

1894-004
Nansemond Co. (Suffolk)

Chancery Causes: William N. Comp vs Sarah E. Norfleet, admx

Prentiss, Gay, Baker, Crump

Plat(2)

OVERSIZE
Box 1
-1 Plat

Folder 1 of 2

William N. Camp .

Plaintiff

vs } In Chancery
Sarah E. Mosfleck, in her own right &c

Defendants

Statement of Costs - (Plaintiffs)

Clerk	\$10.00
Att. & Tax	14.50
Shff	2.20
Mr. B. Pinner N.P. fee &c	10.00
Lee Buttr	5.00
	<u>\$43.70</u>

Defendants Costs

clk. . . \$2.50

Costs of Copy of record . . \$17.50

Subt.

Peter B. Prentiss Clerk

24
180

739
210
4300
1478
1553.40

Statement
of
Costs

William N. Camp

1885
Jan'y

To CLERK OF SUPREME COURT OF APPEALS OF VA., at Richmond,
Docketing cause against Norfolk army & 18 atty
10 papers 25 petition & record 30 Super ideas V: 68 two
Copies 50 return 15 printing record & copy \$47.84

Dr.

50 00

Received payment Geo. N. Taylor & Co.

Cash to date - \$50.-

Bal cost

29.77

\$79.77 + fee for record

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON *Mrs Sarah E. Norflee*
Administratrix, with the will annexed of
Elisha Norflee deceased

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 ^{3rd} ~~first~~ Monday in *March 1889* ~~next~~, to answer a
Bill in Chancery, exhibited against *her*
in the said Court by *William M. Causey*

and have then and there this summons.

William B. Causey
Witness, ~~PETER B. PRENTIS~~, Clerk of our said Court, at his office, this *16th* day of
March 1889, in the 11⁷ th year of the Commonwealth.

Teste:

Wm B. Causey, Clerk.

1889 March 15th. I have executed this process
by delivering a copy in person to the within named
Mrs Sarah E Norfleth.

Wm H Howell

Sept

Caused by

William N. Camp
to & sum: in ch:
Mrs. Sarah E. Norfleth
Admin^{or} of Elisha
Norfleth decd.

1889

To Mch Ruler
(3rd Monday)

1890
Octo

Pro: B. No 2 P. 16

Cir: Co:

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY - GREETING:
YOU ARE HEREBY COMMANDED TO SUMMON *Sarah E. Hufleeth* adminis-
tratrix with the Will annexed of *Elisha Hufleeth*, deceased, and in
her own right, as Coverture of *Elisha Hufleeth*, deceased, and
Peter B. Prentiss, Trustee,

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 *September*, next to answer a
Bill in Chancery, exhibited against *Them*,
in the said Court by *William M. Camp*,

and have then and there this Summons. Witness, PETER B. PRENTIS, Clerk of our said
Court, at his office, this *23rd* day of *August*, 1884, in the *109th*
year of the Commonwealth.

Teste:

Peter B. Prentiss Clerk.

Specified August 30th 1884 and a copy here of
delivered to Sarah. E. Maffett and others as per
Shunt

J. T. Cox left for

J. L. Hedyburn left

Rules & Cause p. 9

William H. Carr

2nd { Sum. in Chy. L. N. York

Sarah E. Maffett, Adm. of
of Elisha Maffett, decd. & Lat

In September Rules, 1884

Pro 13. 401. 1012

Cis. Co.

Memorandum
The Respondent Peter B. Hunter's motion, with the named, is hereby engaged
on 10th November, from taking any steps to foreclose the blood of trust
referred to, in the Bill, in this cause, until the matter is "subsequently",
now before the court and fully heard and determined by the Judge of the
Circuit Court of Henderson County.
Respectfully,
Peter B. Hunter. Clerk

Know all men by these presents, that we, William
N. Camp and William H. Gay, are held and
firmly bound unto Sarah E. Norfleet, Admin-
istratrix with the will annexed of Elisha Norfleet
deceased, and in her own right as Doweress of
Elisha Norfleet, deceased, in the sum of Five
hundred dollars, to the payment whereof will
and truly to be made, to the said Sarah E. Norfleet
as aforesaid, we bind ourselves, and each of us, our
and each of our heirs, Executors, and Administrators,
jointly and severally, firmly by these presents,
Sealed with our seals and dated this 23rd: day of
August, in the year one thousand eight hundred
and eighty four, and in the 109th year of the
Commonwealth. And we hereby waive our
Homestead Exemption, as to this obligation.
The condition of the above obligation is such,
that whereas the above bound William N. Camp,
on his Bill in Chancery against the said Sarah E.
Norfleet, Administratrix with the will annexed,
of Elisha Norfleet, deceased, and in her own right,
as Doweress of Elisha Norfleet, deceased, and
Peter B. Painter's Trustee, addressed to the Honl
George Blow, Judge of the Circuit Court of
Hansemond County, has obtained an Injunction
from the Honl. C. W. Murdaugh Judge of the Court
of Hustings for the City of Portsmouth, to enjoin
and restrain the said Peter B. Painter's Trustee, from

Taking any steps to foreclose the Deed of Trust referred to in the said Bill, until the matters in controversy, be passed upon and fully heard and determined by the Judge of the said Circuit Court; And whereas it is provided, in the order of the said Judge, who awarded the said Injunction, that the complainant is not to have the benefit thereof, until he or some one for him, shall execute, before the Clerk of the said Circuit Court, a proper injunction Bond with good security in the penalty of Five hundred dollars, conditioned according to law: Now therefore, if the said William N Camp shall pay all such costs as may be awarded against him and all such damages which shall be incurred, in case the said injunction be dissolved, then, this obligation to be void, or else to remain in full force and virtue.

Executed in presence of {

Peter B. Prentiss, Clerk. }

W N Camp

Seal

W H Gay

Seal

VIRGINIA:

In the Supreme Court of Appeals, held at the State
Court-house in the City of Richmond. on Tuesday
the 17th day of May 1887.

William H. Camp

Appellant.

against
Sarah E. Norfleet Administratrix
with the will annexed of Elisha
Norfleet deceased and in her
own right and dower of
Elisha Norfleet deceased and Peter
B. Prentiss trustee Appellees

Upon an appeal from a decree

pronounced by the Circuit Court
of the County of Nansemond
on the 14th of October 1884.

This day came again the parties
by their counsel and the court
having maturely considered the
transcript of the record of the
decree aforesaid and the argu-
ments of counsel is of opinion
for reasons stated in writing and
filed with the record that the ap-
pellant is entitled to compensa-
tion for the deficiency ascertained
to be two hundred and ten
acres of land in the land purchas-
ed by him from the appellee and
that such compensation should
be allowed him in the balance
due by him for said land.

And the Court is further of
opinion that such compensation
should be according to the av-
erage value per acre of the whole
tract, under the contract of

Contract of purchase to wit: seven dollars and thirty nine ^{1 and nine tenths} cents per acre for 210 acres, which appears to be the deficiency aforesaid, and that the court erred in failing so to decree and in dissolving the injunction awarded the plaintiff.

It is therefore decreed and ordered that the said decree be reversed and annulled, and that the appellant recover against the appellee Sarah E. Mofflett his costs by him expended in the prosecution of his appeal aforesaid here; and that ⁱⁿ satisfaction for this decree of costs and to receive credit therefor on the balance of purchase money owing by him as aforesaid.

And this Cause is remanded to the said Circuit Court for further proceedings to be had therein in accordance with said written opinion, and this decree.

Which is ordered to be certified to the said Circuit Court of the County of Nansemond.

Appellants Costs in
Supreme Court of Appeals \$ 79.77
Excerpt for transcript of record 3.17.50

A Copy

Wm Geo. H. Taylor C.C.

Camp
as { Copy
 Deer
Norfolk's admix

Archie Court Halsemond

Oct 2 / 147

William H. Camp.

Appellant.

⁴
28.

Sarah E. Norfleet adm^{or} with the will annexed of Elisha Norfleet deceased, and in her own right as doress of Elisha Norfleet deceased, and Peter B. Prentiss Trustee. . . Appellees

This cause, wherein a copy of the decree of the Supreme Court of Appeals dated the 17th day of May, 1887, reversing the decree of this court entered herein on the 14th day of October, 1884, is herewith presented to the court, came on this day to be finally heard, and was argued by Counsel. On consideration whereof, and in accordance with the mandates of the said decree of the Supreme Court of Appeals aforesaid, the Court doth adjudge order and decree that the Appellant, the said W^m H. Camp, is entitled to compensation for the deficiency in the acreage of the tract of land in the bill and proceedings mentioned said deficiency amounting to two hundred and ten acres, and that such compensation be at the rate of Seven dollars and thirty-nine and nine-tenths cents (\$7.39⁹/₁₀) cents per acre, making a total of \$1,553.79, and that said Appellant be given credit for fifteen hundred and fifty-three dollars and seventy-nine cents on his bonds executed to secure the purchase money for said land: and that said Appellant recover against the appellee his costs by him ~~expended~~

Wm H. Camp²

vs J. In. Cher

Sarah E. Hoagland Adm^{or} &c

Decree in accordance
with the decree rendered
by Supreme Ct. of appeals
on the 17th of May, 1887.

To be entered,

C. M. H. C.

Enter on the 17th of May, 1887

Wm H. Camp

about this suit and appeal in this behalf ex-
pendes, which said costs amount to the
sum of ninety-nine and 77/100 dollars

In Vacation: In the Circuit Court of
Hansemond County:

Wm. S. Camp

v.

Sarah E. Norfleet Adm^x of
Elisha Norfleet dec^d and dowress
of said Elisha Norfleet, and
Peter B. Prentiss, Trustee.

This cause came on this
day to be heard on the Bill and
Exhibits therewith filed, the Answer
of the defendant Sarah E. Norfleet,
with general replication thereto, ~~and~~
the notice of a motion to dissolve
the injunction heretofore awarded in
this cause, and the depositions of
witnesses, and was argued by coun-
sel. On consideration whereof
the Court without at this time
deciding the said motion doth
continue it to the hearing, ~~and~~
but unless the said plaintiff
shall pay to the said Sarah E.
Norfleet within ^{fifteen} ~~five~~ days from

this date the sum of Sixteen Hun-
dred Dollars on account of his in-
debtedness to her, then the said
injunction shall stand dissolved,
and the Trustee shall proceed at once
to sell the land in the Bill ^{described} on
accordance with the provisions of
the deed of Trust. -

And both plaintiff and Defendants
are allowed to take further testimony
between this date and the first day
of the next term of the Court. -

To The Clerk of the Circuit Court for the
County of Wausemon. Do

Please enter above as a vacation
order.

September 12th - 1884

{ Geo. B. Hunt.
{

Endy H

Wm. H. Camp

25 } Rough Decree
of the 12th day of
Sept. 1884 -

In Vacation
Sarah E. Huxley, Clerk
(Securities)

Entered -

Ch: order Book, 2^d 1.
page 668.

To William N. Camp Esq.

Take notice that I
shall on Wednesday the 10. day of
September 1884, move the Honourable
George Blow Judge of the Circuit
Court of Hanover County, in
chambers, in the city of Norfolk
Virginia to dissolve the injunction
awarded in the chancery cause of
William N. Camp against myself
and another on the 22. day of
August 1884, by the Honourable
C. W. Mundaugh Judge of the Hastings
Court of Portsmouth Va.

Sarah E. Norfleet Adm.
Elisha Norfleet decd. and
Dowers of said Elisha
Norfleet decd.
by Counsel -

29. August 1884.

Robt. N. Prentiss J. d.

Executed by delivering a true copy
of the within notice to William N.
Camp this 30. day of August 1884.

J. S. Cox Sept for
J. L. Hulphum Sheriff

Charles C. Moffet Clerk

Noted of
Motions to
dissolve
injunctions -

Wm N. Camp.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON *Beverly P. Baker,*

at the Office of Robert R. Prentiss, Esq. in the Town of Suffolk
to appear before the Judge of the ~~said County~~ Court of Nansemond County, at the Courthouse of
~~said County~~, on the *29th* day of *September*, 1884, at *10½* ~~o'clock~~ *o'clock, a.m.*, to testify and the truth to say
on behalf of *Elisha Hargreaves' Adm'r. &c*

Circuit Court for said County
in a certain matter of controversy in our ~~said Court~~ depending and undetermined between
Wm. N. Camp Plaintiff,
and

Said Elisha Hargreaves' Adm'r. &c Defendants.

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

Witness, PETER B. PRENTISS, Clerk of our said Court, at his office, this *17th* day of *September*
1884, in the 109th year of the Commonwealth.

Peter B. Prentiss CLERK.

Speculated and a copy hereof
delivered to Beverly P. Baker
Sept 23 1884

J. J. Cox left for
J. L. Hulgum shift

Elisha Hufleat's Adm.

ats Σ spa:

10m. N. Camp

To 29th day of Sept.
1884, at 10¹/₂ o'clock a.m.
at the Office of Robert
R. Hunte, Esq., in Suffolk
Va.

Civil Co.

To William A. Camp, Esq.

Take notice, that on Monday the 29. day of September 1884 at the office of Robert R. Prentiss in Suffolk, Virginia, between the hours of Nine O'Clock A.M. and Six O'Clock P.M. of that day I shall proceed to take the depositions of Beverly P. Baker and others, to be read as evidence in my behalf, in a certain suit in equity depending in the Circuit Court of Jamesmond County, wherein I am defendant and you are plaintiff; and if from any cause the taking of the said depositions be not commenced, or if commenced, be not concluded on that day, the taking thereof will be adjourned from day to day, or from time to time at the same place, and between the same hours, until the same shall be completed. -

17. Sept. 1884.

Sarah E. Norfleet Adm^x
of with the will annexed of
Elisha Norfleet dec^d and
Dowress of the said Elisha
Norfleet
by counsel.

Service of this notice is hereby accepted.

C. H. Causery

R. H. Rowles atty

The deposition of J^r P. Baker taken before me, Lee Pratt, a notary public for the County of Nansemond, pursuant to notice hereto annexed, at the office of Robt R. Prentiss, in Suffolk, Virginia on the 29th day of September, 1884, between the hours of 9 o'clock A.M. and 6 o'clock P.M., to be read as evidence in behalf of Sarah C. Norfleet administratrix with the will annexed of Eliza Norfleet deceased and doweress of the said Eliza Norfleet, in a certain suit in equity depending in the Circuit Court of Nansemond County of Virginia, wherein she is defendant and W^m N. Camp is plaintiff.

Present

RR Prentiss Counsel for defendant

CS Causey " " plaintiff

The witness J P Baker being duly sworn deposes as follows in answer to questions:

1st Question State your age residence occupation and do you know the parties to this suit?

1st Answer Between forty four and forty five years of age, resides in Nansemond County, by occupation a farmer and County Surveyor. I know the parties to this suit.

2nd Question When did you survey the Elisha Norfleet woodland, (described in the deed from Sarg. E. Norfleet to W^m N. Camp as the Jason Lassiter and part of the Culloden land)?

2nd Ans Oct 31st and Nov 1st, 1882

3rd Ques When did you make the map of the said woodland?

3rd Ans Nov 3rd, 1882

4th Question When was the said map delivered to the said W. N. Camp?

4th Ans On or before the 13th of November, 1882.

5th Q How do you know this?

5th A. Because on the 13th of Nov Mr Camp and myself examined said map and on that day he paid me for the same

6th Q In the survey of the said woodland are you sure that the line between Daniel Brothens land and the said woodland is correctly surveyed? ie, is the line a correct one?

6th A. Mr Daniel Brothens said that I was across the line on him a little. There are fourteen chains and forty one links that on which I found no line trees and I do not know that

the said line is exactly correct,
but but think it is.

7th Q

Are you sure that all the lines
of the same place have been correctly
laid out?

7th A.

I do not know exactly how to answer
it unless I could see the deeds.
Mr Camp told me he claimed to high
water mark on the mill pond.
Mr Harrison Willis said he claimed
to the mill run. I made calculations
to the mill run, except the 9 acre piece
which was made at high water mark.
Had the survey been made at high
water mark all the way, the area
would have been about ten or twelve
acres more.

8th Q

Is there any dispute about the 9 acre
piece alluded to?

8th A.

I have never heard of any.

1st Q

Cross Examination by Counsel for Plaintiff
When did Mr Camp first know from
you the acreage in his entire purchase
from Mrs Norfleet?

1st Answer

I sent the acreage to him by mail
and supposed that he received it about
the 18th of August 1884.

2nd
Excepted to by
2nd Counsel for Defendant
no ^{no} and want

Q. Did Mr. Camp in your presence
ever say anything to lead you to believe
that his purchase from Mrs. Norfleet
was a contract of hazard?

A. I do not know that he did, but Mr.
Camp did state to me that he and
Mrs. Norfleet ^{would have} had to have a hauling
over about the matter.

2nd Q. Did you not understand from
Mr. Camp that if there was any
considerable deficiency in the acreage
of his purchase that he would expect
Mrs. Norfleet to make it good?
Excepted to because irrelevant
and immaterial.

3rd A. I did so understand him.

1st Q. Reexamination by Counsel for Defendant
When was this conversation first
alluded to?

1st A. Some time in the latter part of August
1884. I know at the time I brought
the map of the home place that Mr.
Camp made use of the hauling over
remark.

2nd Q. When was the survey of the home
place commenced, when completed and

when was the map delivered?

2nd A. It was commenced on the 16th of October 1882, completed, the 12th of August 1884, and the map was delivered sometime in August 1884.

Exception by Counsel for Plaintiff upon the ground that the map which is already filed in the papers already in the hands of the judge is the best evidence.

3rd Q. Why was there so much delay on your part between the time you commenced to survey the home place and the time you completed it?

3rd A. I was waiting for instructions for to complete it.

4th Q. Were you instructed by Mr Camp to make the survey in October 1882 of the "home" place?

4th A. I commenced it and worked one day on it and waited for further instructions and completed it in August 1884.

5th Q. Were you, or not instructed to stop surveying the "home" place in Oct 1882 after having worked one day on it?

5th A. Not that I recollect of.

6th Q. Why did you stop?

(Excepted to by Counsel for Plaintiff upon the ground that by such questions he (counsel) seems to be leading his witness.)

6th A. Because I did not have instructions to go ahead.

7th Q. What were your instructions when you commenced the survey of the home place?

8th A. Mr. Camp asked me to survey the home place (Mr. Elisha Norflee the home place).

9th Q. Then can you not tell why you did not obey your instructions?

9th A. I disobey and worked one day.

10th Q. When Mr. Camp instructed you to survey the "home" place do you mean to say that you obeyed his instruction by working one day and then leaving it for nearly two years incomplete?

10th A. I do and when I received further instruction I completed it.

11th Q. And if you had not received such further instruction do I understand you that you would have never completed it?

11th A.

No, I would have never completed it without further instruction.

Re cross Examination by Counsel for Plaintiff

1st Question Did not Mr. Camp tell you at the time he employed you to survey the land in question that he wanted to know the acreage before the deed was prepared?

1st Answer If so I do not recollect it.

2nd Q. Was not the delay in regard to the "home" place caused by want of knowledge as to the lines?

2nd A. I do not know, sir.

And further this Deponent saith not.

Signed B. P. Baker

Virginia,

County of Nansemond, to wit:

I Lee Witt, a notary public for the County of Nansemond, in the said State, do hereby certify that the foregoing deposition of Beverly P. Baker was duly taken, sworn to and subscribed before me, at the time and place and for the purposes therein mentioned. Given under my hand this 29th day of Sept 1887.

Notary fee \$5.00 Signed Lee Witt, N.P.

Deposition of
Beverly J. Baker
in suit of
Camp vs Norfleet

1884

Sept: 29th. Filed.

Peter B. Prentiss, clerk

Camp v. Norfleet's Adm'x.

D. M. 33 Q.

From the Circuit Court of Nansemond.

531—Walthall & Bowles, Prs.

IN THE
SUPREME COURT OF APPEALS OF VIRGINIA.

RICHMOND.

CAMP

v.

NORFLEET'S ADM'X, &c.

To the Honorable Judges of the Supreme Court of Appeals of Virginia:

Your petitioner, William N. Camp, represents that on the 23d day of August, 1884, he, by his attorneys, filed his bill against the said appellees in the Circuit Court of Nansemond county, on the chancery side thereof; to which bill of complaint there was filed a demurrer and answer by Sarah E. Norfleet. Whereupon such proceedings were had that a final decree in the said cause was pronounced and entered against your petitioner in the said Circuit Court of Nansemond county on the 14th day of October, 1884.

A transcript of the record of the proceedings in said cause, and the decree of the court entered therein, will show that the proceedings are as follows:

Your petitioner represents that he is aggrieved by a final decree of the said Circuit Court of Nansemond county in a chancery cause therein depending, in which he, the said William N. Camp, was complainant, and the said Sarah E. Norfleet, adm'x, *et al.*, were defendants—

First. That in no sense whatever, at any time, either pending the negotiations for the purchase of the land in the bill and proceedings mentioned, or at the date of the deed itself, did your petitioner contemplate a contract of "hazard," but always, from the initiative to the conclusion, the inducement on his part to consider and conclude the purchase of said land was, that the said tract of land contained eight hundred and ninety-two

acres (892), and if there was either excess or deficiency, the difference would be so small that the well-known maxim—*de minimis lex non curat*—would apply.

