyance of the land in controversy?

A None that I know positively, only by ^{the} record which I read

Q To whom and when were those conveyances made

A I saw where Mr. Babb made a conveyance to Edward C. Riddick, and I also saw where Edward C. Riddick conveyed the same land in controversy to J. W. Rawles

Q Who were the witnesses to the wills you wrote for Mr. Babb?

A Myself ^{and} Dr. Elliott to the first one I am certain and to the second one Myself ^{and} I am not positive as to the other witness though I think it was Mr. John Byrd

Q How many acres of land were there in the tract transferred by you from Hardy Duke's estate

to Dempsy Babb

A I am not positive but I think sixty six acres

Q How many acres are there in the tract in controversy

A The same as there were then, there has been no additions or deductions

Q Did your books as Commissioner of the revenue state or show that Dempsy Babb had a fee-simple or a life-estate in the land transferred by you to him from Hardy Dukes Estate

A An estate for life F. L. was marked against his name

Q Are you sure about this

A If I transferred the land I am

Q Was it customary at that time to charge any fees for transferring lands on the books of the Commissioner

A Yes for every kind of estate in lands the fee was fifty cents

Q She has stated that Dempsy Babb's wife only had a life ~~owner's~~ interest in this land is that true?

A Yes.

Q Then by what authority did you transfer it to Dempsy Babb for his life

A It was at his request and only to save trouble in the collection of the taxes, if I made the transfer which I think I did

Re-Examined

Q In answer to a question propounded by the Attorney for the plaintiff in his cross-examination you spoke of having seen on record a certain conveyance from Dempsy Babb to E. C. Riddick conveying this land and also of another certain conveyance from E. C. Riddick to J. H. Rawles purporting to convey the same land, now I want you to state all you may know in regard to these conveyances, their considerations, whether bogus or otherwise

Note

[Objected to on the ground that the deeds are the best evidence, and on the further ground that a deed cannot be collaterally attacked and can only be attacked in a specific suit brought for that purpose]

[To which it is replied by defts counsel that everything in relation to those conveyances was first brought out by plaintiffs counsel as entirely new matter, he failing to produce the very record thereto.]

[To which pliffs counsel replies that his question simply referred to and sustained the fact that there was a record, which was the extent of the information desired. The pliffs counsel knowing as now that the record was the best evidence of what it contained and especially the consideration therein named, asked no question with reference thereto and insists that if the ~~plaintiffs~~ ^{defts} counsel desires any testimony with reference thereto, he ought to take the necessary proceedings by he can introduce such testimony. Plaintiffs counsel further says that if the deft is anxious for the record referred to he ought to have asked at the proper time that it be introduced.]

[Counsel for deft replies as follows the plaintiff in his bill uses this language referring to one of those very conveyances
"As will ^{appear} from a copy of a deed from
"E. L. Riddick and others herewith filed.

and asked to be read as a part of this "bill marked exhibit A") And the Counsel for the plaintiff has up to this time wholly failed to file exhibit A. or to put us in possession thereof]

[To which plaintiffs Counsel responds that the deed is a matter of record and is subject to inspection at all times by the deft and deft's Counsel, and the fact that such testimony would be improper cannot be successfully questioned if the exhibit is never filed. Counsel for plff further says that said exhibit was filed and if there is no such copy of the exhibit in the papers now ^a such copies will be produced and put in the papers by the plaintiffs Counsel and the plaintiffs offers to produce a copy at any time the same may be desired by deft or deft's Counsel]

[Counsel for deft says that the deft nor his Counsel has ever seen such exhibit in the papers and if it was ever filed it must have been withdrawn by plaintiffs Counsel before the papers in this case came into possession of the deft which fact Counsel for deft believes but does not charge is fully within the knowledge of the Counsel for the plaintiff]

[To which plaintiffs Counsel responds that it is immaterial with him what depts Counsel believes or charges with reference to this matter.]

[Depts Counsel says to settle the whole matter he propounds the following direct question to the plaintiffs Counsel not as a witness but as a lawyer viz: Did you not withdraw Exhibit A" from the papers in this case you can answer or not as you like.]

[Counsel for plaintiff says in answer. that the fact that he has offered to produce Exhibit A at any time even if it is necessary to have several copies thereof made by the Clerk of the County Court ought to be sufficient evidence of the fact that the plaintiffs Counsel is as anxious to have it in the record as depts Counsel.]