Second. Since, according to the rules laid down by your honorable court in *Benson v. Humphreys et al.*, 1 Matthews 198-9, and in *Watson v. Hoy*, 28 Gratt. 698, "the burthen of proof is always upon the party asserting a contract of 'hazard,' and must either be shown upon the face of the instrument or by clear and cogent proof"—*aliunde*, establishing beyond controversy the intent of the contracting parties, that the evidence contained in the record in this cause does not justify the judgment of the said circuit court in decreeing summary dissolution of your petitioner's order of injunction and dismissal of his bill, for the deed of conveyance purports on its face to transfer to your petitioner two tracts of land—one "supposed to contain three hundred and fifteen (315) acres, more or less"; the other "supposed to contain five hundred and seventy-seven (577) acres, more or less,"—for the sum of six thousand six hundred (6,600) dollars, and the depositions of the grantor, the grantee, and the scrivener, all agree that from an old diagram of the lands in question an estimate was made on the day the deed was drawn and executed of the total acreage of the lands conveyed in the presence of all the parties, the said diagram being herewith filed; and your petitioner emphatically states that under no circumstances would he have agreed to give \$6,600 for the land in question had he supposed so great a deficiency as two hundred and ten (210) acres existed, and the evidence, both of the grantee and the county surveyor of Nansemond county, who made the survey of said lands, show that complaint of the deficiency was made to the grantor at the earliest possible moment after the ascertainment thereof.

That the deposition of the scrivener contains simply his opinion as to the contract being one of "hazard," and nowhere does he testify that he knew the contract to be one of "hazard" from the express declarations of both or either of the parties; and moreover, he says he never saw them together except upon the day he drew the deed.

Your petitioner therefore prays that your honorable court will grant him an appeal from, and a *supersedeas* to, the said decree of the said Circuit Court of Nansemond county, rendered on the 14th day of October, 1884, and that the same may be reviewed, and, after the hearing of the same, may be reversed and annulled, and such decree entered by this court as the said circuit court below should have entered,

And your petitioner will ever pray, &c.

WILLIAM N. CAMP,
By Counsel.

I, the undersigned, an attorney of the Court of Appeals, do certify that in my opinion the foregoing case should be reviewed and reversed.

F. S. BLAIR.

Appeal allowed and *supersedeas* awarded. Bond required in the penalty of two hundred dollars, conditioned according to law.

ROBERT A. RICHARDSON.

December 13th, 1884.

To the Clerk of the Supreme Court of Appeals at Richmond, Va.

VIRGINIA—sc.:

William N. Camp,	Complainant,	} In chancery.
against		
Sarah E. Norfleet, administratrix with the		
will annexed of Elisha Norfleet, dec'd,		
and in her own right as dowress of		
Elisha Norfleet, deceased, and Peter		
B. Prentis, trustee,	Defendants,	

Pleas at the court-house, in the town of Suffolk, before the Circuit Court for Nansemond county, on Tuesday the fourteenth day of October, in the year one thousand eight hundred and eighty-four.

Be it remembered, that heretofore, to wit: on the 23d day of August, in the year 1884—

Came the complainant, by his attorneys, and filed his bill against the defendants, which bill is in these words:

In the Circuit Court of Nansemond county—In chancery.

To the Hon. George Blow, judge of said court:

Humbly complaining, sheweth unto your Honor that your orator, Wm. N. Camp, did, on the 1st day of January, 1883, purchase from Sarah E. Norfleet, administratrix with the will annexed of Elisha Norfleet, dec'd, certain lands situated in the county of Nansemond, in the State of Virginia, to wit: First, the "Home" tract, supposed to contain
page 2 } three hundred and fifteen acres, more or less. Second, a tract
} known as a portion of the Jason Lassiter and Culloden tracts, supposed to contain five hundred and seventy-seven (577) acres, more or less, making an aggregate of 892 acres, for the sum of six thousand six hundred dollars, as will appear by a duly authenticated copy of a deed from said Sarah E. Norfleet, administratrix, &c., to said William N. Camp, herewith filed, marked "A," and is prayed to be taken as a part

of this bill. That by a rough diagram and memorandum presented to your orator on the day of sale, above stated, he was induced to believe that the lands sold contained 892 acres, or very nearly that quantity—said memorandum and diagram being herewith filed, marked "B," and is prayed to be taken as part of this bill. That, in accordance with the belief that the aggregate area was 892 acres, your orator paid to the said Sarah E. Norfleet, administratrix, &c., fourteen hundred dollars (\$1400,) and executed a deed of trust to secure the remainder of the purchase money, as will appear by a copy of said deed herewith filed, marked "C," and is prayed to be taken as a part of this bill. That your orator has just ascertained from a survey made of said lands by Beverly P. Baker, the county surveyor of Nansemond county, that there is a deficiency in the "Home" tract, which was supposed to contain 315 acres, of 43 acres, and a deficiency in the "Jason Lassiter" and "Culloden" tracts, which were supposed to contain 577 acres, of 167 acres, making a total deficiency of 210 acres, so that your orator has only acquired by his purchase 682 acres, instead of 892 acres.

Your orator further states that on the 1st day of January, page 3 } 1883, in the deed of trust aforesaid to Peter B. Prentis, the trustee therein named, he promised to pay to said Sarah E. Norfleet, adm'x, &c., fifty-two hundred dollars; twenty-two hundred dollars of which have been paid, and all the remainder of which, according to the tenor of the bonds given in evidence of the credit portion of the purchase-money, is now due; and while your orator has offered to adjust the matter in controversy without appealing to the aid of this court, said defendant wholly declines and positively refuses to make any abatement of the purchase-money on account of the large deficiency in the acreage of the said land, and although she well knows that the contract for the said land was not one of hazard, but that the estimate of the area of the land sold to your orator was based mainly on the diagram and memorandum marked "B," and herewith filed, and which was delivered to your orator on the day of sale, together with several other papers; that notwithstanding your orator's offer to adjust the matter in controversy, the said defendant has ordered the said Peter B. Prentis, trustee, to advertise and sell the said land; and, pursuant to said instruction, the said trustee has already taken steps to sell said land, and your complainant knows that said trustee has already prepared his advertisement to sell said land under the deed of trust above referred to—a copy of said advertisement being herewith filed, marked "X," and is prayed to be taken as a part of this bill. Your orator is ready and willing to pay to the said defendant whatsoever is adjudged to be due; but as the deficiency of 210 acres in a tract represented to contain 892 acres is so very great, your orator is forced page 4 } to ask the aid of this court for relief. Hence, since your orator is remediless in the premises, save in a court of equity where matters of this sort are alone and properly cognizable and relievable, he prays that the said Sarah E. Norfleet, as administratrix with the will annexed of Elisha Norfleet, deceased, and in her own right as

the dowress of Elisha Norfleet, deceased, and Peter B. Prentis, trustee, may be made parties defendant to this bill and required to answer the same on oath, and that an injunction may be awarded by your Honor to prohibit and restrain Peter B. Prentis, trustee, from proceeding to sell said land under the deed of trust aforesaid, until the matters in controversy as set forth in this bill of complaint are fully heard and determined by this court; and that such part of the sum of \$6,600 agreed to be paid for 892 acres of land as may seem equitable and just, be abated for and on account of the said deficiency of 210 acres, and that whatever sum is rightly due to said Sarah E. Norfleet as administratrix, and also as dowress of Elisha Norfleet, deceased, may be decreed to her, and that all further and general relief as the nature of the case may require and to equity may seem meet, shall be given.

And your orator will ever pray, &c.

WM. N. CAMP,
By C. H. CAUSEY,
Attorney.

RAWLES & CAUSEY, p. q.

State of Virginia—

Nansemond county, to wit:

page 5 } This day Wm. N. Camp personally appeared before me and made oath that the matters of fact contained in the foregoing bill, so far as his own knowledge extends, are true, and in so far as derived from the information of others, he believes to be true.

Given under my hand this 20th day of August, 1884.

C. H. CAUSEY,
Notary Public.

On the motion of the plaintiff, and for good cause shown, injunction is awarded according to the prayer of the bill to enjoin and restrain Peter B. Prentis, trustee, from taking any steps to foreclose the deed of trust referred to till the matters in controversy be passed upon by some competent court of jurisdiction and fully heard and determined. But the complainant in this suit is not to have the benefit of this order until he, or some one for him, shall have executed before the clerk of the Circuit Court of Nansemond county a proper injunction bond, with good security, in the penalty of five hundred dollars, conditioned according to law.

C. W. MURDAUGH,
Judge of the Court of Hustings for city of Portsmouth.

To the clerk of Circuit Court of Nansemond county.

The following is a copy of the Exhibit "A," filed with the foregoing bill :

"Whereas Elisha Norfleet, by his last will and testament, which was duly recorded in the clerk's office of the County Court of Nansemond county, Virginia, on the 10th day of January, 1870, appointed Jethro Riddick his executor, who duly qualified as such and has since died ;
 } and whereas Sarah E. Norfleet, the widow of said Elisha Nor-
 page 6 } fleet, deceased, has duly qualified in Nansemond County Court
 } aforesaid as the administratrix de bonis non with the will annexed of the said Elisha Norfleet, deceased ; and whereas the said Elisha Norfleet, by his last will and testament, authorized his executor to sell certain real estate ; and whereas the parcels of land hereinafter described have been sold to William N. Camp :

Now, therefore, this deed, made this first day of January, A. D. 1883, between the said Sarah E. Norfleet, administratrix with the will annexed of Elisha Norfleet, deceased, of the one part, and William N. Camp, of the other part—witnesseth, That the said party of the first part, in consideration of the sum of six thousand six hundred (6,600) dollars, doth grant, with general warranty, unto the said William N. Camp and his heirs and assigns forever the following tracts, pieces or parcels of land situate, lying, and being in Cypress Magisterial District, Nansemond county, and State of Virginia, and bounded as follows :

First. The Howe tract, supposed to contain three hundred and fifteen (315) acres, more or less, and adjoining the lands of Joseph P. Hall, John F. Penner, Robert R. Smith, Levi C. Thayer's estate, and the White Marsh road, together with all and singular the appurtenances belonging to the same.

Second. A tract (known as a portion of the Jason Lassiter and Culloden tracts) supposed to contain five hundred and seventy-seven (577) acres, more or less, and adjoining the lands of the said Levi C. Thayer's estate, Richard Williamson's estate, Charles H. Hill, Caleb R. Busby, Thomas Griggs, Daniel Brothers, and John M. Galbraith, together with all and singular the appurtenances belonging to the same.

page 7 } The lands hereby sold and conveyed being all on the west
 } side of the White Marsh road, and embrace all the lands (in-
 } cluding the dower lands of the said Sarah E. Norfleet, as the
 } widow of said Elisha Norfleet) owned by the estate of the said Elisha
 } Norfleet, deceased, except a tract of twenty-six (26) acres, lying on the
 } east side of said road, and is generally known as the Fork-of-the-Road
 } tract.

Witness the following signature and seal.

SARAH E. NORFLEET, [Seal.]

Adm'rx with the will annexed of Elisha Norfleet, deceased.

Witness :

F. H. RAWLS.

In the clerk's office of Nansemond County Court, the 25th day of January, 1883—This deed was acknowledged by Sarah E. Norfleet, administratrix with the will annexed of Elisha Norfleet, deceased, and thereupon admitted to record.

Teste :

PETER B. PRENTIS, Clerk.

A copy—Teste :

PETER B. PRENTIS, Clerk.

The following is a copy of the Exhibit "B," filed with the foregoing bill ; which exhibit is written entirely in lead pencil, and is endorsed also in pencil, as follows :

"Memo. of S. E. Norfleet's lands, and No. of acres in each tract not sold to this date, Oct. 29, '75."

[Plat omitted.]

The following is a copy of Exhibit "C," filed with the foregoing bill :

page 9 } This deed, made the 1st day of January, one thousand eight
 } hundred and eighty-three, between William N. Camp, of the
 } county of Nansemond and State of Virginia, of the one part,
 } and Peter B. Prentis, chosen as trustee for the purposes herein named, of
 } the other part—

Witnesseth, that the said William N. Camp doth grant with general warranty unto the said Peter B. Prentis, trustee, as aforesaid, the following property, to wit :

All those two (2) tracts, pieces, or parcels of land situate, lying, and being in the county of Nansemond (Cypress District), in the State of Virginia, and bounded and described as follows :

First. The home tract, supposed to contain three hundred and fifteen (315) acres, more or less, and adjoining the lands of Joseph P. Hall, John F. Penner, Robert R. Smith, Levi C. Thayer's estate, and the White-Marsh road.

Second. A tract known as a portion of the Jason Lassiter and Culloden tracts, supposed to contain five hundred and seventy-seven (577) acres, more or less, and adjoining the lands of the said Thayer's estate, Richard Williamson's estate, Charles H. Hill, Caleb R. Busby, Thomas Griggs, Daniel Brothers, and John M. Galbraith ; which lands are by deed of this date conveyed by Sarah E. Norfleet, adm'x with the will annexed of Elisha Norfleet, deceased, to said William N. Camp, the said Sarah E. Norfleet, adm'x, as aforesaid, being the beneficiary hereinafter named, together with all and singular the appurtenances belonging to the same. In trust to secure to Sarah E. Norfleet, administratrix with the will annexed of Elisha Norfleet, deceased, of the county of Nansemond, in the State of Virginia, the payment of the sum of five thousand two hundred (\$5,200) dollars, a part of the purchase-price of said land, evidenced by

page 10 } three (3) bonds aggregating that sum, of even date with this deed, and payable to the said Sarah E. Norfleet, adm'x, as aforesaid, as follows: One bond for \$800, due 1st May, 1883; one bond for \$2,200, due 1st August, 1883; and one bond for \$2,200, due 1st August, 1884, all of said bonds carrying interest from date; and it is covenanted and agreed between the parties aforesaid that in case of a sale thereof for twenty (20) days, and upon such terms as the said trustee shall direct; and after paying the expenses of executing this trust, if then unpaid, including a commission of five (5) per cent. to said trustee, then to discharge the amount of money, principal and interest, then due and unpaid of the said debt, and the residue, if any, pay as the law directs. In all other respects this deed shall be executed according to the law governing trust sales.

Witness the following signatures and seals.

WM. N. CAMP, [Seal.]
PETER B. PRENTIS, Trustee, [Seal.]

Witness:

F. H. RAWLS.

Virginia—

County of Nansemond, to wit:

I, C. H. Causey, a notary public in and for the said county, in the State of Virginia, do certify that William N. Camp and Peter B. Prentis, trustee, whose names are signed to the writing above, bearing date the 1st day of January, 1883, have severally acknowledged the same before me in the county aforesaid.

Given under my hand this 25th day of January, 1883.

C. H. CAUSEY,
Notary Public.

page 11 } In the clerk's office of Nansemond County Court the 25th day of January, 1883—
This deed of trust was received, and, with the certificate annexed, admitted to record.

Teste:

PETER B. PRENTIS, Clerk.

A copy—Teste:

PETER B. PRENTIS, Clerk.

The following is a copy of Exhibit "D" filed with the foregoing bill:

Auction Sale of Valuable Real Estate.

By virtue of a deed of trust executed by William N. Camp the 1st day

of January, 1883, and duly recorded, to secure the payment to Sarah E. Norfleet, administratrix with the will annexed of Elisha Norfleet, deceased, of certain debts therein specified, the undersigned, being directed by the said creditor, will offer for sale by public auction, for cash, on Saturday, September 13, 1884, before the Suffolk Hotel, in the town of Suffolk, Va., at 12 o'clock M., the following property, to wit:

First. The home tract of land, supposed to contain 315 acres, more or less, and adjoining the lands of Joseph P. Hall, John F. Pinner, Robert R. Smith, Levi C. Thayer's estate, and the White Marsh road.

Second. A tract of land known as a portion of the "Jason Lassiter" and "Culloden" tracts, supposed to contain 577 acres, more or less, and adjoining the lands of the said Thayer's estate, Richard Williamson's estate, Charles H. Hill, Caleb R. Busby, Thomas Griggs, Daniel Brothers, and John M. Galbraith.

This property is situated within one half mile of the town of Suffolk, the improvements on which consist of a large two-story dwelling, together with all necessary and convenient out-buildings, and to any one desiring to invest in real estate this sale offers a fine opportunity.

PETER B. PRENTIS, Trustee.

Suffolk, Va., August 21, 1884.

And at the same day, to wit:

On the 23d day of August, in the year 1884, came William N. Camp, by his attorney, and sued out of the office of the said Circuit Court a summons against Sarah E. Norfleet, administratrix with the will annexed of Elisha Norfleet, deceased, and in her own right as doweress of Elisha Norfleet, deceased, and Peter B. Prentis, trustee, which summons, with the restraining and enjoining order thereon endorsed, together with the return thereon made, is in the words following:

The Commonwealth of Virginia—

To the Sheriff of Nansemond county—Greeting:

You are hereby commanded to summon Sarah E. Norfleet, administratrix with the will annexed of Elisha Norfleet, deceased, and in her own right as doweress of Elisha Norfleet, deceased, and Peter B. Prentis, trustee, 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 September next, to answer a bill in chancery exhibited against them in the said court by William N. Camp, and have then and there this summons.

Witness, Peter B. Prentis, clerk of our said court, at his office this 23d day of August, 1884, in the 109th year of the Commonwealth.

Teste.

PETER B. PRENTIS, Clerk.

Memorandum.

The defendant, Peter B. Prentis, trustee within named, is hereby enjoined and restrained from taking any steps to foreclose the deed of trust referred to in the bill in this cause until the matters in controversy are passed upon and fully heard and determined by the judge of the Circuit Court of Nansemond county.

Teste :

PETER B. PRENTIS, Clerk.

Sheriff's Return.

page 14 } Executed August 30th, 1884, and a copy hereof delivered
to Sarah E. Norfleet and Peter B. Prentis, trustee.

J. T. COX, Deputy for
J. L. FULGHAM, Sheriff.

And at another day, to wit :

At rules held in the clerk's office of the said Circuit Court, on the first day of September, 1884—

The said summons being returned executed on the defendants, and the bill of the plaintiff having been filed, and the defendants still failing to appear and plead, answer or demur to the said bill, on the motion of the plaintiff, it is ordered that it be entered of record that his bill will be taken for confessed, if the said defendants shall continue in default at the then next rules.

And at another day, to wit :

In the clerk's office of the said Circuit Court on Monday, the 8th day of September, 1884—

Came the defendant, Sarah E. Norfleet, administratrix with the will annexed of Elisha Norfleet, deceased, and in her own right as the dowress of Elisha Norfleet, deceased, by her attorney, and filed her demurrer and answer to the foregoing bill, which demurrer and answer is in the words and figures following:

page 15 } The following is a copy of the demurrer and answer to the
foregoing bill :

The demurrer and answer of Sarah E. Norfleet, administratrix with the will annexed of Elisha Norfleet, deceased, and in her own right as the dowress of Elisha Norfleet, deceased, to a bill of complaint exhibited against her and another in the Circuit Court of Nansemond county by William N. Camp, complainant.

Demurrer.

The defendant says that the bill is not sufficient in law.

Answer.

This respondent, reserving to herself the benefit of all just exceptions to the said bill, for answer thereto, or to so much thereof as she is advised that it is material she should answer, answers, and says that it is true that the complainant purchased from this respondent the lands in the bill described; but it is not true that the contract of sale was made on the 1st day of January, 1883. During the summer and fall of 1882 the complainant came to this respondent's residence and sought repeated interviews with respondent in his urgent efforts to purchase the said real estate. This respondent at first told complainant that page 16 } her price was \$8,000 cash, but after repeated conversations, during which respondent declined to sell by the acre or to make any representation whatever as to the quantity of land, and after the complainant had fully examined the land and ascertained from the best available sources the undisputed boundary lines of the said land, it was finally agreed some time in the month of November, or thereabouts, that there should be a sale of the said land in gross, and not by the acre, for the sum of \$6,600 in cash, possession to be given on the 1st day of January, 1883. Between the time of the contract of sale and the 25th day of January, 1883, the complainant paid at one time \$50, and at another \$350; after the contract of sale, at the request and demand of the complainant, respondent was forced to modify the terms of sale and allow the complainant to pay one-third of the purchase-money in cash, and the other two-thirds in equal instalments on the 1st day of August, 1883, and the 1st day of August, 1884, respectively. And again the complainant failed to comply with his contract, and on the 25th day of January, 1883, fell short \$800 on the cash payment as agreed upon, and asked and received a still further indulgence for the said \$800 until the 1st day of May, 1883. And again the complainant made default in the payment of the page 17 } said \$800, and did not finish making the agreed cash payment until the 18th day of July, 1884. And again the complainant made default in the payment of the bond for the second instalment of purchase-money due on the 1st day of August, 1883. He paid nothing upon this bond until the 1st day of October, 1883, when he paid through a third party \$208.07. He has paid altogether on this bond \$1,388.51, leaving a balance of \$811.49 of principal still due on this bond, with an accrual of nearly two years' interest.

And again: The complainant has made default in the payment of the last bond for \$2,200, due on the 1st day of August, 1884. Upon this bond he has paid nothing. In the interval, the complainant has made respondent many promises at various times to pay certain amounts on

account of his said indebtedness; which promises he has consistently and persistently violated.

In the mean time the complainant, who is largely engaged in the saw-mill business, has greatly depreciated the value of the land by cutting a large quantity of valuable timber therefrom, the proceeds of which if applied to respondent's debt would have nearly, if not quite, liquidated the same, as this respondent is informed and believes.

page 18 } That it is not true, on the contrary it is utterly untrue, that the rough diagram marked Exhibit "B," with the complainant's bill, was presented to the complainant on the day of sale, nor was he thereby induced to believe that the land sold contained 892 acres, or very nearly that quantity.

This respondent alleges that the said rough diagram was never shown to the complainant until after the bargain had been fully made and the price agreed upon. The said rough diagram was made over nine years ago by a gentleman who was not a surveyor, and the part of the Colloden tract sold to the complainant is nowhere marked off on the said rough diagram. After the contract of hazard had been agreed upon, this respondent, in response to the request of the complainant, handed him the said rough diagram, together with perhaps some other papers, so as to assist the complainant in locating the land which he had already agreed to buy in gross, without reference to area.

This respondent, at various times during their negotiations, refused to sell the land by the acre, and told him that she did not know either the boundary lines or the area of the lands in question; that there had been some disputes with reference to the boundary lines, and especially with reference to the lines between the lands of Robert R. Smith, Esq., and Daniel Brothers, Esq. After an examination in company with page 19 } disinterested persons, who claimed to know the boundary lines, the complainant expressed himself satisfied, said that he was willing to take all risks, and agreed to buy in the only way this respondent proposed to sell—viz., in gross and not by the acre.

This respondent was thus particular because she had no definite information either as to the area or boundary lines of said land, and so repeatedly informed the complainant.

That it is not true that the complainant has just ascertained the result of the survey made by the county surveyor; on the contrary thereof, the said survey of the Jason Lassiter and Culloden tract was made about the 1st day of November, 1882, and the complainant has known such results ever since that time.

This respondent, further answering, denies that since the execution of the deed of trust dated 1st January, 1883, the complainant has paid her \$2,200; although the complainant is, perhaps, more nearly accurate in this than in any other allegation in his said bill contained. He has, in fact, paid in various sums, at different times, \$2,188.51 of an indebtedness of \$5,200 principal.

This respondent, answering further, alleges that the offer of compromise alluded to in the complainant's bill was in the nature of a page 20 } threat that, unless she would extend the time for the payment of the last bond for twelve months longer and receive \$400 in full satisfaction of the bond over-due for more than twelve months (on which there is now due \$811.49 of principal), that he would sue out an injunction, by means of which she would become involved in a tedious and expensive litigation.

This respondent avers that she never heard any complaint whatever with reference to any alleged deficiency in the land sold, until about two or three weeks ago, when she notified the complainant that she needed her money, and would be forced to foreclose the deed of trust unless he paid the balance due.

This respondent again denies the repeated allegation of the bill that the estimate of the acreage was based mainly, or in anywise, on the diagram marked "B," filed with the bill; and again denies that it was delivered to the complainant on the day of sale, and again avers that the said contract was clearly and distinctly a contract of hazard; and that it was a contract of hazard in which the complainant had every advantage, because his examinations of the lands sold had made him more familiar with their character and boundaries than was this respondent.

page 21 } This respondent therefore prays that the injunction heretofore awarded in this cause may be at once dissolved, and that the trustee may be permitted to advertise and sell the said land for the satisfaction of respondent's debt in accordance with the provisions of the said deed of trust.

And this respondent denies all fraud, unlawful combination and confederacy; and having fully answered the complainant's bill, she prays to be hence dismissed with her reasonable costs by her in this behalf most unjustly expended. And she will ever pray, &c.

S. E. NORFLEET.

ROB. R. PRENTIS, p. d.

2d Sept., 1881.

State of Virginia—

County of Nansemond, to wit:

This day Sarah E. Norfleet made oath before me that the statements made in the foregoing answer, so far as made of her own knowledge, are true, and so far as made from information derived from others, she believes them to be true.

Given under my hand this 9th day of September, 1884.

ROB. R. PRENTIS,
Commissioner in Chancery.

And at another day, to wit :

page 22 } In the clerk's office of the said circuit court, on the 9th day
day of September, 1884—
Came the defendant, Sarah E. Norfleet, administratrix with the will annexed of Elisha Norfleet, deceased, and doweress of Elisha Norfleet, deceased, by counsel, and filed depositions, which, with the notice and return thereon, is in the words following :

To William N. Camp, Esq'r :

You are hereby notified that on Tuesday the 9th day of September, 1884, at the law-office of Robert R. Prentis, in Suffolk, Virginia, between the hours of 9 o'clock A. M. and 6 o'clock P. M. of that day, I shall proceed to take the depositions of Sarah E. Norfleet and others, to be read as evidence in my behalf in a certain suit in equity depending in the Circuit Court of Nansemond county, wherein I and another are defendants and you are plaintiff; and if from any cause the taking of the said depositions be not commenced, or if commenced be not concluded on that day, the taking thereof will be adjourned from time to time, at the same place and between the same hours, until the same shall be completed.

SARAH E. NORFLEET,
Adm'x with the will annexed of Elisha Norfleet, dec'd, and doweress of Elisha Norfleet, dec'd.

BY COUNSEL.
ROB. R. PRENTIS, p. d.

29th August, 1884.

Sheriff's Return on Notice.

page 23 } Executed by delivering a true copy of the within notice to
William N. Camp this 30th day of August, 1884.

J. T. COX, Dep'ty for
J. L. FULGHAM, Sheriff.

The depositions of Sarah E. Norfleet and others, taken before the undersigned, John B. Pinner, a notary public for Nansemond county, pursuant to the annexed notice, on the 9th day of September, 1884, to be read as evidence in the behalf of the defendant in the chancery cause of Wm. N. Camp vs. Sarah E. Norfleet, administratrix with the will annexed of Elisha Norfleet, deceased, and doweress of Elisha Norfleet, de-

ceased, and Peter B. Prentis, trustee, now depending in the Circuit Court of Nansemond county.

Present : R. R. PRENTIS, Esq.,
Counsel for defendant.
C. H. CAUSEY,
Counsel for plaintiff.

Witness Sarah E. Norfleet, being first duly sworn, in answer to questions, deposeth as follows :

1. State your age, residence, and do you know the parties to this suit ?

Answer. Fifty years ; Suffolk, Va. Yes, I know the plaintiff, and am the defendant.

2. State what was the contract between yourself and Wm. N. Camp when you sold him the land in the bill described, with all the attendant circumstances ?

Answer. I sold all the remainder of the lands of Elisha Norfleet's estate except twenty-six acres. I sold him as it was, gross, and not by the acre, for the sum of six thousand six hundred dollars (\$6,600) cash, but it was not paid cash. I told him all the time
page 24 } that I asked eight thousand dollars (\$8,000) for the farm, but
he was not willing to give it and I fell to seven thousand, and he said he would give me six ; but I told him I would not take that, and then he offered me six thousand six hundred. I agreed to let him have it. I thought in the meanwhile I was selling it to W. H. Gay & Co., until he purchased it, and then he told me it was he alone. I expected him to pay me one third cash ; I wanted all cash, but he said he would pay me one third cash and the balance in one and two years. In the mean time, I told him I knew nothing about the lines, and could not identify them, and did not know how much land there was ; it was only estimated at so much. And I told *told* him there had been disputes about the lines, not while Mr. Brothers owned the adjoining land, but when Mr. Hazlett owned it I had had some little dispute about the line ; and the piece next to Mr. Robt. Smith, he and I had had a little spat about it ; but, to use Mr. Camp's words, he said he would fight them out about it. Mr. Camp knew more than I did about the lines. He and Mr. Gay had been over it several times, and he seemed to be satisfied about it ; and, moreover, the day when I gave him the deed I told him I wanted to have no more drawback, no more trouble about it ; that I sold him all the land, and he rightly understood it.

3. When was the bargain made ?

Answer. It was sold fall, 1882, in October or November, I don't know which. I could — swear to the exact month.

page 25 } [Exception to question and answer on the ground that the deed, copy, and record is best evidence of contract.]

4. When was possession to be given, and when was the deed to pass?

[Query 4 excepted to on the ground in absence of written contract, deed is best evidence.]

Answer. It was to be given the 1st of January, or if I preferred to stay I could do so until March; he did not care. When I sold the land I expected the deed to pass at once, but he did not comply with the contract and the deed was not passed until January. He paid me fifty dollars when I sold the farm, but the deed was not passed until January.

5. What time in January, if you recollect?

Answer. I don't remember; I know the notes were given back from 1st January—the 25th, I believe—along the latter part of January, but I don't recollect.

6. At what time, if you recollect, was the paper marked "B," with the complainant's bill, handed to the complainant, before or after the bargain?

Answer. It was handed to him when he went to survey it.

7. Did he go to survey it before or after the bargain was made?

Answer. It was after the bargain, but before the deed was passed.

8. Did the complainant make any complaint as to the quantity of the land at the time the deed was passed?

Answer. No, sir.

9. When did he first make such complaint?

Answer. It has been but a short time ago; just before he ordered the bill of injunction.

page 26 } 10. Did you make any representation as to the quantity of land sold?

Answer. I told him it was supposed to contain so much, each tract, but I did not know it; it had not been surveyed since the war.

11. Did he ever offer to buy it by the acre?

(Question 11 excepted to generally; ground of exception called for by defendant's counsel.)

Answer. He asked me what I would take for it by the acre?

12. What was your reply?

Answer. I would not sell it by the acre.

13. Why would you not sell it by the acre?

Answer. Because I wanted so much for the place, and did not want to have it surveyed or have any trouble with it; did not want to go to that expense, because I did not know the lines.

14. Did you tell Mr. Camp your reason for not selling by the acre, and if so, what was his reply?

Answer. I don't think he asked me my reason, but he said he was willing to run the risk to find the lines.

15. Who drew the deed?

Answer. Mr. Peter Prentis.

16. Did you intend, by executing that deed, to convey the land as you have stated your bargain was, in gross and not by the acre, or not?

Answer. I intended it to be in gross.

17. Why were you thus particular?

page 27 } Because there had been trouble about a piece of land that was sold in Mr. Norfleet's lifetime.

18. Did you tell Mr. Camp of this trouble?

Answer. I don't remember whether I told him that day, the day the deed — written, but I had told him about it. I told Mr. Prentis I did not want any drawback to the deed when it was written.

19. Did you tell Mr. Camp the history of the rough diagram, marked "B"?

Answer. I told him it was a plat that Willis Riddick drew up in his lifetime just to show the lands of Mr. Norfleet's estate; it was no surveyor's plat.

20. Is the part of the Culloden tract sold by you to Mr. Camp marked out in the said diagram?

Answer. No, sir; the part of the Culloden land I sold him was a part of the Thayer land, but I did not know where the line was.

21. Has any timber been cut from the land since Mr. Camp has had possession of it; if so, how much, if you know?

(Excepted to on the ground of immateriality.)

Answer. I don't know how much; he has been cutting all twelve months. I was told he had cut two million feet of plank. He told me he had sold enough off of it to pay for it.

(Excepted to — immaterial.)

22. How much money has been paid on the bond due 1st August, 1883?

page 28 } Answer. Oct. 1st, 1883, received two hundred and eight dollars and seven cents; Dec. 8th, 1883, received two hundred and eighty dollars and forty-four cents; Dec. 21st, 1883, received three hundred dollars; June 30th, 1884, received six hundred dollars.

23. State the offer of compromise alluded to in the complainant's bill?

Answer. Mr. John Wright came to me and said that Mr. Causey had told him that Mr. Camp said if I would take four hundred dollars and give him the note that was due in 1883, and give him 12 months more to pay the other note, he would not bring the bill of injunction, but if I

would not do it—compromise that way—he would get out a bill of injunction.

(Excepted to—hearsay evidence.)

Cross-examined by Counsel for Plaintiff.

1. In your first conversation with Mr. Camp in relation to the sale of the land in question, how many acres did you estimate there were in the home tract, and also in the other tract?

(Excepted to on the ground that the witness has testified in effect that she never made any estimation of the area of the land sold.)

Answer. I don't remember, what the deed calls for is what we supposed it contained, but I did not know it; but I did not sell it by the acre when it was sold.

2. Did you not tell Mr. Camp at one time that you thought there were 900 acres in the two tracts?

Answer. I don't remember it. I always told him I did not know the number of acres.

3. Was there any other writing in regard to the land in question prior to the deed dated January 1st, 1883?

Answer. I don't remember. I gave him a receipt for fifty dollars; there might have been, but I don't remember, because, when I sold Mr. Camp the land I never expected to have any trouble about the matter.

4. When did you first show Mr. Camp the paper marked "B"?

Answer. I would not swear that I showed it to him before he went to make the survey. I might have done so, but I don't remember.

5. Was not an estimate made of the number of acres from the paper marked "B" at or before the time the deed was executed?

Answer. I don't remember it.

6. Did not Mr. Camp ask you how many acres there were in the two tracts you sold him, and did you not tell him that you were certain the home tract contained 315 acres?

Answer. No; I did not tell him any such thing. I told him it was supposed to contain so many acres. I handed him a plat, but, if he surveyed it, he does not know whether he has the right lines or not. I couldn't identify it.

7. Do you know whether or not the survey was completed before the deed was made?

Answer. I do not. I had nothing to do with the survey.

8. Did you not, on the day the deed was drawn, estimate the homestead to contain 315 acres and the Jason Lassiter tract to contain 577 acres?

Answer. No; the home tract was estimated to contain 315 acres, and the Jason Lassiter land and Culloden tract to contain the remainder,

whatever it was; but there was not 500 acres in the Jason Lassiter tract, first.

9. Did you not estimate all the land sold in the deed of January 1st, 1883, at 892 acres?

Answer. It was supposed to contain all there was in the deed—all that the deed called for; but it was not sold by the acre, it was sold in gross.

Re-Examined by Counsel for Defendant.

1. How did you happen to hand Mr. Camp the paper marked "B"; what led you to think of that paper?

Answer. It was with some old plats I gave him; I suppose it was to show him better how the land was situated.

2. Was that when he wanted to make a survey?

Answer. I think it was.

3. Had he not then bargained to buy the land?

Answer. He had bargained; yes, sir, when I gave him the old plats.

Cross-Examined.

1. Did not Mr. Camp make an estimate, in your presence, of the total number of acres from the paper marked "B," and was not he as well as yourself induced to suppose, from that paper, that there were 892 acres of land?

Answer. He might have done so; I don't remember it. And further, this deponent saith not.

S. E. NORFLEET.

The witness, Peter B. Prentiss, being duly sworn, in answer to questions, deposeth as follows:

1. State your age, residence, and occupation—and do you know the parties to this suit?

Answer. 64 years; Suffolk, Va.; clerk Nansemond County Court; am one of the defendants.

2. Did you draw the deeds alluded to in the complainant's bill; if so, state the circumstances, as near as you recollect them?

Answer. I drew both the deed of bargain and sale and the deed of trust referred to, in the presence of all the parties interested—Mrs. Norfleet and Mr. Camp being the parties interested. I was requested by the grantor in the deed of bargain and sale to write a deed conveying all the lands belonging to the estate of Elisha Norfleet, deceased, and which were located on the west side of White Marsh road, in Nansemond county, Virginia. Learning from both parties that all the real estate remaining unsold, at that time, except the small piece of land of some twenty or thirty acres known as the Norfleet's Fork place, was to be con-

veyed by said deed—the quantity of land to be conveyed thereby being
 page 32 } supposed to contain what the deed calls for—from what occurred in my presence, the day the deed was written and executed,
 } I supposed it was a contract of hazard between buyer and seller.

3. Did you intend, by the language used in the deed of bargain and sale, to convey that idea, or not?

Answer. I did, unquestionably.

4. Is it your habit, in drawing a deed of conveyance of land in the usual way, to say that the land "is supposed to contain so many acres, more or less"?

Answer. No.

5. What is the language usually used?

Answer. "Estimated to contain"; or, "containing by estimation," unless specially requested to use the term by the seller, "in gross, and not by the acre." But, in this case, I am fully persuaded that, if the term or words "in gross, and not by the acre," had been employed in the deed, no objection would have been made by the grantee.

6. Then why, in this conveyance, did you use the language "supposed to contain"? what was your reason?

Answer. Because the grantor, as I then believed, really had no distinct idea of the absolute quantity or number of acres of land that she was selling; her information, as far as I could determine, having been obtained from her neighbors and friends as to the quantity of unsold land belonging to her husband's estate.

7. Did this appear to you from the conversation which took place between you and parties on that day?

Answer. It did.

8. Then, did you or not intend that these deeds should be the evidence of a contract of hazard of a sale in gross and not by the acre?

page 33 } Answer. I certainly did look upon it as a contract of hazard.

9. When were these deeds drawn, if you recollect?

Answer. I think the deeds were both written after the 1st January, '83, though the contract related to the 1st of January, '83.

Cross-Examined by Counsel for Plaintiff.

1. What took place between the parties on the day of sale that induced you to believe that they, and especially the grantee, intended a contract of hazard?

Answer. The sale took place previously to the date of the deeds, because I thought that the grantee knew more about what he was buying than the grantor did about what she was selling.

2. What induced you to think so?

Answer. Because, at the time, he was perfectly satisfied with his bargain, as I supposed—nothing being said or intimated to the contrary; and I further knew that the grantee would be pleased to have such a piece

of property which was so contiguous to his saw-mill and proposed railroad ventures, and that I had no doubt, as I said before, that he knew more about Mrs. Norfleet's lands then on the market than she did.

3. How many interviews did the parties have with you in regard to this sale?

Answer. One interview was had with Mrs. Norfleet about selling her property; this occurred three or four months before I knew Mr. Camp had bought it. Previous to Mr. Camp's purchase, we, Mr. Camp and I, had several casual conversations about this property, relating to title, &c., but without any intimation on his part that he had bought or expected to buy it. It has been Mr. Camp's practice, as a prudent gentleman, to ask me, as clerk of the court, in relation
 page 34 } generally to the title to property which he and his partner, Wm. H. Gay, Esq., thought of buying. I always looked upon Mr. Camp as being cautious before his negotiations for the purchase of land.

4. How often did you see these parties together in relation to this transaction?

Answer. Only once, and that was on the day when the deeds were executed and delivered.

5. Did you on that occasion have before you the paper marked "B," filed with the papers in this cause?

Answer. Yes, here are some of my figures on it.

6. Please state, if you can, what took place in connection with said paper, and for what purpose your figures were made on it?

Answer. I cannot state in so many words what took place, but the figures were made (that is, those that I made) to arrive at what we supposed to be the unsold quantity of the Norfleet land. My idea was, at what then occurred, that they were made to approximate the supposed quantity to be conveyed.

7. Do you not believe that both parties thought that the land in question contained the number of acres named in the deed?

Answer. I believe they did on Mrs. Norfleet's, from representations made to her by others, and on Mr. Camp's part, that he was familiar with what he was buying.

page 35 } 8. What reason did you have to believe that Mr. Camp knew what he was buying, and that the tract contained 892 acres?

Answer. Because Mr. Camp was too prudent a man to buy "a pig in the bag," and from his occupation as a land-buyer, upon which there was a quantity of timber-trees suitable for manufacture, he would not have purchased the property, unless he knew its value, not meaning to say, however, that he knew the number of acres he was purchasing.

9. You have stated, in answer to one of the questions in chief, that Camp appeared well satisfied with his bargain; do you believe that he would have appeared so well satisfied had he then known that instead of 892 acres he was only getting 682?

Answer. Yes, because I firmly believe that he knew there was timber enough on it to save himself in any shrinkage in acreage.

10. Please state your reason for this conclusion?

Answer. Because I believe, as a prudent man, as I have before said, he had gone over the land, and was so well satisfied with his "prospecting" he would not lose anything by the purchase—Mr. Camp having been engaged in saw-milling operations for quite a number of years, and knew what he was about.

11. Did Mr. Camp ever tell you or any one else in your presence that he would be perfectly willing to pay \$6,600 for this land, even though it should fall short two hundred and ten acres from the original estimate?

Answer. He did not.

12. Did he ever tell you that he had made so thorough an examination of this land as to be able to estimate accurately its superficial contents, and the quantity of lumber that might be obtained therefrom?