A The conveyance which Mr. Babb made to E. C. Riddick was certainly a bogus conveyance for this reason. Dempsy Babb and I were security for a colored man for a considerable amount, I not being

able to bear my proportion of the security-ship, he stated to me that he would have to go into bankruptcy. I advised him to seek some friend and not go into bankruptcy, in a few days after this conversation, he informed me that Capt Edward C. Riddick had agreed to accept his propositions which afterwards I saw upon record

Re Cross Examined

Q Did Mr. Babb remain in possession of this property from the time of your transfer of the same up to the time of the death of his wife?

A He did

Q Who has been in possession since the death of Mr. Babb's wife?

A His son-in-law J. W. Rawles and himself they have been holding it since the death of the old lady Chissey but not in quietude

Q Who has been cultivating the land since the death of Mr. Babb's wife

Dempsey Babb, A. W. Rawles and their
tennants

And further this deponent saith not

Jesse P. Savage.

Drajah Langstun being duly sworn
deposes and says as follows

Q What is your name, age, residence,
occupation ^{and} do you know the parties to
this suit

A Drajah Langstun, 67 years, Wauseon Co
farmer ^{and} do know the parties to this
suit

Q Tell all you know about Hardy
Duke's will and about the land
now in controversy

A Hardy Duke was my guardian, I lived
sometimes with him and sometimes
off at work about five years, In
April 1842 he died. I was not there
when the will was wrote I returned
in about a week or so thereafter, it
was my home, and I lived with his
widow until she married Doon

1
Babb. After Mr. Babb married her there was a contention about the slave property. He brought suit, he gained the slaves, there was then another suit brought concerning the board of the children. Hardy Duke gave Chrissy in his will the home place, fifty acres on the Briery Pond that was to keep Chrissy and the children. This fifty acres was sold for the purpose of furnishing support for the children. When this suit was in court Squire Joe Duke had a copy of the will and read it the copy said "I give unto my wife Christian, the home place, and fifty acres at the Briery Pond during life after her death to my girl-children I dont remember whether it used the word living or not.

The childrens friends found fault and said they were not treated well and they were taken away. Mr. Babb lived there and I visited him from time to time, and one day I remarked to him that that old Porch had fallen into decay and why he did not fix it up. He said to me, "you know how it is my hands are tied

and I cant repair property, not my own
He told me that as many times as I
have fingered and toes and never
claimed it in my presence in his
life. His barn was burned and I
told him that if he would get up a
subscription I would help him to
rebuild. Mr. Babb said the land
isnt mine I cannot afford to build
Chrissy is old, and bound to die
pretty soon and then I have got to
leave it. if that old Castle was mine
I would tear it down and move it
out of the road". I was there just
before his wife died. He said to me "come
in if you can get in for I am ashamed
of this old hut, but I cannot afford
to spend money on the property of
other folks"

Q Do you know whether the land in
controversy was ever sold by any
order of Court or not I mean the
same place

A No never since Hardy Duke heired it.
Dempsey Babb owed me money I
sued him and he made a conveyance

to Capt Edward Riddick. I agreed to accept fifty cents in the dollar and he paid me.

Cross Examined

Q Who has been in possession of this property since the death of Dempsey Babb's wife

A Mr. Babb himself and others I don't know whom
And further this deponent saith not

Isajah Langston -

Mrs Missouri Turner being duly sworn
deposes and says

Q What is your name, age, residence occupation and do you know the parties to this suit

A. Missouri Turner, 52 years, Mauremond Co Housewife and does know the parties to this suit

Q State all you know about the will of Hardy Duke (decd)

A I know the land was divided in two parts one part to my brother and the

part was given to mother during her life for the maintenance of her and her girl-children and at her death it was given to her living girl-children those were the words of the will

Q How many girl-children were there

A There were four living at first, Margaret Ann, Laura Ann, Missouri, (that is myself) and Ellen, only one of whom were living at my mother's death to wit myself

Q Was the land in this controversy, that is the House place ever sold at Public Auction by order of Court

A No sir it never was

Q Were there any other suits brought against said land to your knowledge

A There was a suit brought in favor of the negroes

Q Do you know whether any land was sold or not belonging to the Estate

1
A After my father's death the Children were treated badly and there was a piece of land different from this in controversy sold to provide for their maintenance

Q Do you know anything of your own knowledge concerning that conveyance which was said to have been made to Capt E. C. Riddick

A A few weeks after mother's death I went to see Mr. Babb and asked him if he intended to give me up the land he said that he was in possession and intended to hold it until I sued him out, then the next day or the day after I heard of the conveyance to Capt E. C. Riddick and in order to satisfy myself I went to see Capt Riddick who told me that the land was mine