Answer. He did not, because he was too prudent a man to let everybody know his business.

13. You have frequently referred to Mr. Camp's prudence and caution; from what source is that knowledge derived, or is it simply an opinion of your own?

Answer. I see Mr. Camp nearly every day, and from casual interviews along the street, riding and walking, and from my general knowledge of him as an enterprising man, I take him to be the gentleman I have described as being a patient and prudent operator in matters of business connected with his milling operations and railroad venture with his partner, Mr. Gay, both of whom are cautious, considerate and enterprising gentlemen.

14. Do you think he would have displayed his usual prudence and caution if he had been equally willing to purchase the lands in question when the deficiency was so great, and especially when the woodland, which, in his estimation as a saw-mill man was the more valuable, only contained 410 instead of 577 acres?

Answer. My idea is, that the many improvements on the premises, consisting of a large frame dwelling and other convenient out-buildings, entered largely into his calculations in the purchase of this property, independently of the timber trees thereon. As I before said, this dwelling and other houses were contiguous to his operations, and he could afford to be satisfied with his purchase.

15. Was this idea derived from anything said to you by Mr. Camp in relation to advantages, or simply a conclusion of your own?

Answer. I judge that the business in which Mr. Camp and his partner were engaged certainly justified him in the purchase of a large body of land, and its contiguity, to his almost daily pursuit.

16. Is it not a fact that, as far as contiguity of residence to his business is concerned, that at the time this purchase was made he could have occupied a residence immediately adjacent to his saw-mill or the saw-mill of W. H. Gay & Co.?

Answer. Yes, and it is also a fact that I believe he had more business from than at his mill, and that he had a little while before that purchase bought a large quantity of timber-trees about one mile from his Norfleet residence.

17. Please state what was the nature of his business which took him so much away from his mill?

Answer. He was looking for timbered lands; while I saw Mr. Camp once on foot I saw him at least ten times in his buggy.

18. Where was he going when you saw him so frequently in his buggy, and state, if you know, how many days were occupied by Camp in the past two years looking for timbered lands?

Answer. I cannot say precisely, but for the contracts for the purchase of timber which have been and are now of record and on file in my office, I should judge he was pretty well "on the pad," either for himself or W. H. Gay & Co.

19. Do you know that W. N. Camp, in his own person, made the purchases of timber or timbered lands referred to by you in the above answer, or that some other member of the company made them?

Answer. I don't know either of it. He is looked upon as the traveller and operator generally of the firm of W. H. Gay & Co., which firm consists of W. H. Gay and Wm. N. Camp.

20. Is it not a fact that in the purchases of timber during the year '83 that R. G. Dennis was largely interested with W. H. Gay & Co. in the purchase of the most valuable timbered lands in Nansemond county made by them in that year?

Answer. I suppose so, and that Camp generally knew what Mr. Dennis was doing in that regard. I do not recollect of ever seeing Mr. Dennis except he were either in the company of Mr. Camp or Mr. Gay.

21. How often would you see Camp during the week on an average?

Answer. Daily, Sunday not excepted, unless he is on a visit out of the State on business.

22. Did Mrs. Norfleet ever tell Mr. Camp in your presence, on the day the deeds referred to in these depositions were drawn, that she was selling the land in gross, and did he say to her that he was buying this land in gross—in short, that he was willing to pay \$6,600 for the land, without regard to its acreage?

Answer. I don't think any such conversation occurred, and with all due politeness and courtesy to Mrs. Norfleet, I don't think she ever heard of the words "in gross," or, if she has heard them, she knew the meaning of the words "in gross" at that time. I am confident no such language was used on that occasion; but I feel sure that if the words "in gross" were incorporated in the deed, no objection would have been urged by Mr. Camp then.

23. Please state your reasons for reaching that conclusion?

Answer. Because Mr. Camp was willing to buy and Mrs. Norfleet to sell for the consideration mentioned in the deed. I presume all the pre-

liminaries in regard to the sale were entered into and agreed upon by them, as to price, &c., before they engaged me to write the deed.

24. Was this done in your presence?

Answer. No, because they were done before they came to me, as I have just said.

25. Was not the inducement to this contract, on the part of Mr. Camp, so far as you know, and as to what took place in your presence on the day the deeds were drawn, the belief that the tracts of land contained 892 acres?

Answer. I suppose that Mr. Camp thought he was buying the quantity named in the deed, and that Mrs. Norfleet thought she was selling the same, neither party intending to deceive the other.

Re-Examined.

1. As the draftsman of the deeds, were you or not led to believe by one or both parties, on the day the deeds were drawn in the presence of page 40 } both parties, that the contract was a contract of hazard—that the sale was a sale in gross, and not by the acre?

(Excepted to as leading, and for the further reason that a similar question has been asked the witness before.)

Answer. Yes, as I have stated before.

2. And was this your reason for using the language "supposed to contain" in the deeds?

Answer. It was.

Re-cross-Examined.

1. What is the difference between the phrases "supposed to contain" and the one you say you usually use, to wit: "estimated to contain" or "containing by estimation"?

(Excepted to, because it asks of the witness a legal opinion.)

Answer. My idea is that "supposed to contain" carries with it a less degree of certainty than "containing by estimation" or "estimated to contain" does.

Further, this deponent saith not.

PETER B. PRENTIS.

The witness on behalf of the plaintiff, W. H. Gay, being duly sworn in answers to questions, deposeth as follows:

1. State your age, residence, occupation, and do you know the parties to this suit?

Answer. About 55 years; Suffolk; manufacturer. I do.

2. Did you ever have any conversation with Mr. Camp in regard to the land purchased by him from Mrs. Sarah E. Norfleet?

(Excepted to as irrelevant.)

Answer. Yes, sir; we talked about buying the land and a certain number of acres was in the land. I don't recollect the exact number at this time. I would recollect if I were to hear it called. And we went over the timbered land, and I said, I suppose there were so many thousand of feet of lumber, about five or six hundred thousand, probably, in the tract, and Mr. Camp said that if there were as many acres as Mrs. Norfleet said there were, he thought we could cut a million feet of lumber, but in the thick woods it is hard to tell.

Cross-examined.

1. Are you Mr. Camp's partner?

Answer. Yes, sir.

2. Are you any connection?

Answer. Yes, sir; he is my son-in-law.

3. Did you have any interest in the timber?

Answer. No. I had no interest in it.

4. Did your mill saw it?

Answer. It did, sir.

5. How were you paid for sawing it?

Answer. I bought the timber at so much a thousand.

6. When was the survey made?

Answer. It was made. I could not recollect when, but I saw him when he made it.

(Excepted to; not best evidence obtainable.)

page 42 } 7. Was it this year?

No; it was not made this year.

8. What season of the year was it made?

Answer. I can't tell you that, to save my life.

9. Was it last year?

Answer. I could not even tell you.

10. When did you first hear that the land fell short?

Answer. I have heard it some time, but I can't tell exactly when.

11. Has it been more than a month?

Answer. I should think it had.

Further, this deponent saith not.

W. H. GAY.

The witness, W. N. Camp, being duly sworn, in answer to questions, deposeth as follows :

1. State you age, residence, occupation, and do you know the parties to this suit?

Answer. Thirty-six years ; Nansemond county ; manufacturer ; I do ; I am the plaintiff.

2. Please state what took place between Mrs. Norfleet and yourself in regard to the purchase of the land in this cause mentioned ?

Answer. Some time in October I heard, through Mr. J. H. Wright, that Mrs. Norfleet wanted to sell her place. I went out there soon afterwards to see her about it, and asked her how much she asked for it. She told me she had been asking \$8,000, but would take \$7,200; and while I was there that day, she produced some old deeds and plats of the land she proposed to sell ; one of the plats, which I lost, purported to be a surveyor's plat of the home place, and it showed there were 325 acres on that place, with ten acres known as the Fair Ground marked off, which left 315 acres. (The witness here asked to see the paper marked "B," on which he said were some figures marked by himself.) On that day Mrs. Norfleet and myself laid this plat on the table and referred to it to get the number of acres she was selling me, and we figured it up together to make 915 acres. She afterwards told me she had sold to Mr. Hill a small piece ; I don't recollect the number of acres ; we deducted that, which left the amount she gave me a deed for. She told me that day she was sure there was more land than what these plats represented. I told her that I thought that was too much for the land, but I would look it over and let her hear from me. Soon afterwards, Mr. Gay and I went out there to look at the land and timber. After looking around there some, we stopped in the woods. I asked Mr. Gay how much he thought there was there. He said there might be five or six hundred thousand feet. I said to him, if the number of acres is here that Mrs. Norfleet says there is, it will cut so much per acre, and make so many hundred thousand feet. I then asked Mr. Guy if he wanted my interest in the land. He said he did not ; that it was not worth the money that Mrs. Norfleet was asking for it. I asked him, then, If I could buy the land at a certain price below Mrs. Norfleet's price, if would he want my interest in it ? He said No ; we had better buy the timber, if we could. I then saw Mrs. Norfleet at two or three different times afterwards, and she finally agreed to accept \$6,600. At every interview I had with Mrs. Norfleet she would always mention the number of acres she was selling, and seemed to be positive from the way she was speaking of it and from the plats of the land she exhibited about the number of acres she was selling, especially the home place. Soon after I made the bargain with her, I made a payment on it, took an obligation bond from her stating number of acres and terms on which it was sold. Sometime in January, '83, I went to Mrs. Norfleet's house, as well as I can recollect, and carried her

to the clerk's office, and the deed was prepared by Mr. Prentiss ; the same papers Mrs. Norfleet showed me when we first bargained for the land were produced and the number of acres that was given in the deed was gotten from the plats by all three, Mrs. Norfleet, Mr. Prentiss, and myself ; Mrs. Norfleet was questioned as to the number of acres on the plat, and as to how much had been sold. The amount arrived at was by the information she gave us. In buying timber or timbered lands we make our estimates of the quantity of timber by the number of acres in the tract of land, and my belief is, nobody can tell how much timber in a given piece of land. and the estimate can only be made by knowing the number of acres.

3. Was not the inducement on your part to purchase this land from Mrs. Norfleet at the price of \$6,600 based on the information received from her that the whole tract contained 892 acres, and had you known at the time there were only 682 acres, would you have made the purchase at that price ?

Answer. It was ; I would not ; I thought I was buying the land for a little over \$7 per acre ; it was all I thought it was worth.

4. Did Mrs. Norfleet tell you, when she made the deed, that she was selling this land or for a lump, in price ?

Answer. She did not ; she always represented to me she was selling a certain number of acres of land.

5. When did you first discover this deficiency ?

Answer. When I got a report from Mr. Baker.

(Witness was here shown a paper signed by Bev. P. Baker, county surveyor, and sked if it was the report referred to.)

6. Is this the report (the one shown to witness as stated above) referred to ?

Answer. This is one of them ; I had one sometime previous to this ; but I don't know, now, where it is ; but this report covers both tracts.

(The report is herewith filed and asked to be made a part of these depositions, and is marked "X.")

Paper marked "X" excepted to as testimony in this cause, because secondary evidence.

(Witness here shown what purports to be an official survey and plat of what is known as the home tract, and asked if the same was made and sent to him by the Nansemond county surveyor.)

7. Is the plat shown what was sent to you by the county surveyor ?

Answer. Yes, it is, and is what is referred to in the paper marked "X."

(It is here requested that the aforesaid plat be filed among the papers in this cause and marked "Y.")

8. What did you do when you found out officially that this deficiency existed?

Answer. I went to Mrs. Norfleet and told her the land had fallen short, and that there must be some mistake as to the lines, and asked her if she knew of any one who could give us any information and establish the lines. She told me she could not, unless Mr. Frank Rawls could. I had some little talk further, but she did not seem disposed to do anything further to get the lines established.

9. What did she do?

Answer. She instructed Mr. Prentis, as trustee, to advertise and sell the property at once.

Cross-Examined.

1. When did you first notify Mrs. Norfleet of the deficiency?

Answer. Soon after I got this statement from the surveyor.

2. Which statement, the first or second?

Answer. The statement dated August 14, 1884.

page 47 } 3. When was the survey of the Jason Lassiter and Culloden tracts made?

Answer. I don't remember.

4. When did you learn the result?

Answer. I don't remember that.

5. Was it in 1883 or 1884?

Answer. I think it was 1883.

6. Are you sure it was not in 1882?

Answer. I think I am.

7. Would you be willing to swear it was not in 1882?

Answer. I answered it just now.

8. Question repeated?

Answer. I don't propose to answer one question a dozen times; once ought to be sufficient; twice certainly ought to be.

9. Question repeated?

I don't think it was in 1882; I haven't any of the papers before me.

10. Did not the surveyor furnish you with a map of the wood land soon after the survey?

Answer. I think he did.

11. Did it show a deficiency of 167 acres?

Answer. I don't recollect now; it showed whatever the statement of 14 August, 1884, shows, I suppose.

12. Where is that map?

Answer. I do not know where it is; my office has been cleaned out, and it may be with old papers.

13. Why did you not notify Mrs. Norfleet of the deficiency in the wood land at the time of this report?

page 48 } Answer. I was waiting to get the full survey of both tracts.
14. So you never mentioned it until after the 14th August, 1884?

Answer. Not until after I got a full statement of both tracts—that is after 14th August, 1884.

15. Was it until after she notified you that unless you paid the balance she would order a sale?

Answer. Yes; it was after that, because she notified me about the 1st August, and I received the report about the 14th August.

16. Did you not examine the lands, and had not the surveyor surveyed the wood land before the deed was executed?

Answer. Not to my knowledge; not that I remember; not before I bought it.

17. Would you be willing to swear that the surveyor had not reported the result of the survey to you of the wood land before the deed was passed?

Answer. If I could find the old plat I could tell you; I can't remember. He started the survey on the home-place in the fall of 1882, my intention being to have plats made and incorporate them in the deed, but he never got through with the home-place, and never completed the survey until a little while ago.

18. Did he commence the wood land at that time?

Answer. Not at that time; I don't think he did.

19. How long afterwards?

Answer. I don't know, as I have no notes of the time.

20. Could you not say whether it was one month or two months afterwards?

Answer. I could not.

page 49 } 21. Could you not say that he stopped surveying the home-place and immediately commenced on the wood land?

Answer. No; I was not with him; kept no notes, and don't recollect how it was.

22. Did not Mrs. Norfleet tell you that some of the lines were disputed?

Answer. She spoke of a disputed line between her and Daniel Brothers.

23. Did she tell you of her difficulty about land sold by her husband in his lifetime?

Answer. I don't remember it.

24. Are you sure now that the surveyor ran the lines correctly?

Answer. I am not; that is why I asked Mrs. Norfleet to help me. I thought it was her duty. I think she obligated to do it in the deed. I am not positive; it is customary.

25. Did she not tell you that she did not know the lines?

Answer. She told me that she did not know all of them.

26. Did she tell you any?

Answer. No; can't say she did.

27. Did she not refuse to sell by the acre?

Answer. Yes; but she sold me as many acres for so much money, as I understood her.

(The witness desires to substitute "She may have done so" for "Yes" in the above answer.)

Re-Examined.

page 50 } 1. Had the survey been completed by Mr. Baker and his report made to you shown a deficiency of two hundred and ten acres before the execution of the deed, would you have agreed to have paid \$6,600 for the land?

Answer. I would not.

Cross-Examined.

1. Suppose it had shown a deficiency of one hundred and sixty-seven acres; what then?

(Excepted to on the ground of impertinence, irrelevancy, and immateriality.)

Answer. I would not, if I had thought it had been that much short at the time the land was bought.

Further, this deponent saith not.

W. N. CAMP.

The following is a copy of the paper marked "X," filed and asked to be made a part of the foregoing depositions:

August 14th, 1884.

Mr. Wm. N. Camp:

Dear Sir,—I have made the calculations of your home place, or better known as the Elisha Norfleet home farm, and find that it contains two hundred and seventy-two (272) acres, one rood and twenty-five poles. The woodland, four hundred and ten acres (410) acres and twenty-five poles; altogether making six hundred and eighty-two acres, two roods

page 51 } and five poles (682 a., 2 r., 5 poles).
I will make the map for you as soon as practicable.

Very respectfully,

BEV. P. BAKER,
County Surveyor.

The paper marked "Y," with this deposition, purports to be a map of the home place, made by Beverly P. Baker, county surveyor, dated August 12th, 1884; which map indicates that the said home place contains five hundred and seventy-two acres, one rood and twenty poles.

Virginia—

County of Nansemond, to wit:

I, John B. Penner, a notary public for the county of Nansemond, in said State, do hereby certify that the foregoing depositions of Sarah E. Norfleet, Peter B. Prentis, W. H. Guy, and W. N. Camp were duly taken, sworn to, and subscribed before me at the time and place and for the purpose therein mentioned.

Given under my hand this 7th day of September, in the year 1884.

JOHN B. PENNER,
Notary Public.

Fee, \$10.

And at another day, to wit:

On Friday the 12th day of September, 1884, in the said circuit court, in vacation—

This cause came on this day to be heard on the bill and exhibits herewith filed, the answer of the defendant Sarah E. Norfleet, with general replication thereto, the notice of a motion to dissolve the injunction heretofore awarded in this cause, and the depositions of witnesses, and was argued by counsel.

On consideration whereof the court, without at this time deciding the said motion, doth continue it to the hearing, but unless the said page 52 } plaintiff shall pay the said Sarah E. Norfleet within fifteen days from this date the sum of sixteen hundred dollars on account of his indebtedness to her, then the said injunction shall stand dissolved, and the trustee shall proceed at once to sell the land in the bill described in accordance with the provisions of the deed of trust.

And both plaintiff and defendants are allowed to take further testimony between this date and the first day of the next term of the court.

And at another day, to wit:

In the clerk's office of the said Circuit Court, on the 29th day of September, 1884—

Came the defendant, Sarah E. Norfleet, administratrix with the will annexed of Elisha Norfleet, deceased, and dowers of the said Elisha Norfleet, by counsel, and filed a deposition, which, with the notice and return thereon made, is in the words following:

To William N. Camp, Esq.:

Take notice, that on Monday, the 29th day of September, 1884, at the office of Robert R. Prentis, in Suffolk, Virginia, between the hours of nine o'clock A. M. and six o'clock P. M. of that day, I shall proceed to take the depositions of Beverly P. Baker and others, to be read as evidence in my behalf in a certain suit in equity, depending in the Circuit Court of Nansemond county, wherein I am defendant and you are plaintiff, and if from any cause the taking of the said depositions be not commenced, or if commenced be not concluded on that day, the taking thereof will be adjourned from day to day, or from time to time, at the same place and between the same hours until the same shall be completed.

SARAH E. NORFLEET,
Adm'x with the will annexed of Elisha Norfleet, dec'd, and doweress of the said Elisha Norfleet.

17th Sept., 1884.

Service of this notice is hereby accepted.

By COUNSEL.

C. H. CAUSEY,
R. H. RAWLES,
Attorneys.

The deposition of Beverly P. Baker, taken before me, Lee Britt, a notary public for the county of Nansemond, pursuant to notice hereto annexed, at the office of Robert R. Prentis, in Suffolk, Virginia, on the 29th day of September, 1884, between the hours of 9 o'clock A. M. and 6 o'clock P. M., to be read as evidence in behalf of Sarah E. Norfleet, administratrix with the will annexed of Elisha Norfleet, dec'd, and doweress of the said Elisha Norfleet, in a certain suit in equity depending in the Circuit Court of Nansemond county, of Virginia, wherein she is defendant and Wm. N. Camp is plaintiff.

Present :

R. R. PRENTIS,
Counsel for defendant.
C. H. CAUSEY,
Counsel for plaintiff.

The witness, B. P. Baker, being duly sworn, deposed as follows in answer to questions :

1st question. State your age, residence, occupation, and do you know the parties to this suit?

1st answer. Between forty-four and forty-five years of age, reside in Nansemond county, by occupation a farmer and county surveyor, and I know the parties to this suit.

2d question. When did you survey the Elisha Norfleet wood land, described in the deed from Sarah E. Norfleet to Wm. N. Camp as the Jason Lassiter and part of the Culloden tract?

2d answer. Oct. 31st and Nov. 1st, 1882.

3d question. When did you make the map of the said wood land?

3d answer. Nov. 3d, 1882.

4th question. When was the said map delivered to said William N. Camp?

4th answer. On or before the 13th of November, 1882.

5th question. How do you know this?

5th answer. Because on the 13th of Nov. Mr. Camp and myself examined said map, and on that day he paid me for the same.

6th question. In the survey of the said wood land, are you sure that the line between Daniel Brothers' wood land and the said wood land is correctly surveyed?

6th answer. Mr. Daniel Brothers said that I was across the line on him a little. There are fourteen chains and forty-one links that on which I found no line-trees, and I do not know that the said line is exactly correct, but think it is.

7th question. Are you sure that all the lines of the home place have been correctly found?