Note [Answer objected to by Plt's Counsel as far as it contains any hear-say statement]

Q Did you ever have a conversation with Mr. J. W. Rawles the Plaintiff here concerning this matter

A Yes Sir I asked him if he had any

right to it and I don't remember what he said to me. I have seen him since and told him that the land was mine he said that if the grandchildren would sign a deed conveying it he would sign it too. but I knew the land was not his and would not agree

Q State whether or not you authorized the deft to go upon the land in question and take possession as he is charged with having done in the bill

A Yes sir

Cross Examined

Q Did you give the deft any written authority

A Yes Sir

Note Plaintiff's Counsel here calls for the production of such writing if in the possession of the witness the deft, or the deft's atty. I
Counsel for deft says that deft will produce said writing when he again takes the stand, his cross-

Examination having been postponed.]

[To which plaintiffs Counsel replies that he desires the production of said ~~paper~~ at this time for the purpose of Cross-Examining this witness with reference thereto and unless the same is produced before the examination of this witness is concluded he reserves the right to Cross-examine her in reference thereto ~~witness~~ when it is produced, the deft admitting that it is in his possession but not here today but that he will file it at the next sitting.]

Q Have you ever read the will of Hardy Duke?

A I have read a copy of it

Q In whose possession was that copy

A In that of my brother

Q Do you know that was a true copy of the will

A Certainly I do it was signed by the Clerk of the Court and bound to be a true copy

Q Who has been in possession of this land since the death of your mother

A Humphrey Ball as long as he lived, Mrs. Boyett lived there and when he left I took possession

Q Did Mrs. Boyett ever pay you any rent?

A No I never asked him for any

Q You say that you took possession of the property, in what way did you do it

A By going there and going ^{to work} ~~there on~~ it was my land and I wished to see if any one would bring any thing against it

Q Was not Mrs. Boyett there when you went on the land or claimed to have taken possession

A Mrs. Boyett was in the house, but said he had no right there and was going to move out in a few days

2 Did you not know that Don. F. H. Rawles claimed this property at the time when you attempted to take possession

A Yes he claimed it. Mr. Babb told me that I should sell it, I told him I didn't know whether I could get any body to buy it like it was. He told me to sell it I could get more for that way than I could by a suit. then I found some one to buy it and I sold it. My husband thought it was not quite money enough and therefore he wouldn't sign the deed

2 Who did you sell it to

A To Jackson Raby

2 When

A Before Mr. Babb died I cant say what year

2 Did the deeds pass

A No Sir

Q Why not

A Because my husband refused to sign believing the land was worth more than I was offered

Q Had not Mr. Henry Babb at this time sold all his right, title and interest to E. C. Riddick

A I had heard so I went to Capt Riddick and he said it was nothing but a sham, that not a dollar had ever been paid and he had wiped his hands of it and turned it over to Mr. Rawles that the old lady was dead and it was mine

Q Have you ever been in possession of the property since your mother's death?

A No not until I took possession just before the institution of this suit

And further this deponent saith not
allan J. Turner

The hour of six o'clock having arrived the further taking of these depositions is adjourned & continued until Monday Feby 24. 1890 at the same place and between the same hours

W. M. Stevens
Notary Public

Merritt Briggs Office Suffolk Va.

February 24. 1890

Present Merritt Briggs Counsel for Def't
Owing to the absence of the Counsel for Plaintiff the further taking of these depositions is adjourned and continued until Tuesday February 25. 1890 at the same place and between the same hours

W. M. Stevens
N. P.

Merritt Briggs Office Suffolk Va.

Feby 25. 1890

Present

Merritt Briggs & R. H. Rawles for Def't

David P. Wright being duly sworn deposes and says as follows

2 What is your name, age, residence, occupation and do you know the parties to this suit?

A. David P. Wright. 72 years, Housenood Cora
farmer and ~~do~~ know the parties to this suit

Q State all you know in relation to the matter
in controversy

A In conversation with Mr. Dempsey, Ball
he said to me that he could not
in prove the place, that he had no
right after the death of his wife
that is all I know

Note

Answer excepted to on the ground of
hearsay and for other reasons
Excess Examined

Q When did that conversation take
place

A I could not say exactly, but it
was some time before the death
of his wife

And further this deponent saith not

David P. Wright -
George W. Turner being duly sworn deposes
and says as follows

Note [Counsel for plaintiff excepts to the

competence of this witness on the ground that he is the husband of Missouri Turner whose title to the land in controversy the defendants are seeking to establish for the purpose of giving some semblance of authority to the deed for his action in the premises. The defendants claim that Missouri Turner is the owner of the land in controversy, this suit is being prosecuted by one who claims authority for his action by a writing from her, and anything the witness may say must be either for or against his own wife and hence his testimony is not competent and for other reasons.]