7th answer. I do not know exactly how to answer it unless I can see the deeds. Mr. Camp told me he claimed to high-water mark on the mill-pond; Mr. Harrison Willis said to the mill-run. I made calculations to the mill-run, except the 9-acre piece, which was made at high-water mark. Had the survey been made at high-water mark all the way, the area would have been about ten or twelve acres more.

8th question. Is there any dispute about the nine-acre piece alluded to?

8th answer. I have never heard any.

Cross-examination by Counsel for Plaintiff.

1st question. When did Mr. Camp first know from you the acreage in his entire purchase from Mrs. Norfleet?

1st answer. I sent the acreage to him by mail, and I suppose he received it about the 18th of August, 1884.

2d question. Did Mr. Camp in your presence ever say anything to lead you to believe that his purchase from Mrs. Norfleet was a contract of hazard?

[Excepted to by counsel for plaintiff as irrelevant.]

2d answer. I do not know that he did, but Mr. Camp did state to me that he and Mrs. Norfleet would have a hauling-over about the matter.

3d question. Did you not understand from Mr. Camp that if there

was any considerable defeiciency in the acreage of his purchase that he would expect Mrs. Norfleet to make it good?

3d answer. I did so understand him.

Re-examination by Counsel for Defendant.

1st question. When was this conversation, just alluded to?

1st answer. Some time in the latter part of August, 1884. I know at the time I brought the map of the home place that Mr. Camp made use of the hauling-over remark.

2d question. When was the survey of the home place commenced, when completed, and when was the map delivered?

2d answer. It was commenced on the 16th of October, 1882, completed the 12th of August, 1884, and the map was delivered some time in August, 1884.

[Exception by counsel for plaintiff upon the ground that the map, which is already filed in the papers already in the hands of the judge, is the best evidence.]

3d question. Why was there so much delay on your part between the time you commenced to survey the home place and the time you completed it?

3d answer. I was waiting for instructions to complete it.

4th question. Were you instructed by Mr. Camp to make the survey in October, 1882, of the "home" place?

4th answer. I commenced it and worked one day on it and waited for further instructions, and completed it in August, 1884.

5th question. Were you or not instructed to stop surveying the "home" place in October, 1882, after having worked one day on it?

5th answer. Not that I recollect of.

6th question. Why did you stop?

[Excepted to by counsel for plaintiff upon the ground that by such questions he (counsel) seems to be leading his witness.]

6th answer. Because I did not have instructions to go ahead.

7th question. What were your instructions when you commenced the survey of the home place?

8th answer. Mr. Camp asked me to survey the home place—Mr. Elisha Norfleet's home place.

9th question. Then can you not tell why you did not obey your instructions?

9th answer. I did obey, and worked one day.

10th question. When Mr. Camp instructed you to survey the "home" place do you mean to say that you obeyed his instructions by working one day and then leaving it for nearly two years uncompleted?

10th answer. I do, and when I received further instructions I completed it.

11th question. And if you had not received such further instructions, do I understand that you would have never completed it?

11th answer. No, I would have never completed it without further instruction.

Re-Cross-Examination by Counsel for Plaintiff.

1st question. Did not Mr. Camp tell you at the time he employed you to survey the land in question that he wanted to know the acreage before the deed was prepared?

1st answer. If so, I do not recollect it.

2d question. Was not the delay in regard to the "home" place caused by want of knowledge as to the lines?

2d answer. I do not know, sir.

And further, this deponent saith not.

(Signed)

B. P. BAKER.

Virginia—

County of Nansemond, to wit:

I, Lee Britt, a notary public for the county of Nansemond, in the said State of Virginia, do hereby certify that the foregoing deposition of Beverly B. Baker was duly taken, sworn to, and subscribed before me at the time and place and for the purposes therein mentioned.

Given under my hand this 29th day of September, 1884.

(Signed)

LEE BRITT, N. P.

Notary's fee, \$5.00.

And now at this day, to wit:

At a circuit court held for the county of Nansemond, at the courthouse, in the town of Suffolk, on the same day and year first herein mentioned, to wit: on Tuesday the 14th day of October, 1884—

This cause came on this day to be further heard upon the bill, the answer of the defendant, Sarah E. Norfleet, with replication thereto, and on the exhibits and examinations of witnesses, and was argued by counsel.

On consideration whereof, the court doth adjudge, order, and decree that the injunction heretofore awarded the complainant in this cause be dissolved, and that the bill of the plaintiff be dismissed, and that he pay to the defendants their costs by them about their defense in this behalf expended.

But this decree is suspended for sixty days from this date in order to

give the plaintiff an opportunity to apply to the Court of Appeals for an appeal and supersedeas.

Teste:

PETER B. PRENTIS, Clerk.

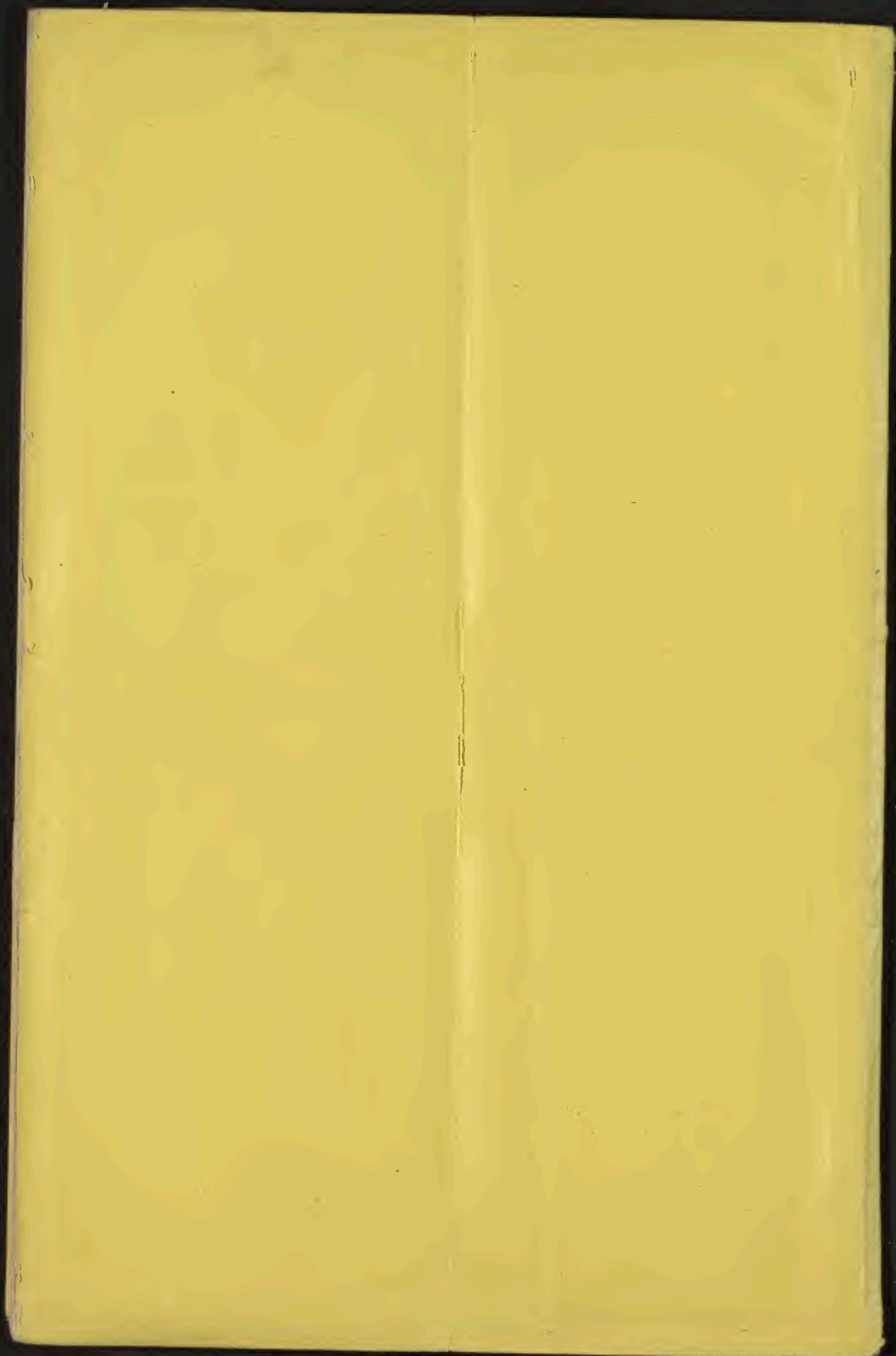
Nansemond Circuit Court Office,
November the 29th, 1884.

A copy—Teste:

GEO. K. TAYLOR, C. C.

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1
The depositions of Sarah E. Norfleet and others taken before the undersigned John B. Pinney a Notary Public for Hansemond County pursuant to the annexed notice on the 9th day of September 1884. to be read as evidence in the behalf of the defendant in the Chancery Cause of Wm. N. Lamp vs. Sarah E. Norfleet Administratrix with the will annexed of Elisha Norfleet deceased and Executor of Elisha Norfleet, deceased and Peter B. Prentiss Trustee now depending in the Circuit Court of Hansemond County.

Present:-

R. R. Prentiss Esq. Counsel for defendant
C. H. Causey " Counsel for plaintiff.

Witness Sarah E. Norfleet being first duly sworn in answer to questions deposes as follows

1. State your age, residence & do you know the parties to this suit?

Ans:- 50 years. - Suffolk, Va.
Yes I know the plaintiff and am

The defendant

2. State what was the contract between yourself & Wm. A. Lamp when you sold him the land, in the bill described with all the attendant circumstances

Ans:— I sold all the remainder of the lands of Elisha Norfleet's estate except twenty-six acres. I sold him as it was, gross, and not by the acre for the sum of Six Thousand Six hundred Dollars (\$6600) cash but it was not paid cash. I told him all the time that I asked Eight Thousand Dollars (\$8000) for the farm but he was not willing to give it & I fell to Seven Thousand and he said he would give me Six, but I told him I would not take that & then he offered one Six Thousand Six hundred. I agreed to let him have it. I thought in the meanwhile I was selling it to W. H. Gay & so until he purchased it and then he told me it was he

alone. I expected him to pay
one one-third cash I wanted
all cash but he said he would
pay me one-third cash and
the balance in one and two years.
In the meantime I told him
I knew nothing about the lines
& could not identify them, &
did not ^{know} how much land there
was; it was only estimated
as so much. And I told him
there had been disputes about the
lines not while Mr. Brothers owned
the adjoining land but when Mr.
Hazlett owned it I had had
some little dispute about the line.
and the piece next to Mr. Rolt
Smith, he & I had had a little
spat about it but to use Mr.
Lamp's words he said he would
fight them out about it.
Mr. Lamp. knew more than
I did about the lines. He and
Mr. Gay had been over it several
times and seemed to be satisfied
about it and moreover ^{the day} when I
gave him the deed I told him
I wanted to have no more draw-
back or more trouble about it.

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that I sold him all the land and he rightly understood it.

3. When was the bargain made?

Ans:— It was sold ~~last~~ ¹⁸⁸² Fall in Oct or November I don't know which I ~~cannot~~ could not swear to the exact month.

Exception.

To question & answer on the ground that the deed copy & record is best evidence of contract.

4. When was possession to be given & when was the deed to pass?

Query 4 Excepted to on the ground in absence of any written contract, deed is best evidence

Ans:— It was to be given the 1st of Jan. or if I preferred to stay I could do so until March, he did not care. When I sold the land I expected the deed to pass at once but he did not comply with the contract and the deed was not passed until January

5-

He paid one fifty dollar when I sold the farm but the deed was not passed until January.

5. What time in January if you recollect?

Ans:- I dont remember. I know the notes were given back from 1st January. The 25th I believe, along the latter part of January, but I dont recollect.

6. At what time if you recollect was the paper marked B with the complainant's bill handed to the complainant, before or after the bargain?

Ans:- It was handed to him when he went to survey it.

7. Did he go to survey it before or after the bargain was made?

Ans:- It was after the bargain but before the deed was passed.

8. Did the complainant make any complaint as to the quantity of the land at the time the deed was passed?

6

Ans:- No sir.

9. When did he first make such complaint?

Ans:- It has been but a short time ago; just before he ordered the bill of injunction.

10. Did you make any representation as to the quantity of land sold?

Ans:- I told him it was supposed to contain so much each tract, but I did not know it. It had not been surveyed since the war.

11. Did he ever offer to buy it by the acre?

Ans:-

Question 11. Excepted to, generally.

+ Ground of exaction called for by defendant's counsel.

Ans:- He asked me what I would take for it by the acre.

12. What was your reply?

Ans:- I would not sell it by the acre.

7

13. Why would you not sell it by the acre?

Ans:- Because I wanted so much for the place and did not want to have it surveyed or have any trouble with it; did not want to go to that expense; because I did not know the lines.

14. Did you tell Mr. Lamp your reason for not selling by the acre; & if so what was his reply?

Ans:- I don't think he asked me my reason but he said he was willing to run the risk to find the lines.

15. Who drew the deed?

Ans:- Mr Peter Prentiss

16. Did you intend by executing that deed to convey the land as you have stated your bargain was in gross & not by the acre, or not?

Ans:- I intended it to be in gross.

17. Why were you thus particular?

Ans:- Because there had been trouble about a piece of land that was sold in Mr Norfleet's life-time

18. Did you tell Mr Camp of the trouble?

Ans:- I don't remember whether I told him that day, the day the deed written, but I had told him about it. I told Mr Poinb's I did not want any draw-back ~~of~~ the deed when it was written.

19. Did you tell Mr Camp the history of the rough diagram marked B.?

Ans:- I told him it was a plat that Willis Riddick had ~~drawn~~ ^{drawn} up in his life-time just to show the lands of Mr Norfleet's Estate. It was ~~an old~~ ^{no old} surveyor's plat.

20. Is the part of the Fulloden tract sold by you to Mr Camp marked out on the said diagram?

Ans:- No sir. The part of the Fulloden land I sold him was

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a part of the Thayer land but I did not know where the line was.

X

21. Has any timber been cut from the land since Mr. Sampson has had possession of it? If so how much if you know?

=

Excepted to on the ground of immateriality.

X

Ans:- I don't know how much; he has been cutting all twelve months. I was told he had cut two million feet of plank. He told me he had sold enough of it to pay for it.

=

Excepted to - immaterial -

22. How much money has been paid on the land due 1st Aug 1883?

Ans:-

Oct 1st '83 Received Two Hundred + Eight Dollars & Seven cents

Dec 8th '83. Received Two Hundred + Eighty Dollars & Forty-four cents

Dec 21st '83 Received Three Hundred Dollars.

June 30th '84 Received Six Hundred Dollars

108.	07
280	44
300.	00
600	00
1388	51

23. State the offer of compromise alluded to in the complainant's bill?

Ans:— Mr John Wright came to me & said that Mr Lowrey had told him that Mr Camp said if I would take Four Hundred Dollars and give him the note that was due in '83 and give him twelve months more to pay the other note, he would not bring the bill of injunction, but if I would not do it; compromise that way, he would get out a bill of injunction.

= Excepted to:— hearsay evidence —

Cross-examined by counsel for plff.

1. In your first conversation with Mr Camp in relation to the sale of the land in question how many acres did you estimate there were in the home tract, and also in the other tract?

= Excepted to on the ground that the witness has testified in effect

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That she never made any estimation of the area of the land sold

Ans:- I don't remember, what the deed calls for is what we supposed it contained, but I did not know it. but I did not sell it by the acre when it was sold,

2. Did you not tell Mr Camp at one time that you thought there were over 900 acres in the two tracts?

Ans:- I don't remember it. I always told him I did not know the number of acres.

3. Was there any other writing in regard to the land in question prior to the deed dated January 1st 1883?

Ans:- I don't remember. I gave him a receipt for fifty ^{dollars} and there might have been but I don't remember because when I sold Mr Camp the land I never expected to have any trouble about the matter.

4. When did you first show Mr Camp

The paper marked B?

Ans:- I would not swear that I showed it to him before he went to make the survey. I might have done so, but I don't remember.

5. Was not an estimate made of the number of acres from the paper marked B at or before the time the deed was executed?

Ans:- I don't remember it.

6. Did not Mr Lamp ask you how many acres there were in the his tract you sold him, & did you not tell him that you were certain the home tract contained 315 acres?

Ans:- No, I did not tell him any such thing. I told him it was supposed to contain so many acres. I handed him a plat but if he surveyed it he does not know whether he has the right lines or not. I could not identify it.

7. Do you know whether or not

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The survey was completed before the deed was made?

Ans:- No I do not I had nothing to do with the survey.

8. Did you not on the day the deed was drawn estimate the homestead to contain 315 acres, & the ~~the~~ Jason Lassiter tract to contain 577 acres?

Ans:- No the home tract was estimated to contain 315 acres and the Jason Lassiter land & Bulloden tract to contain the remainder whatever it was, but there was not 500 acres in the Jason Lassiter tract first:

9. Did you not estimate all the land sold in the deed of January 1st 1883 at 892 acres?

Ans:- It was supposed to contain all there was in the deed, all that the deed called for, but it was not sold by the acre, it was sold in gross.

Re-examined by Counsel for dftd
1. How did you happen to have

315
577
892

Mr Lamp the paper marked B.
What led you to think of that
paper?

Ans: It was with some old plats
I gave him. I suppose it was
to show him better how the land
was situated

2. Was that when he wanted to
make a survey?

Ans:- I think it was.

3. Had he not then bargained
to buy the land?

Ans:- He had bargained, yes
sir, when I gave him the old plats

cross-examined.

1. Did not Mr Lamp make an
estimate in your presence of the
total number of acres from the
paper marked B, and was not
he as well as yourself induced
to suppose from that paper
that there were 892 acres of
land?

Ans:- He might have done so
I don't remember it.

And further this deponent saith not

The witness Peter B. Prentiss being duly sworn in answer to questions deposes as follows

1. State your age, residence, and occupation, and do you know the parties to this suit:?

Ans:- 64 years. Suffolk Va
Clerk Nausemond County Courts
I do, am one of the defendants.

2. Did you draw the deeds alluded to in the complainant's bill? If so state the circumstances as near as you recollect them.

Ans:- I drew both the deed of bargain & sale & the deed of trust referred to in the presence of all the parties interested. Mrs Norfleet & Mr Camp being the parties interested. I was requested by the grantor in the deed of bargain & sale to write a deed conveying all the lands belonging to the estate of Eliza Norfleet deceased and which were located on the west side

of White Marsh Road in Nanse-
mond County Virginia. Learn-
ing from both parties that all the
real estate remaining unsold
at that time, belonging to said
estate, except the small piece of
land of some twenty or thirty
acres known as The Norfleet's
Fork place was to be conveyed
by said deed, the quantity of
land to be conveyed thereby being
supposed to contain what the
deed calls for. From what occur-
red in my presence the day the
deed was written & executed I
supposed that it was a contract
of hazard between the buyer &
seller.

3. Did you intend by the language
used in the deed of bargain and
sale to convey that idea or not?
Ans:- I did, unquestionably

4. Is it your habit in drawing
a deed of conveyance of land
in the usual way to say that
the land "is supposed to contain"

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so many acres more or less?
Ans:- No

5. What is the language usually used?

Ans:- "Estimated to contain" or "containing by estimation" unless ^{requested} specially to use the term by the seller in gross & not by the acre but in this case I am fully persuaded that if the term or words "in gross and not by the acre" had been employed in the deed no objection would have been made by the grantee

6. Then why in this conveyance did you use the language "supposed to contain"? What was your reason?

Ans:- Because the grantor as I then believed really had no distinct idea of the absolute quantity or number of acres of land that she was selling. Her information as far as I could determine having been obtained from her neighbors and friends as to the quantity of

unsold land belonging to her husband's estate.

7. Did this appear to you from the conversation which took place between you and the parties on that day?
Ans:- It did.

8. Then did you or not intend that those deeds should be the evidence of a contract of hazard of a sale in gross & not by the acre?

Ans:- I certainly did look upon ^{it} as a contract of hazard

9. When were these deeds drawn if you recollect?

Ans:- I think the deeds were both written after the 1st Jan '83 tho' the contract related to the 1st of January '83

Cross-examined by Counsel for plff.

1. What took place between the parties on the day of sale that induced you to believe that they,

especially the grantee, intended a contract of hazard?

Ans:- The sale took place previously to the date of the deed. Because I thought that the grantee knew more about what he was buying than the grantor did about what she was selling.

2. What induced you to think so?

Ans:- Because at the time he was perfectly satisfied with his bargain, as I supposed, nothing being said or intimated to the contrary, and I further knew that the grantee would be pleased to have such a piece of property, which was so contiguous to his saw-mill & proposed rail-road venture, & that I had no doubt as I said before, that he knew more about Mrs. Norflut's lands than on the market, than she did.