[Counsel for deed replies that the law as above set forth is true; but that the plaintiff in this case brings an action against A. J. Raby and not against Mrs Missouri Turner, this being the fact this witness is perfectly competent.]

[To which counsel for plaintiff replies that it is true, that neither Missouri Turner nor her husband are parties to

this suit, still the deft claiming under authority from Missouri Turner the wife of witness it is evident that the witness is introduced to show his wife's authority and therefore the incompetency. Counsel for plaintiff here again calls for the writing under which the deft claims to have acted in the premises, the deft having already admitted that it was in his possession.]

[Counsel for deft replies that the witness now upon the stand has not the aforesaid writing in his possession; but that the deft A. J. Raby has, and as his cross-examination has not been finished he will produce the same when counsel for plaintiff calls for it when he is upon the stand. ~~He~~ cannot produce it now with proper explanations not being upon the stand as a witness.]

[Counsel for deft says that it is presumptuous in counsel to say without proof what I intend to

prove by the witness now on the stand]

[Counsel for plaintiff says that he shall ask the deft in this case no further questions, that the cross-examination is closed and insists that said paper be produced now or not at all]

[Counsel for deft replies that the cross-examination of the deft in this case has been postponed at the special request of counsel for plaintiff, that A. J. Raby, the deft was not asked for the production of the paper now in question while upon the stand and there is but one legal way for opposing counsel to make him produce it. When that way is employed the deft will gladly introduce it in this record; and counsel for deft here states that A. J. Raby, the deft will produce this paper when called upon as a witness so to do, or when a Subpoena duces tecum for the]
same

Counsel for plaintiff simply says that Missouri Turner having admitted on the stand that there

was such a writing; and the deft having admitted that such a paper was in his possession it is incumbent upon them to introduce it to show that its contents are what they say.]

Note [Witness Turner here withdrawn]

[Counsel for deft here gave notice that he will hereafter introduce the deft Mr. A. J. Raby in order to give him an opportunity to introduce the writing in question]

Matthew Munn being duly sworn deposes and says as follows

Q What is your name, age, residence, occupation and do you know the parties to this suit?

A. Matthew Munn, 45 years, Hammond La farmer, and knows the parties to this suit.

Q State if you ever had any conversation with Mr. S. H. Rawles the plaintiff in this suit about the title of the land in controversy, and if so what was it

A Before last Christmas I was hauling wood out of my woods, and it was right close by the line of the land now in controversy. Mr. Rawles and I met in the morning he was hunting a "Line Tree" he said as he had a man cutting rails and cord wood. He said it was so wet he could not get down to where he thought the line was, I told him there was not much danger if he could not get down to where the line tree was of his man going over onto my land, and also that it did not make much difference as the prospect was that I would lose my place anyhow. He said he expected there would be a controversy over the place that he owned; but he held it under the same title that Mr. Babb held, and it had got to be decided by law; and if it wasn't his he didn't want it, and in case he should lose it, he wanted to take all off ^{of} it that he could.

And further This deponent says Not.
Matthew Munn

A. J. Raby being duly sworn deposes and says as follows

2 You will now produce your authority which has been said by witnesses in this case is in writing for your taking charge of the land in controversy

Note [Objected to by plaintiff's counsel on the ground that the deft has already testified in this case and has had ample opportunity to introduce the paper in question and for the further reason that the writing has been several times called for and not been produced and at times when pl'tiffs counsel desired it for the purpose of cross-examining witnesses with reference thereto]

[Counsel for deft here replies that nothing was said about this paper while this witness was upon the stand and counsel for plaintiff insisting upon the production of this paper, this witness is introduced mainly for the purpose of introducing said paper and giving plaintiff's counsel and opportunity to examine him with reference to the same]

Note The writing was here produced and is now filed in the case and marked Exhibit No. 3

Q You said in answer to a question on your cross-examination heretofore had that about the year 1886 Dempsey Babb engaged your services to purchase of Mrs. Missouri Turner the estate now in question, he stating at the time that she was the only heir entitled for such a sum as you might agree with her upon, you further stated in that connection that you effected a contract with Mrs. Turner and her husband for the consideration of two hundred dollars and you introduced in this record the original deed which you said was made at that time together with a note to Peter B. Prentiss the County Clerk. Please explain why the deed was made to Mrs. E. E. Raby