3. How many interviews did the parties have with you in regard to this sale?

Ans:- One interview was had with Mrs. Moffet about selling her property. This occurred three or four months before I knew Mr. Lamp had bought it. Previous to Mr. Lamp's purchase, ^{Mr. Lamp & myself} we had several casual conversations about this property relating to title &c but without any intimation on his part that he had bought or expected to buy it. It has been Mr. Lamp's practice as a prudent gentleman to ask me as clerk of the Court in relation generally to the title to property which he and his partner Wm. H. Gay Esq. thought of buying. I always looked upon Mr. Lamp as being cautious before his negotiations for the purchase of land.

4. How often did you see these parties together in relation to this transaction?

Ans:- Only once and that was on the day when the deeds were executed & delivered

To William A. Camp Esq.,

You are hereby notified
that on Tuesday the 9. Day of
September 1884 at the law office of
Robert N. Proutis, in Suffolk Virginia
between the hours of 9 O'Clock A.M.
and 6 O'Clock P.M. of that day I
shall proceed to take the depositions
of Sarah E. Norfleet and others to
be read as evidence in my behalf
in a certain suit in equity depending
in the Circuit Court of Nansemond
County, wherein I and another are
defendants and you are plaintiff;
and if from any cause the taking
of the said depositions be not
commenced, or if commenced, be not
concluded on that day, the taking
thereof will be adjourned from
time to time, at the same place
and between the same hours, until
the same shall be completed.

Sarah E. Norfleet Adm^r.
with the will annexed of
Elisha Norfleet dec^d. and
Dowress of Elisha Norfleet dec^d.
by counsel.

29. August 1884.

Rob. N. Proutis p.d.

Sarah E. Norfolk Am. &c

ads. ~~3~~ Notice to
~~3~~ take Depositions.

Wm. N. Camp.

Executed by delivering a true copy
of the within notice to William N.
Camp this 30. Day of August 1884.

J. J. Lee & Co. for
J. L. Hurlingham Clerk

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5. Did you on that occasion have before you the paper marked B filed with the papers in this cause?

Ans:- Yes, here are some of my figures on it:

6. Please state, if you can, what took place in connection with said paper and for what purpose your figures were made on it:

Ans:- I can not state in so many words what took place but the figures were made (that is those that I made) to arrive at what we supposed to be the unsold quantity of the Norfleet land. My idea was, at what then occurred, that they were made to approximate the supposed quantity to be conveyed.

7. Do you not believe that both parties thought that the land in question contained the number of acres named in the deed?

Ans:- I believe they did. On Mrs Norfleet's part from representations made to her by others.

& on Mr. Camp's part that he was familiar with what he was buying

8. What reason did you have to believe that Mr. Camp knew what he was buying & that the tract contained 892 acres?

Ans:- Because Mr. Camp was too prudent a man to buy a "pig in the bag" and from his occupation as a land buyer upon which there was a quantity of timber trees suitable for manufacture he would not have purchased the property unless he knew its value, not meaning to say however that he knew ~~however~~ the number of acres he was purchasing.

9. You have stated in answer to one of the questions in chief that Camp appeared well satisfied with his bargain, do you believe that he would have appeared so well satisfied had he then known that instead of 892 acres, he was only getting

682 ?

Ans:- Yes, because I firmly believe that he knew there was timber enough on it to save himself in any shortcoming in acreage.

10. Please state your reasons for this conclusion?

Ans:- Because, ^{I believe} as a prudent man as I have before said, he had gone over the land and was so well satisfied with his "prospecting" he would not lose anything by the purchase, Mr Lamp having been engaged in saw-milling operations for quite a number of years & knew what he was about.

11. Did Mr Lamp ever tell you or anyone else in your presence that he would be perfectly willing to pay \$6600 for this land even tho' it should fall short two hundred & ten acres from the original estimate?

Ans:- He did not

12. Did he ever tell you that he

had made so thorough an examination of this land as to be able to estimate accurately its superficial contents and the quantity of lumber that might be obtained therefrom?

Ans:- He did not. because he was too prudent a man to let everybody know his business.

13. You have frequently referred to Mr Samp's prudence & caution, from what source is that knowledge derived or is it simply an opinion of your own?

Ans:- I see Mr Samp nearly every day, and from casual interviews along the street riding & walking & from my general knowledge of him as an enterprising man I take him to be the gentleman I have described as being a patient and prudent operator in matters of business connected with his milling operations & rail-road venture with his partner Mr Gay both of whom are cautious considerate and enterprising gentlemen.

14. Do you think he would have displayed his usual prudence & caution, if he had been equally willing to purchase the lands in question, when the deficiency was so great & especially when the woodland which in his estimation as ~~an~~ saw-mill man was the more valuable, only contained 410 instead of 577 acres?

Ans:- My idea is that the many improvements on the premises consisting of a large frame dwelling and other convenient out buildings entered largely into his calculations in the purchase of this property independently of the timber trees thereon. As I before said this dwelling & other houses were contiguous to his operations & he could afford to be satisfied with this purchase.

15. Was this idea derived from anything said to you by Mr. Lamm in relation to advantage or simply a conclusion of your own?

Ans:- I judge that the business in which Mr Lamm & his partner were engaged, certainly justified him in the purchase of a large body of land and its contiguity to his almost daily pursuit.

16. Is it not a fact that so far as contiguity of residence ~~to~~ ^{to} his business is concerned that at the time this purchase was made he could have occupied a residence immediately adjacent to his saw mill or the saw mill of W H Gay & Co.?

Ans:- Yes and it is also a fact that I believe he had more business from than at his mill and that he had a little while before that purchase bought a large quantity of timber trees about one mile from his Norfleet residence

17. Please state what was the nature of his business which took him so far away from his mill?

Ans:- He was ~~supposed~~ looking for

timberland
lands. While I saw Mr. Lamp once
on foot I saw him, at least
ten times in his buggy

18 When was he going when you
saw him so frequently in his
buggy and state if you know
how many days were occupied
by Lamp in the past two years
looking for timbered lands

Ans:- I can not say precisely
but from the contracts for the pur-
chase of timber which have been
and are now of record and on
file in my office I should judge
he was pretty well "on the pad"
either for himself or W.H. Gay & Co.

19. Do you know that W. A. Lamp
in his own person made the
purchases of timber or timbered
lands referred to by you in the
above answer or that some
other member of the company
made them

Ans:- I don't know either of it.
He is looked upon as the traveler
and operator generally of the firm
of W.H. Gay & Co. which firm

consists of W. H. Gay + W^m J. Lamp

20 Is it not a fact that in the purchases of timber during the year '83 that R. G. Dennis was largely interested with W. H. Gay & Co in the purchase of the most valuable timbered lands in Newsumund County made by them in that year?

Ans:- I suppose so, and that Lamp generally knew what Mr Dennis was doing in that regard I do not recollect of ever seeing Mr. Dennis except he were either in the company of Mr Lamp or Mr Gay.

21. How often would you see Lamp during the week on an average?

Ans:- Daily Sunday not excepted. unless he is on a visit out of the state on business.

22. Did Mrs Norfleet ever tell Mr Lamp in your presence on the day the deeds referred to in these depositions were drawn

That she was selling the land in gross & did he say to her that ~~he~~ he was buying this land in gross, in short that he was willing to pay \$6600 for the land without regard to its acreage

Ans:- I dont think any such conversation occurred with all due politeness & courtesy to Mrs Norfleet I dont think she ever heard of the words "in gross" or if she has heard ~~that~~ she knew the meaning of the words "in gross", at that time. I am confident no such language was used on that occasion. but I feel sure that if the words "in gross" were incorporated in the deed no objection would have been urged by Mr Camp. Then:

23. Please state your reasons for reaching that conclusion.

Ans:- Because Mr Camp was willing to buy and Mrs Norfleet to sell for the consideration mentioned in the deed. I presume all these preliminaries in re-

gand to the sale were entered into & agreed upon by them (as to Price &c before they engaged me to write the deed

24 Was this done in your presence?
Ans:- No because they were done before they came to me as I have just said.

25 - Was not the inducement to this contract on the part of Mr. Camp, so far as you know, and as to what took place in your presence on the day the deeds were drawn, the belief that the tracts of land contained 872 acres? -

Ans: I suppose that Mr. Camp thought he was buying the quantity named in the deed, and that Mrs. Vorfleet thought she was selling the same - Neither party intending to deceive the other.

~~Re~~ Examined:

1. As the draftsman of the deeds were you or not led to believe by one or both parties, on the

day the deeds were drawn, in the presence of both parties, that the contract was a contract of hazard - that the sale was a sale in gross and not by the acre? -

Excepted to as leading, & for the further reason that a similar question has been asked the witness before. -

Answer - Yes, as I have stated before. -

2. And was this your reason for using the language "supposed to contain" in the deeds?

Ans. - It was. -

Re-cross-examined:

1. What is the difference between the phrases "supposed to contain" and the one you say you usually use, to wit: "estimated to contain" or "containing by estimation"?

Excepted to because it asks of the witness a legal opinion -

Answer: My idea is, that "supposed to contain" carries with it

a less degree of certainty than
"containing by estimation" or
"Estimated to contain". does. -

Further this deponent saith
not. -

Peter B. Prentiss.

The witness in behalf of the
plaintiff W. H. Gay being duly
sworn in answer to questions
deposeth as follows.

1. State your age, residence, occu-
pation & do you know the
parties to this suit - ?

Ans: - About 55 years. Suffolk
Manufacturer. I do.

2. Did you ever have any conver-
sation with Mr Lamp in regard
to the land purchased by him
from Mrs Sarah E. Norfleet - ?
= Excepted to as irrelevant -

Ans: - Yes sir. He talked about
buying the land and a certain
number of acres was in the land
I don't recollect the exact number
at this time. I would recollect

if I were to hear it called and we went over the timbered land and I said I supposed there were so many thousands of feet of lumber about five or six hundred thousand feet probably in the tract and Mr Lamp said if there were as many acres as Mrs Norfleet said there were he thought we could cut a million feet of lumber but ⁱⁿ the thick woods it is hard to tell.

Cross-examined

1. Are you Mr Lamp's partner?
Ans:- Yes sir

2. Are you any connection?
Ans: Yes sir he is my son-in-law

3. Did you have any interest in the timber?

Ans:- No I had no interest in it.

4. Did your mill saw it?

Ans:- It did sir

5 How were you paid for sawing

it-?

Ans:- I bought the timber at
so much a thousand.

6. When was the survey made?

Ans:- It was made, I could not
recollect when but I saw him
when he made it.

= Excepted to not best evidence ob-
tainable.

7. Was it this year?

Ans:- No it was not made this year.

8. What season of the year was it made?

Ans:- I cant tell you that to save
my life.

9. Was it last year?

Ans:- I could not even tell you.

10. When did you first hear that
the land fell short?

Ans:- I have heard it some
time but I cant tell exactly when.

11. Has it been more than a month?

Ans:- I should think it had.

Further this deponent saith
not. W. H. Gay

The witness W. H. Gay being
duly sworn in answer to ques-
tions deposes as follows

1. State your age, residence, oc-
cupation & do you know the
parties to this suit?

Ans:- 36 years. Nansmond
County. Manufacturer. I do I am
the plaintiff.

2. Please state what took place
between Mrs Norfleet & yourself
in regard to the purchase of the
land in this cause mentioned

Ans:- Some time in October I
heard through Mr J. H. Wright
that Mrs Norfleet wanted to
sell her place. I went out there
soon afterwards to see her about
it. and asked her how much
she asked for it. She told me
she had been asking \$8000 but
would take \$7200, and while I
was there that day she produced

some old deeds and plat^s of
 the land she proposed to sell
 One of the plat^s which I lost
 purported to be a surveyor's
 plat of the home place and
 it showed there were 325 acres
 in that place with ten acres
 known as the Fair Ground mark-
 ed off which left 315 acres
 (The witness here asked to see
 the paper marked B. on which
 he said were some figures marked
 by himself) On that day Mrs
 Norfleet and myself laid this
 plat on the table & referred to
 it to get the number of acres
 she was selling me and we figured
 it up together to make 915 acres
 She afterwards told me she had
 sold Mr Hill a small piece
 I don't recollect the number of
 acres. We deducted that which
 left the amount she gave me
 a deed for. She told me that
 day she was sure there was
 more land than what these plat^s
 represented. I told her that I
 thought that was too much for
 the land but I would look it

over and let her hear from me. Some afterwards Mr Gay⁺ went out there to look at the land and timber. After looking around there some we stopped in the woods. I asked Mr Gay how much he thought there was there. He said there might be five or six hundred thousand feet. I said to him if the number of acres is here that Mrs Norfleet says there is it will cut so much per acre and make so many hundred thousand feet. I then asked Mr Gay if he wanted any interest in the land. He said he did not that it was not worth the money that Mrs Norfleet was asking for it. I asked him then if I could buy the land at a certain price below Mrs Norfleet's price if he would want any interest in it. He said no we had better buy the timber if we could. I then saw Mrs Norfleet at two or three different times afterwards & she finally agreed to accept \$6600. At every interview I had with Mrs Norfleet she would always

mention the number of acres
 she was selling and seemed to
 be positive from the way she was
 speaking of it + from the plots
 of the land she exhibited about
 the number of acres she was selling
 especially the home place. Soon
 after I made the bargain
 with her I made a payment
 on it took an obligation bond
 from her stating number of acres
 + terms on which it was sold
 That is an ~~for~~ ~~and~~ ~~am~~ ~~go~~ ~~on~~
 it. Some time in January '83
 I went to Mrs Torfleet's house
 As well as I can recollect + carried
 her to the clerk's office, and
 the deed was prepared by Mr.
 Prentiss. The same papers Mrs
 Torfleet showed me when we
 first bargained for the land
 were produced, and the number
 of acres that was given in the
 deed was ~~the same as the~~ got-
 ten from the plots by all three
 Mrs Torfleet Mr. Prentiss + my-
 self. Mrs Torfleet was questioned
 as to the number of acres on the
 plot and as to how much had

been sold. The amount arrived at was by the information she gave us. In buying timber or timbered lands we make our estimates of the quantity of timber by the number of acres in the tract of land, and, my belief is, nobody can tell how much timber in a given piece of land & the estimate can only be made by ^{knowing} the number of acres

3. Was not the inducement on your part to purchase this land from Mrs Norfleet at the price of \$6600 based on the information received from her that the whole tract contained 892 acres and had you known at the time there were only 682 acres would you have made the purchase at that price

Ans:- It was & I would not I thought I was buying the land for a little over \$7 per acre It was all I thought it was worth.

4 Did Mrs Norfleet tell you

when she made the deed that she was selling this land in gross or for a lump in price

Ans:- She did not. She always represented to me she was selling a certain number of acres of land.

5. When did you first discover this deficiency?

Ans:- When I got a report from Mr Baker

(Witness was here shown a paper signed by Ber. P. Baker County Surveyor and asked if it was the report referred to)

6. Is this the report (the one shown to witness as stated above) referred to?

Ans:- This is one of them. I had one some time previous to this but I don't know now where it is but this report covers both tracts.

(The report is herewith filed & asked to be made a part of these depositions marked X)

= Paper marked X excepted to as testimony in this cause because secondary evidence.

Witness here shown what purports to be an official survey and plot of what is known as the home tract and asked if the same was made and sent to him by the Nansemond County Surveyor.

7. Is the plot shown what was sent to you by the County Surveyor?
 Ans: - Yes it is and is what is referred to in the paper marked X.

(It is here requested that the afore-said plot be filed among the papers in this case and marked Y.)

8 What did you do when you found out officially that this deficiency existed?

Ans: - I went to Mrs Thurfleet & told her the land had fallen short & that there must be some mistake as to the lines & asked her if she knew of anyone who could give us any information & establish the lines. She told me she could not unless Mr Frank Rawls could

I had some little talk further but she did not seem disposed to do anything further to get the lines established

Q What did she do.

Ans. - She instructed Mr Prentiss as Trustee to advertise & sell the property at once. -

Cross. Examined: -

1. When did you first notify Mrs. Norfleet of the deficiency?

Ans. Soon after I got this statement from the Surveyor?

2. Which statement, the first or second?

Ans. The statement dated August 14. 1884. -

3. When was the survey of the Jason Lassiter & Culoden tracts made?

Ans. I don't remember. -

4. When did you learn the results?

Ans. I don't remember that. -

5. Was it in 1883 or 1884?

Ans. I think it was 1883. -

6. ~~Was~~ ^{Are} you sure it was not in 1882?

Ans. I think I am -

7. Would you be willing to swear it was not in 1882?

Ans. I answered it just now. -

8. Question repeated?

Ans. I don't propose to answer one question a dozen ^{times} - Once ought to be sufficient - Three certainly ought to be. -

9. Question repeated?

Ans. I don't think it was in 1882. I haven't any of the papers before me. -

10. Did not the Surveyor furnish you with a map of the Woodland soon after the survey?

Ans. I think ~~he~~ did -

11. Did it show a deficiency of 167 acres. -

Ans. I don't recollect now. It showed whatever the statement

of 14 August 1884, shows, I suppose. -

12. Where is that map?

Ans. I do not know where it is. - My office has been cleaned out and it may be with old papers. -

13. Why did you not notify Mrs. Telford of the deficiency in the woodland at the time of this report?

Ans. I was waiting to get a full survey of both tracts. -

14. So you never mentioned it until after the 14. August 1884?

Ans. Not until after I got a full statement of both tracts. - that is after 14. August 1884. -

15. Was it until after she notified you that unless you paid the balance she would order a sale?

Ans. Yes, ^{it was after they} because she notified ^{me} about the 1. August and I received the report ^{about} the 14. August. -

45-

16. Did you ^{not} examine the land, and had ^{not} the surveyor surveyed the woodland, before the deed was executed?

Ans. Not to my knowledge, not that I remember, not before I bought it.

17. Would you be willing to swear that the surveyor had not reported the result of the survey to you of the wood-land before the deed was passed?

Ans. - If I could find the old plat, I could tell you - I can't remember. - He started the survey on the Horse Place ~~in~~ ^{the} the Fall of 1882 - My intention being to have plats made and incorporate them in the deed but he never got through with the Horse Place - And never completed the survey until here a little while ago.

18. Did he commence the Woodland at that time.

Ans. Not at that time - I don't think he did.

19. How long afterwards?

Ans. I don't know - ~~as~~ I have no notes of the time.

20. Could you not say whether it was one month or two months afterwards?

Ans. I could not.

21. Could you not say that he stopped surveying the Home Place and immediately commenced on the woodland?

Ans. - No. - I was not with him, kept no notes, and don't recollect how it was.

22. Did not Mrs. Torfleet tell you that some of the lines were disputed?

Ans. She spoke of a disputed line between ~~her~~ and Daniel Brothers.

23. Did she tell you of her difficulty about land sold by her husband in his life-time?

Ans. I don't remember it.

24. Are you sure now that the Surveyor ran the lines correctly?

Ans. - I am not. - That is why I asked Mrs. Torfleet to help me. - I thought it was her duty. I think she obligated to

47

Do it in the deed, I am not positive - it is customary -

25. Did she not tell you that she did not know the lines?

Ans. - She told me that she did not know all of them -

26. Did she tell you any? -
No can't say she did -

27. Did she not refuse to sell by the acre?

Ans. - Yes, but she sold one or many acres for as much money as I ~~understood~~ understood her.

(The witness desire to substitute "She may have done so" for "Yes" in above answer.)

Re-Examined.

1. Had the survey been completed by Mr Baker and his report made to you shown a deficiency of two hundred and ten acres before the execution of the deed would you have ^{agreed to have} paid \$6600 for the land?

Ans. - I would not

OVER

Cross-examined

1. Suppose it had shown a deficiency of one hundred and sixty-seven acres, what then?

Excepted to on the ground of impertinence irrelevancy & immateriality.

Ans:— I would not if I had thought it had been that much short, at the time the land was bought.

Further this deponent saith not.
 J. A. Camp

~~No other witness appearing
 the taking of these depositions
 are by consent of counsel closed.~~

~~John B. Pinner
 Notary Public.~~

Virginia

County of Nansemond to wit:
 I John B. Pinner a Notary Public for the County of Nansemond in the said state do hereby certify that the foregoing depositions of Sarah E. Norfleet Peter B. Breun's W. H. Gay & W. A. Lamp were duly taken sworn to and subscribed before me at the times & place & for the purpose therein mentioned Given under my hand this 9th day of September in the year 1887
 Fee \$10. John B. Pinner
 Notary Public

Camp
x 4 Depos
Norfolk

1884. Sept. 7th. Filed.
C. W.

William N Leamp

vs

Sarah E Norflut-Adm^x ^{of Elisha Norfleet.} vs

It appearing that there has been no order or proceeding for five years in this cause, it is ordered that it be stricken from the docket with leave to re-instate with good cause within one year from this date.

22

5-3

Wm Wleamph
vs

Sarah E Norfleet

Adm. of Elisha Norfleet,
tals. -Oct 12th 94

Whe entered

CMA

Entered in Chancery
Order Book No. 2
Page 591.

William N. Camp

^{N.}
Sarah E. Norfleet Adm^r of Elisha Norfleet
dec^d and dowress of said Elisha Norfleet, and
Peter B. Drentis, Trustees. -

This cause came on this day
to be further heard upon the bill
the answer of the defendant ^{Sarah E. Norfleet}, with
replication thereto, and on the exhibits
and examinations of witnesses, and
was argued by counsel:

On consideration whereof, the Court
doth adjudge, order and decree that the
injunction heretofore awarded the com-
plainant in this cause be dissolved,
and that the bill of the plaintiff be
dismissed, and that he pay to the
defendants ^{their} costs by them about
their defence in this behalf expen-
ded. -

But this decree is suspended for sixty days
from this date in order to give the
plaintiff an opportunity to apply
to the Court of Appeals for a
Supersedeas. -

Wm. A. Camp

Final
Decred.

Sarah E. Norfleet
Adm. V.C.

Oct. Term 1884. Enter. Thos.
Geo. B. Snow.

2nd 1885 Nov 12

The Demurrer and Answer of
Sarah E. Norfleet Administratrix of
with the will annexed of Elisha
Norfleet deceased, and in her own
right as the dowress of Elisha Norfleet
dec'd, to a bill of complaint exhib-
ited against her and another in
the Circuit Court of Hansemond County
by William A. Camp, complainant

Demurrer.

The defendant says that the bill
is not sufficient in law.

Answer.

This respondent reserving to
herself the benefit of all just ex-
ceptions to the said bill for answer
thereto, or to so much thereof as
she is advised that it is material
she should answer, answers and says,
that -

It is true that the complainant pur-
chased from this respondent the lands
in the bill described. - But it is not
true that the contract of sale was made
on the 1. day of January 1883. - During
the Summer and Fall of 1882 the
complainant came to this respondent's

residence and sought repeated interviews with respondent in his urgent efforts to purchase the said real estate. This respondent at first told complainant that her price was \$8000. Cash, but after repeated conversations, during which respondent declined to sell by the acre, or to make any representation whatever as to the quantity of land, and after the complainant had fully examined the land and ascertained from the best available sources the undisputed boundary lines of the said land, it was finally agreed, sometime in the month of November or thereabouts, that there should be a sale of the said land, in gross and not by the acres, for the sum of \$6600.± in Cash, possession to be given on the 1. day of ^{January} ~~February~~ 1883. Between the time of the contract of sale and the 25. day of January 1883, the complainant paid at one time \$50.- and at another \$350.- After the contract of sale, at the request and demand of the complainant, respondent was forced to modify the terms of sale and allow the complainant to pay one-third of the purchase money in cash, and the other

two thirds in equal instalments on the 1st day of August 1883 and the 1st day of August 1884 respectively - and again the complainant failed to comply with his contract and on the 25th day of January 1883 fell short \$800.- on the cash payment as agreed upon, and asked and received a still further indulgence for the said \$800.- until the 1st day of May 1883. - And again the complainant made default in the payment of the said \$800.- and did not finish making the agreed cash payment until the 18th day of July 1884. - And again the complainant made default in the payment of the bond for the second instalment of purchase money and due on the 1st day of August 1883. - He paid nothing upon this bond until the 1st day of October 1883, when he paid through a third party \$208.⁰⁷. - He has paid altogether on this bond \$1388.⁵¹, leaving a balance of \$811.⁴⁹/₁₀₀ of principal still due on this bond with an accrual of nearly two years interest. -

And again the complainant has made default in the payment of the last bond for \$20200.[±] due on the 1st day of August 1884. - Upon this bond he

has paid nothing. - In the interval, the complainant has made respondent many promises at various times to pay certain amounts on account of his said indebtedness, which promises he has consistently and persistently violated. -

In the meantime the complainant who is largely engaged in the saw-mill business has ~~been~~ greatly depreciated the value of the land by cutting a large quantity of valuable timber therefrom, ~~and~~ ~~which~~ the proceeds of which, if applied to respondents ^{debt}, would have nearly if not quite liquidated the same, as this respondent is informed and believes.

That it is not true, on the contrary it is utterly untrue, that the rough diagram marked Exhibit "B" with the complainant's bill was presented to the complainant on the day of sale, nor was he thereby induced to believe that the lands sold contained 892 acres or very nearly that quantity. - This respondent alleges that the said rough diagram was never shown to the complainant until after the bargain had been fully made and the price agreed upon. - The said rough diagram was made over nine years ago, by a gentleman who was

not a surveyor, and the part of the Colodew tract sold to the complainant is nowhere marked off on the said rough diagram. - After the contract of hazard had been agreed upon, this respondent in response to the request of the complainant handed him the said rough diagram, together with perhaps some other papers, so as to assist the complainant in locating the lands which he had already agreed to buy ~~with~~ in gross without reference to area. - This respondent at various times during their negotiations refused to sell the land by the acre, and told him that she did not know either the ~~lines~~ boundary lines or the area of the lands in question, that there had been some disputes with reference to the boundary lines, and especially with reference to the lines between the lands of Robert N. Smith Esq. and Daniel Brothers Esq. - After an examination in company with disinterested persons ~~the complainant~~ who claimed to know the boundary lines, the complainant expressed himself satisfied, said that he was willing to take all risks, and agreed to buy in the only way

this respondent proposed to sell, viz. in gross and not by the acre. -

~~Her complaint~~ This respondent was thus particular because she had no definite information either as to the area or boundary lines of the said land, and so repeatedly informed the complainant. -

That it is not true that the complainant has just ascertained the result of the survey made by the County Surveyor on the contrary thereof the said survey of the Jason Lassiter and Gullodges tracts was made about the 1st day of November 1882, and the complainant has known such result ever since that time. -

This respondent further answering denies that since the execution of the deed of trust dated 1. January 1883, the complainant has paid her \$2200. - Although the complainant is perhaps more nearly accurate in this than in any other allegation in his said bill contained. He has in fact paid in various sums at different times \$2188.⁵⁷ of an indebtedness of \$5200. - principal. -

This respondent answering further alleges that the offer of compromise alluded to in the complainant's bill was in the nature

of a threat that, unless she would extend the time for the payment of the last bond for twelve months longer and receive \$400.[±] in full satisfaction of the bond overdue for more than twelve months (on which there is now due \$811.49 of principal) that he would sue out an injunction by means of which she would become involved in a tedious and expensive litigation.

This respondent avers that she never heard any complaint whatever with reference to any alleged deficiency in the land sold until about two or three weeks ago, when she notified the complainant that she needed her money and would be forced to foreclose the deed of trust unless he paid the balance due.

This respondent again denies the repeated allegation of the bill that the estimate of the acreage was based mainly, or in any wise on the diagram marked "B" filed with the bill, and again denies that it was delivered to the complainant on the day of sale, and again avers that the said contract was clearly and distinctly a contract of hazard. And that it was a contract of hazard in which the complainant had every advantage, because his examinations of the lands sold had made

him more familiar with their character and boundaries than was this respondent.

This respondent therefore prays that the injunction ~~before~~ heretofore awarded in this cause may be at once dissolved, and that the Trustee may be permitted to advertise and sell the said land for the satisfaction of respondent's debt in accordance with the provisions of the said deed of Trust. -

And this respondent denies all fraud, unlawful combination and confederacy, and having fully answered the complainant's bill she prays to be hence dismissed with her reasonable costs by her in this behalf most unjustly expended, and she will pray &c. -

S. E. Norfleet.

Robt. N. Prentiss p. d.

2. Sept. 1884. -

State of Virginia,
County of Hansemond, to wit.

This day Sarah E. Norfleet made oath before me that the statements made in the foregoing answer so far as made of her own knowledge are true, and so far as made from information derived from others she believes them to be true. Given under my hand this 9. day of September 1884. -

Robt. N. Prentiss.
- Comm'r in Chancery.

Answer of
Sarah E. Norfleet
Adm't. &c.
to Bill of
Wm. N. Camp. —

1884. Sept. 12: 8th: Filed
clk.

AUCTION SALE

— OF —

Valuable Real Estate.

By virtue of a deed of trust executed by William N. Camp the 1st day of January, 1883, and duly recorded, to secure the payment to Sarah E. Norfleet, administratrix, with the will annexed, of Elisha Norfleet, deceased, of certain debts therein specified, the undersigned being directed by the said creditor, will offer for sale, by public auction, for CASH,

On Saturday, Sept. 13, 1884,

before the Suffolk Hotel, in the town of Suffolk, Va., at 12 o'clock M., the following property, to wit:

First. The home tract of land, supposed to contain 315 acres, more or less, and adjoining the lands of Joseph P. Hall, John F. Pinner, Robert R. Smith, Levi C. Thayer's estate, and the White Marsh road.

Second. A tract of land known as a portion of the "Jason Lasiter" and "Culloden Tracts," supposed to contain 577 acres, more or less, and adjoining the lands of the said Thayer's estate, Richard Williamson's estate, Charles H. Hill, Caleb R. Busby, Thomas Griggs, Daniel Brothers and John Galbraith.

This property is situated within one-half mile of the town of Suffolk, the improvements on which consist of a large two-story dwelling, together with all necessary and convenient outbuildings, and to any one desiring to invest in real estate, this sale offers a fine opportunity.

PETER B. PRENTIS,

SUFFOLK, VA., August 21, 1884.

TRUSTEE.

Saturday August 31st 1884

TRUSTEE

BETTER B. BRENTIS'

obituary.

and to any one desiring to invest in real estate, this sale offers a fine dwelling together with all necessary and convenient outbuildings, sufficient the improvements on which consist of a large two-story

This property is situated within one-half mile of the town of Daniel Brothers and John Campbell.

Thomas's estate, Charles H. Hill, Caleb R. Busby, Thomas Grist, and adjoining the lands of the said Thayer's estate, Richard Wilcox, and "Cuthbert Tracts," supposed to contain 577 acres more or less. Second, A tract of land known as a portion of the "Jason Land."

and Robert R. Smith, Levi C. Thayer's estate, and the White Marsh tract or less, and adjoining the lands of Joseph B. Hall, John A. Fin-

First, The home tract of land, supposed to contain 315 acres, the following property, to wit:

before the said land, in the town of Suffolk, Va., at 12 o'clock on

On Saturday, Sept. 13, 1884,

from the cash.

being directed by the said creditors, will offer for sale, by public auction, the tract of land, of certain depts. therein specified, the undersigned to sell, by public administration, with the will annexed, of 121-1/2

of a deed of trust executed by William N. Campbell the

A simple Real Estate

Auction Sale

This Deed made the 1st day of January One thousand eight hundred and eighty three, between William A Camp, of the County of Nansemond and State of Virginia, of the one part, and Peter B Prentis Chren as trustee for the purposes herein named, of the other part, Witnesseth: That the said William A Camp doth grant, with general warranty, unto the said Peter B Prentis Trustee as aforesaid, the following property, to wit: All those two (2) tracts, pieces or parcels of land, situate, lying and being in the County of Nansemond (Cypress District) in the State of Virginia, and bounded and described as follows: First: The Home tract, supposed to contain three hundred and fifteen (315) acres, more or less, and adjoining the lands of Joseph P Hall, John F Pinner, Robert R Smith, Levi C Thayer's Estate and the white marsh road.

Second: A tract known as a portion of the Gasondapiter and Callodon tracts, supposed to contain five hundred and seventy seven (577) acres, more or less, and adjoining the lands of the said Thayer's Estate, Richard Williamson's Estate, Charles H Hill, Caleb R Busby, Thomas Griggs, Daniel Brothers and John M Galbraith - which lands, are by deed of this date conveyed by Sarah E Norfleet Admx, with the will annexed of Elisha Norfleet, deceased, to said William A Camp. The said Sarah

E. Norfleet, Admrx: as aforesaid, being the beneficiary hereinafter named, together with all and singular the appurtenances belonging to the same.

IN Trust, to secure to Sarah E. Norfleet, Administratrix with the will annexed of Elisha Norfleet, deceased, of the County of Hansamond, in the State of Virginia the payment of the sum of Five thousand, two hundred (5200) dollars, a part of the purchase price of said land, evidenced by three (3) bonds aggregating that sum, of even date with this deed, and payable to the said Sarah E. Norfleet Admrx as aforesaid, as follows: One bond for \$800. due 1st May 1883. One bond for \$2200. due 1st August 1883. and one bond for \$2200. due 1st August 1884. all of said bonds carrying interest from date; and it is covenanted and agreed between the parties aforesaid, that in case of a sale the same shall be made after first advertising the time, place and terms thereof for twenty (20) days, and upon such terms as the said Trustee shall direct, and after paying the expenses of executing this trust, if then unpaid, including a commission of five (5) per cent to the said Trustee, then to discharge the amount of money, principal and interest, then due and unpaid of the said debt, and the residue, if any, pay as the law directs.

In all other respects this Deed shall be

executed according to the law governing trust sales.
Witness the following signatures and seals
Witness Wm A Camp (Seal)
J H Rawls Peter B Prentiss, Trustee (Seal)

Virginia
County of Nansemond } To wit:
I, L H Causey, a Notary Public in and for the said
County, in the State of Virginia, do certify that
William A Camp and Peter B Prentiss Trustee
whose names are signed to the writing above,
bearing date the 1st day of January 1883, have
severally acknowledged the same before me in
the County aforesaid.
Given under my hand this 25th day of January
1883.

L H Causey
Notary Public

In the Clerk's Office of Nansemond County Court
the 25th day of January, 1883.

This Deed of Trust was received, and with the Certificate
annexed admitted to record

Teste:

Peter B Prentiss Clerk

A copy

Teste:

Peter B. Prentiss. Clerk

10m. N. Canth

Xnd

To { Copy Wood of Irish
Peter B. Prentiss Trustee for
Sergeant E. Henshaw, Adm'r of Estate
Henshaw, dead

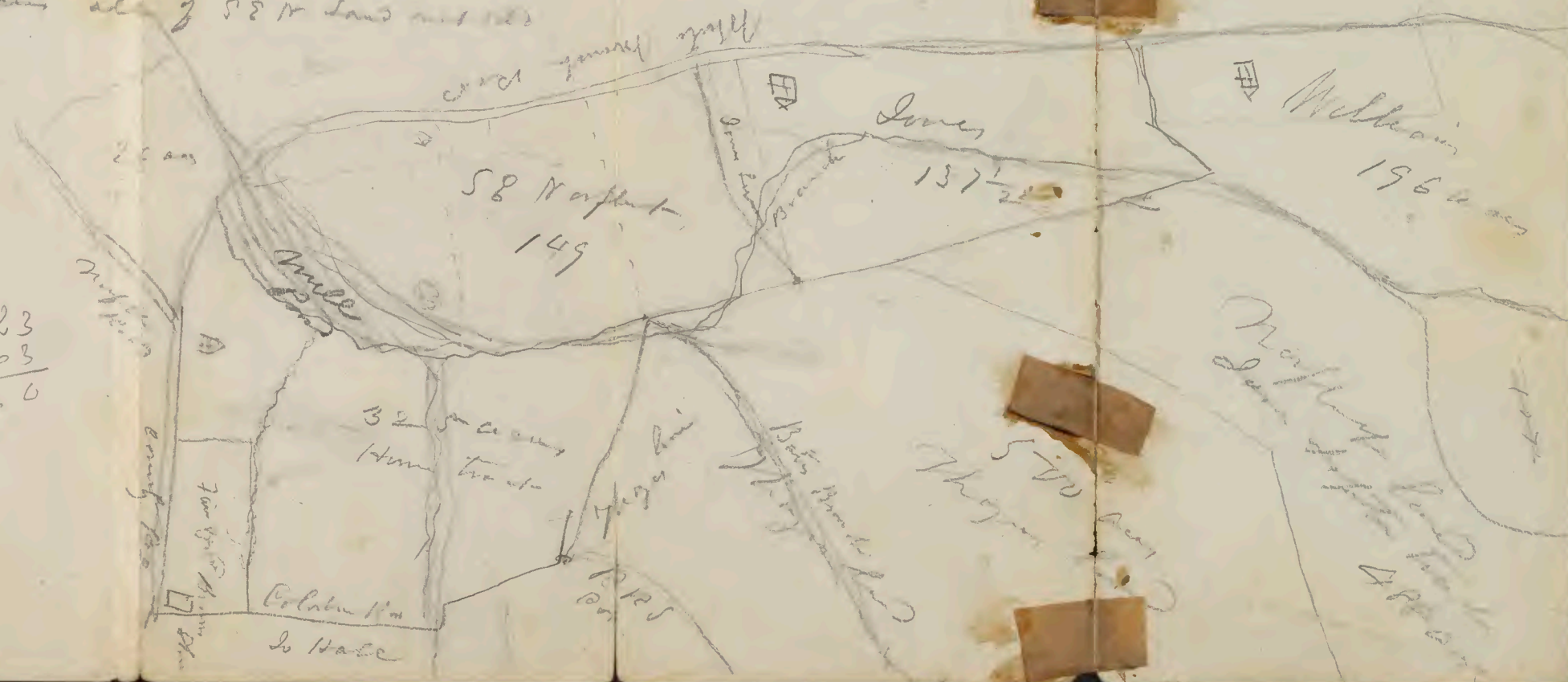
6

2

325 Home track
+ 149 on white ground 10.2
+ 26. Force of up 11.2
458 Same white track
985 same as 584 sand and red

$$\begin{array}{r} 315 \\ 400 \\ \hline 140 \\ \hline 915 \end{array} \quad \begin{array}{r} 523 \\ 63 \\ \hline 460 \end{array}$$

Plot of 58 Knaples
in Lower Thayer & Co
J. Williams



Memo of S. P. Hughes
lands & one of same in
each Texas state
Sold to the state,
Oct 29/71

"B"

Whereas Elisha Norfleet, by his Last Will and Testament, which was duly recorded in the Clerk's Office of the County Court of Hanseman County, Virginia, on the 10th day of January, 1870, appointed Jethro Riddick his Executor, who duly qualified as such, and has since died:

And Whereas Sarah E. Norfleet, the widow of said Elisha Norfleet deceased, has duly qualified in Hanseman County Court, aforesaid, as the Administratrix de bonis non with the Will annexed, of the said Elisha Norfleet, deceased: And Whereas the said Elisha Norfleet, by his Last Will and Testament, authorized his Executor to sell certain Real Estate: And whereas the parcels of land hereinafter described have been sold to William N. Camp:

Now therefore, this Deed, made this First day of January, A.D. 1883, between the said Sarah E. Norfleet, Administratrix with the Will annexed, of Elisha Norfleet, deceased, of the one part, and William N. Camp, of the other part, (Witnesseth, That the said party of the first part, in consideration of the sum of Six thousand, six hundred (6600) dollars, doth grant with general warranty unto the said William N. Camp and his heirs and assigns forever, the following tracts, pieces or parcels of land, situate, lying and being in Cyprus Magisterial District, Hanseman County and State of Virginia, and bounded as follows: First: The Home tract, supposed to contain three hundred and fifteen (315) acres, more or less, and adjoining the lands of Joseph P. Hall, John F. Pinner, Robert R. Smith, Levi C. Mayer's Estate, and the White Marsh road,

together with all and singular the appurtenances be-
longing to the same.

Second: A Tract (known as a portion of the Jason Lapsler
and Cilladen Tracts), supposed to contain Five hundred
and Seventy-seven (577) acres, more or less, and adjoining
the lands of the said Levi O. Thayer's Estate, Richard Wil-
liamson's Estate, Charles H. Hill, Caleb R. Brody's, Thomas
Giggs', Daniel Brothers and John M. Galbraith,
together with all and singular the appurtenances
belonging to the same - The lands hereby sold and conveyed
being all on the West side of the White Marsh road, and
embrace all the lands (including the Dower lands of the
said Sarah E. Nasfleeth, as the widow of the said Elisha
Nasfleeth) owned ~~owned~~ by the Estate of the said Elisha
Nasfleeth, deceased, except a tract of Seventy-six (26)
acres, lying on the East side of said road, and is generally
known as the Fork of the Road Tract.

Witness the following signature and seal.

Witness

J. H. Rawls

Sarah E. Nasfleeth, 

Admop: with the will annexed of Elisha
Nasfleeth, deceased

In the Clerk's Office of Hallowell County Court, the 25th day of
January, 1883.

This Deed was acknowledged by Sarah E. Nasfleeth, Admop: acting
with the Will annexed of Elisha Nasfleeth, deceased, and thereupon
admitted to record.

Teste: Peter B. Prentiss, Clerk

A Copy: Teste: Peter B. Prentiss, Clerk

xm d.

Elisha Huxford's Admpt: &c

To & Copy Deed

William H. Camp

"A"

William H. Curren

25 } 4 Exhibits filed
with the Bill

Sarah E. Harbeck, in her own right
for her

In the Circuit Court of Henrewood
County

In Chancery
To the Hon^{ble}. George Blow, Judge of
said Court.