[Objected to by plaintiff's counsel for the foregoing reason and for other reasons]

A Yes I have so stated and the deed was

so drawn at the special request of all the parties concerned. Mr. Babb believing at the time that Mrs. Turner by reason of her hatred to him would never execute a deed made directly to him, therefore it seems to be most feasible for the purpose of accomplishing the purchase of said land to deal with a party that would be most pleasing to Mrs. Turner, and Mrs. E. E. Raby was therefore ^{deemed} the most acceptable person through whom to convey the property.

~~And further this deponent saith not~~
Cross-Examined

Q What other parties if any claim the land in controversy?

A I never heard of any

And further this deponent saith not

A. E. Raby

No further witnesses appearing, the further taking of these depositions is adjourned and continued until Friday the 28 of Feb, 1890 at the same place and between the same hours

W. W. Stevens
U. P.

Merritt Briggs Office, Suffolk Va
Feb'y 28. 1890

The further taking of these depositions
is continued from Tuesday Feb'y 25
until to day, at the same place
and between the same hours
Present

E. E. Holland Counsel for Plaintiff
Merritt Briggs " " Def't

John Byrd Jr being duly sworn
deposes and says as follows:

Q State your name, age, residence, occupation
and whether you know the parties to this suit

A John Byrd Jr; 74 years; Houseman & a
farmer and do know the parties to this
suit

Q Do you know the land in controversy?

A I do have known it a good while, all
of sixty years

Q To whom did it belong when you first
knew it?

A It belonged to Hardy Duke, he lived there

and died there

Q Who occupied the premises after Hardy Duke's death?

A His widow, until she married and then until she died. His widow married Dempsey Babb

Q Can you say whether Dempsey Babb claimed this land?

A I cant say only what Dempsey Babb told me, out of his own mouth. In 1867 I had been to see my sister and when coming by there where Mr. Rawles now lives, the old place. Mr. Babb was working near the road where the house now stands I said to him what are you doing here says he I owns this place and I thought I would fix up and build me a house, the land I live on is Chrissey's heirs and I cant afford to do any thing there, when she dies I am out of house and home. He said that when she died the land would go to Hardy Duke's Estate

I asked him what he meant, whether it was to go to any individual one, and he replied that it belonged to the living girls. I started off and he said hold on, I had a notion to come to your house but I haven't been I can see you now just the same. He said he had a quarter house over there that he had built for his black folks, that they ^{had} gone to the Yankees and he wanted to move it to where he was now at work, and asked me if I would assist him about the bossing or overseeing the moving of it, I told him I could not as I was fixing to go over the sound and unless he did so in a few days I could not. I asked him how he expected to move the house, he replied by the use of Cradles and Slide Poles. I remarked that there was right smart hill and I didn't think he could do it. He said he thought we had moved one for Mr. Dick Baker which was as steep a hill as that. I replied yes, the one moved for Mr. Baker was a short ^{wide} ~~narrow~~ house while the one in question was a long narrow one. I bade him good bye and left

Q Do you know know, whether this land has been sold by any order of the Court since the death of Hardy Duke?

A No sir I have never heard of it. I should probably have known it if ^{it} had.

Cross Examined

Q When did Hardy Duke's widow die?

A I reckon about four years ago I don't know exactly.

Q Who has been in possession of the property since she died?

A Mr. Oumpsey Babb as long as he lived and since his death Mr. Rawles the Plaintiff. I have seen Mr. Rawles there covering houses

And further this deponent saith not.

For 1211 By Court

State of Virginia }
County of Hansemond } to wit:

I, W. H. Stevens a Notary Public for
the County and State aforesaid, do
hereby certify, that the foregoing depositions
were duly taken, sworn to and subscribed
before me at the times and ^{place} mentioned
therein

Given under my hand this 28. day of
February 1890

W. H. Stevens
N. P.

Filed October
17th 1890

Rawles
as
Roby-

Oct 12th, 1893
To be entered

To be entered
Oct 12, 1893

Oct 12, 1893

Dismissed

In hand from Rawles

Entered in Chancery
Order Book
No. 2. Page 518.

J. L. Rawles
vs
A. J. Robey

With the Consent of the parties, it is
ordered that this Cause be dismissed,
each party paying his own costs -