Humbly complaining,
sheweth unto your honor, that your
Orator, William N. Camp, did, on the
1st day of January, 1888, purchase from
Sarah E. Norfleet, Administratrix with the
will annexed, of Elisha Norfleet, deceased,
certain lands situated in the County of
Henrewood, in the State of Virginia, to wit:
"First: the 'Home' tract supposed to contain
three hundred and fifteen acres, more or
less; Second: a tract known as ~~the~~ por-
tion of the Jason Lassiter ~~and~~ Culloden
tract, supposed to contain five hun-
dred and seventy-seven (577) more or less,
making an aggregate of 892 acres,
for the sum of Six thousand Six hun-
dred dollars, as will appear by a duly
authenticated copy of a deed from said
Sarah E. Norfleet Administratrix &c to
said William N. Camp, herewith filed
marked "A" and is prayed to be taken as
a part of this bill - That by a rough dia-
gram and memorandum presented to

your orator on the day of sale above stated, he was induced to believe that the lands sold contained 892 acres or very nearly that quantity. Said Memorandum and diagram being herewith filed marked "B" and is prayed to be taken as part of this bill.

That in accordance with the belief that the aggregate area was 892 acres your orator paid to the said Sarah E. Norfleet Administratrix &c. fourteen hundred dollars (\$1400.00) and executed a Deed of Trust to secure the remainder of the purchase money as will appear by a copy of said Deed herewith filed, marked "C" and is prayed to be taken as a part of this bill.

That your Orator has just ascertained from a survey made of said lands by Beverly P. Baker, the County Surveyor of Harborside County that there is a deficiency in the "Home" tract, which was supposed to contain 315 acres, of 43 acres - and a deficiency in the "Jason Lassiter" and "Cuddeledu" tracts, which were supposed to contain 577 acres, of 167 acres - making a total deficiency of 210 acres - so that your

orator has only acquired by his purchase 682 acres instead of 892 acres.

Your orator further states that on the 1st day of January, 1883, in the deed of trust appraised to Peter B. Prentiss, the trustee therein named, he promised to pay to said Sarah E. Moffett Adams the sum of fifty-two hundred ^{dollars of which twenty-two hundred} ~~dollars~~ ^{the remainder} and all of which according to the tenor of the bonds given in evidence of the credit-portion of the purchase money is now due, and while your orator has offered to adjust the matter in controversy without appealing to the aid of this court, said defendant wholly declines and positively refuses to make any abatement of the purchase money on account of the large deficiency in the acreage of the said land, and although she well knows that the contract for the said land was not one of hazard - but that the estimate of the area of the land sold to your orator was based mainly on the diagram and memorandum marked "B" and herewith filed, and which was delivered to your orator on the day of sale together with several

xx
That notwithstanding your
standing your
orator offer to
adjudicate the matter
in controversy
the said defend-
ant has ordered
the said Peter B.
Prentiss trustee
to advertise and
sell the said
land, and
inasmuch as said
instructions the
said trustee
has already
taken steps to
sell said land
and your Com-
plainant knows
that said trustee
has already pre-
pared his ad-
vertisement to sell
said land under
the deed of gift
above referred to
a copy of said
advertisement
being herewith
filed with
"X" and is hereby
be taken as a part of
this bill.

other paper. xx
Your orator is ready and
willing to pay to the said defendant
whatever is adjudged to be due but as
the deficiency of 210 acres in a tract
represented to contain 892 acres is so
very great your orator is forced to ask
the aid of this Court for relief -
Hence since your orator is remediless
in the premises, same in a Court of
equity where matters of this sort are
alone and properly cognizable and
relievable, he prays that the said Sarah
in her own right ~~and~~ ^{as} ~~the~~ ^{the} ~~said~~ ^{the} ~~defendant~~ ^{defendant} ~~may~~ ^{may}
E. Norflut, and Peter B. Prentiss trustee may
be made parties defendant to this
bill and required to answer the same
on oath and that an injunction may
be awarded by your honor to prohibit
and restrain Peter B. Prentiss trustee from
proceeding to sell said land under the
Deed of Gift aforesaid until the
matter in controversy as set forth in
this bill of Complaint are fully
heard and determined by this Court
and that such part of the sum of \$6600
agreed to be paid for 892 acres of land,
as may seem equitable and just, be
abated for and on account of the said
deficiency of 210 acres, and that whatever

sum is rightly due to said Sarah E.
Worflatt as administratrix and also as
dowry of Elisha Worflatt deceased may be
decreed to her; and that all further
and general relief as the nature of the
Case may require and to equity may
seem meet shall be given.

And your orator will ever pray &c.

Wm. H. Camp

by C. H. Henry Atty.

Rawlin Henry Jr.

State of Virginia

Household County to wit: This day William
H. Camp personally appeared before me
and made oath that the matters of fact
contained in the foregoing bill so far as his
own knowledge extends is true, and in so
far as derived from the information of
others he believes to be true.

Given under my hand this 20th
day of August, 1884.

C. H. Henry
Notary Public

On the motion of the plaintiff and
for good cause shown injunction

is awarded according to the prayer of the
bill to enjoin and restrain Peter B.
Prentiss trustee from taking any steps to
foreclose the deed of trust referred to. till
the matters in controversy be passed
upon by some competent Court of
jurisdiction and fully ^{heard and} determined.

But the Complainant in this writ
is not to have the benefit of this order
until he or some one for him shall
have executed before the Clerk of the
Circuit Court of Nausemund County
a proper injunction bond with good
security in the penalty of Two Hundred
dollars, conditioned ac-
cording to law

To the Clerk of
Circuit Court of
Nausemund County

C. W. Mundaugh
Judge of Court of
Hastings for City
Potomac

(69) Rowles & Cansey. p. 9

William M. Canby

²⁵ Bill of Inj. on

Sarah E. Norfleet, in her own
right &c. & al.

Now returned Cir: Ct.

William H. Camp

⁴/₂₅ Chy. Notes

Sarah E. Norfleet, Adm'x of Eliza Norfleet, dec'd H. L. L.
1884 Aug: 23^d Bill filed - order of Ref: awarded - Bond executed filed

" " " Sum in Chy. L. paid to Ref: Rules, 1884

" " 30th Motion of Motion to dissolve Ref: filed

" Sept: 1st: Decree in re: vs depts:

" " 8th: Answer of depts: Sarah E. Norfleet. ~~Adm'x~~ filed

" " 9th: Depositions for depts: filed

" " 12th: Vacation Decem.

" " 29th: Depositions for depts: filed -

" Octo: 14th: Final Decree - dissolving injunction

Chy: Notes

In the Supreme Court of Appeals of Virginia
Richmond
William H. Leach Appellant
Against { In Chancery
Sarah E. Norfleet ^{admx.} et al. Appellees

To the Honorable the Judges of the Supreme
Court of Appeals of Virginia

Your petitioner, William H. Leach, represents that on the 2nd day of August, 1884, he by his Attorneys, filed his bill against the said Appellees in the Circuit Court of Henric County, on the chancery side thereof, to which bill of Complaint there was filed a demurrer and answer by Sarah E. Norfleet, whereupon such proceedings were had, that a final decree in the said cause was pronounced and entered against your petitioner in the said Circuit Court of Henric County on the 14th day of October, 1884.

A Transcript of the record of the proceedings in said cause and the decree of the Court entered therein will show that the proceedings are as follows: Your petitioner represents that he is aggrieved by final decree of the said Circuit Court of Henric County in a chancery cause therein depending in which he, the said William H. Leach was Complainant and the said Sarah E. Norfleet ^{admx.} et al were defendants. Finds That in no sense

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whatever at any time either pending the negotiations for the purchase of the land in the bill and proceedings mentioned, or at the date of the Deed itself, that your petitioner contemplate a contract of "Hazard", but always, from the initiative to the conclusion, the inducement on his part to consider and conclude the purchase of said land was that the said tract of land contained Eight hundred and ninety-two acres (892), and if there was either excess or deficiency, the difference would be so small, that the well known maxim, *de minimis lex non curat* - would apply.

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Second. Since according to the rules laid down by your honourable Court in *Benson v. Humphreys et al.* - 1 Matthews 198-9, and in *Watson v. Hoy* 28 Gratt. 698. "the burden of proof is always upon the party asserting a contract of 'Hazard' and must either be shown upon the face of the instrument or by clear and cogent proof", *aliunde*, establishing beyond controversy the intent of the contracting parties - that the evidence, contained in the record in this cause, does not justify the judgment of the said Circuit Court in decreeing summary dissolution of your petitioner's order of injunction and dismissal of his bill - for the deed of conveyance purports on its face to transfer

to your petitioner two tracts of land - one - "Supposed to contain three hundred and fifteen (315) acres, more or less" - the other - "Supposed to contain five hundred and seventy-seven (577) acres, more or less" for the sum of Six thousand six hundred (6,600) dollars, and the depositions of the grantor, the grantee and the Scrivener all agree that from an old diagram of the lands in question an estimate was made on the day the deed was drawn and executed of the total acreage of the lands conveyed in the presence of all the parties, the said diagram being herewith filed, and your petitioner emphatically states that under no circumstances would he have agreed to give \$6,600. for the land in question had he supposed so great a deficiency as two hundred and ten (210) acres existed, and the evidence both of the grantee and the County Surveyor of Hampshire County, who made the survey of said lands, show that complaint of the deficiency was made to the grantor at the earliest possible moment after the ascertainment thereof. That the deposition of the Scrivener contains simply his opinion as to the contract being one of "Hazard" and nowhere does he testify that

he knew the contract to be one of "Hazard" from the express declarations of both or either of the parties, and moreover he says he never saw them together except upon the day he drew the deeds. Your petitioner therefore prays that your Honorable Court will grant him an appeal from, and a Supersedeas to, the said decree of the said Circuit Court of Hansmann County, rendered on the 14th day of October, 1884, and that the same may be reviewed, and after the hearing of the same may be reversed and annulled, and such decree entered by this Court as the said Circuit Court below should have entered.

And your petitioner will ever pray,
 William H. Camp.
 by Counsel.

I, the Undersigned, an attorney of the Court of Appeals do certify that in my opinion, the foregoing case should be reviewed and reversed.

F. S. Blair

This Report and petition
came to hand this 11th day of
December, 1884. Robt A. Richardson

Apprent allowed & supervision
awarded. Bond returns in the
sum of Ten hundred dollars
conditioned accordingly to law

13th Decmber, 1884, Robert A. Richardson

The following is a copy of the exhibit 'C' filed with the foregoing bill.

This Deed, made the 1st day of January, One thousand eight hundred and eighty-three, between William N. Camp, of the County of Nauseland and State of Virginia, of the one part, and Peter B. Reuter, Chosen as Trustee for the purposes herein named, of the other part. Witnesseth: That the said William N. Camp doth grant with general warranty unto the said Peter B. Reuter, Trustee as aforesaid, the following property, to wit: All those two (2) tracts, pieces or parcels of land, situate, lying and being in the County of Nauseland (Cypress District) in the State of Virginia, and bounded and described as follows: First: The Home tract, supposed to contain three hundred and fifteen (315) acres, more or less, and adjoining the lands of Joseph P. Hall, John F. Pinner, Robert R. Smith, Levi C. Thayer's Estate and The White Marsh road. Second: A tract known as a portion of the Jason Lapsiter and Culloden tracts, supposed to contain Five hundred and Seventy-seven (577) acres, more or less, and adjoining the lands of the said Thayer's Estate, Richard Williamson's Estate, Charles H. Hall, Caleb R. Busby, Thomas Briggs Daniel Brothers and John M. Galbraith, which lands are by Deed of ~~Gift~~ This date, conveyed by Sarah E. Norfleet, Admrx: with the Will annexed of Elisha Norfleet, deceased, to said William N. Camp: the said Sarah E. Norfleet, Admrx: as aforesaid, being the beneficiary hereinafter named, together with all and singular the appurtenances belonging to the same. In Trust, to Secure to Sarah E. Norfleet, administratrix with the will annexed of Elisha Norfleet, deceased, of the County of Nauseland in the State of Virginia the payment of the sum of Five thousand two hundred (5200) dollars, a part of

The purchase price of said land, evidenced by Three (3) bonds, aggregating that sum, of even date with this Deed, and payable to the said Sarah E. Harplest, Adm^x: as aforesaid, as follows: one bond for \$800 due 1st May, 1883: One bond for \$2200⁰⁰ due 1st August, 1883; and one bond for \$2200⁰⁰ due 1st August, 1884: all of said bonds carrying interest from date; and it is covenanted and agreed between the parties aforesaid that, in case of a sale, the same shall be made after first advertising the time, place and terms thereof, for twenty (20) days, and upon such terms as the said Trustee shall direct, and after paying the expenses of executing this trust, if then unpaid, including a Commission of five (5) per cent to the said Trustee, then to discharge the amount of money, principal and interest then due and unpaid, of the said debt, and the residue, if any, pay as the law directs. In all other respects this Deed shall be executed according to the law governing trust sales. Witness the following signatures and seals.

Witness

H. H. Rawls

Wm: N. Camp. 

Peter B. Prentiss, Trustee. 

Virginia - County of Hanover, to wit:

I, C. H. Causey, a Notary Public in and for the said County, in the State of Virginia, do certify that William N. Camp and Peter B. Prentiss, Trustee, whose names are signed to the writing above, bearing date the 1st day of January, 1883, have, severally, acknowledged the same before me, in the County aforesaid.

Given under my hand this 25th day of January, 1883.

C. H. Causey.

Notary Public.

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In the Clerk's Office of Hanover and County Court, the 25th day
of January, 1883.

This Deed of Trust was received, and with the Certificate annexed
admitted to record.

To-wit:

Peter B. Prentiss, Clerk

A Copy:

To-wit:

Peter B. Prentiss, Clerk.

The following is a Copy of the Exhibit D, filed with
the foregoing Bill.

"Auction Sale of Valuable Real Estate.

By virtue of a Deed of Trust, executed by William M. Camp,
the 1st day of January, 1883, and duly recorded, to secure the
payment to Sarah E. Norfleet, Administratrix with the Will
annexed of Elisha Norfleet, deceased, of certain debts therein
specified the undersigned, being directed by the said Creditor, will
offer for sale, by Public Auction, for Cash, on Saturday, September
13, 1884, before the Suffolk Hotel, in the Town of Suffolk,
Va. at 12 O'clock, M., The following property, to-wit:
First. The Home Tract of land, supposed to contain 315-
acres, more or less, and adjoining the lands of Joseph P. Hall,
John F. Pinner, Robert R. Smith, Levi C. Thayer's Estate, and
The White Marsh Road.

Second. A Tract of land, known as a portion of the "Jason
Lapsiter" and "Culloden Tracts", supposed to contain 577 acres,
more or less, and adjoining the lands of the said Thayer's Estate,

Richard Williamson's Estate, Charles H. Hill, Caleb R. Busby,
Thomas Briggs, Daniel ~~Brothers~~ and John ¹¹¹ Galbraith.

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This property is situated within one-half mile of the Town
of Suffolk. The improvements on which, consist of a
large two-story dwelling together with all necessary and
convenient
outbuildings; and to any one desiring to invest in Real
Estate, this sale offers a fine opportunity.

Suffolk, Va. August 21, 1884.

Peter B. Prentiss, Trustee.

And on the same day, to wit: on the 23rd day of August, in the year, 1884, came William N. Camp, by his attorney, and sued out of the Office of the said Circuit Court, a Summons against Sarah E. Norfolk, administratrix with the will annexed of Elisha Norfolk, deceased, and in her own right as Dowress of Elisha Norfolk, deceased, and Peter B. Prentiss, Trustee, which Summons, with the restraining and enjoining order ^{endorsed} thereon, together with the return thereon made, is in the words following:

Summons

The Commonwealth of Virginia,

To the Sheriff of Nansemond County, Greeting:

You are hereby commanded to Summon Sarah E. Norfolk, administratrix with the will annexed of Elisha Norfolk, deceased, and in her own right as Dowress of Elisha Norfolk, deceased, and Peter B. Prentiss, Trustee, 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 September next, to answer a Bill in Chancery, exhibited against them in the said Court by William N. Camp, and have them and there this Summons. Witness Peter B. Prentiss, Clerk of our said Court, at his Office, this 23rd day of August, 1884, in the 109th year of The Commonwealth.

Teste:

Peter B. Prentiss, Clerk

Restraining and
Enjoining order

"Memo: The Defendant, Peter B. Prentiss, Trustee, within named, is hereby enjoined and restrained, from taking any steps to foreclose the Deed of Trust referred to, in the Bill in this Cause, until the matters in controversy are passed upon and fully heard and determined by the Judge of the Circuit

Court of Nassau County.

Jesse:

Peter B. Prentiss, Clerk

Sheriff's return

" Executed, August 30th: 1884, and a Copy hereof delivered to Sarah E. Wafleek and Peter B. Prentiss, Trustees.

J. J. Cox, Deputy for
J. L. Fulgham, Sheriff.

And, at another day, to wit: At Rules held in the Clerk's Office of the said Circuit Court on the 1st: day of September, 1884: The said Summons being returned executed on the defendants, and the bill of the plaintiff having been filed, and the defendants still failing to appear and plead, answer or demur to the said bill, on the motion of the plaintiff, it is ordered, that it be entered of record, that his bill will be taken for confessed, if the said defendants shall continue in default at the then, next rules.

And, at another day, to wit: in the Clerk's Office of the said Circuit Court, on Monday, the 8th: day of September, 1884: Came the Defendant Sarah E. Wafleek, administratrix with the will annexed of Elisha Wafleek, deceased, and in her own right as the Dowress of Elisha Wafleek, deceased, by her Attorney, and filed her Demurrer and answer to the foregoing Bill, which Demurrer and Answer is in the words and figures following:

The following is a copy of the Denial and answer to the foregoing bill.

The Denial and Answer of Sarah E. Norfleet.

Administratrix with the will annexed of Elisha Norfleet deceased, and in her own right as the dowress of Elisha Norfleet decd, to a bill of Complaint exhibited against her and another in the Circuit Court of Hanson and County by William A. Camp Complainant,

Denial.

The defendant says that the bill is not sufficient in law.

Answer.

This respondent reserving to herself the benefit of all just exceptions to the said bill for answer thereto, or to so much thereof as she is advised that it is material she should answer, answers and says, that,

It is true that the complainant purchased from this respondent the lands in the bill described, But it is not true that the contract of sale was made on the 1 day of January 1883. - During the summer and Fall of 1882 the complainant came to this respondent's residence, and sought repeated interviews with respondent in his urgent efforts to purchase the said real estate. - This respondent

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at first told complainant that her price was \$8000 - cash, but after repeated conversations, deciding which respondent declined to sell by the acre, or to make any representation whatever as to the quantity of land, and after the complainant had fully examined the land and ascertained from the best available sources the undisputed boundary lines of the said land, it was finally agreed some time in the month of November or thereabouts, that there should be a sale of the said land, in gross, and not by the acre, for the sum of \$6600 in cash, possession to be given on the 1 day of January 1883. - Between the time of the contract of sale and the 25 day of January 1883, the complainant paid at one time \$50. - and at another \$350 - after the contract of sale, at the request and demand of the complainant, respondent was forced to modify the terms of sale and allow the complainant to pay one third of the purchase money in cash, and the other two thirds in equal instalments on the 1 day of August 1883 and the 1 day of August 1884. respectively - and again the complainant failed to comply with his contract and on the 25 day of January 1883. fell short \$800. - on the cash payment as agreed upon, and asked and received a still further indulgence for the said \$800. - until the 1 day of May 1883. - and again the complainant made default in the payment of the said \$300 - and

did not finish making the agreed cash payment until the 13 day of July 1884. - And again the complainant made default in the payment of the bond for the second instalment of purchase money due on the 1 day of August 1883. - He paid nothing upon this bond until the 1 day of October 1883, when he paid through a third party \$208²⁷. - He has paid altogether on this bond \$1388⁵⁷, leaving a balance of \$811⁴² of principal still due on this bond, with an accrual of nearly two years interest. -

And again the complainant has made default in the payment of the last bond for 2200[±] due on the 1 day of August 1884. - Upon this bond he has paid nothing. - In the interval, the complainant has made respondent many promises at various times to pay certain amounts on account of his said indebtedness, which promises he has consistently and persistently recolated. - In the meantime the complainant who is largely engaged in the saw mill business has greatly depreciated the value of the land by cutting a large quantity of valuable timber therefrom the proceeds of which, if applied to respondent's debt would have nearly if not quite liquidated the same, as this respondent is informed and believes. -

That it is not true, on the contrary it is utterly

contract, that the rough diagram marked Exhibit
 "B" with the Complainant's bill was presented
 to the Complainant on the day of sale, nor was
 he thereby induced to believe that the land sold
 contained 892 acres or very nearly that quantity, -
 This respondent alleges that the said rough dia-
 gram was never shown to the complainant
 until after the bargain had been fully made
 and the price agreed upon. - The said rough
 diagram was made over nine years ago,
 by a gentleman who was not a surveyor, and
 the part of the Colodan tract sold to the complainant
 is nowhere marked off on the said rough diagram. -
 After the contract of hazard had been agreed
 upon, this respondent in response to the request
 of the complainant handed him the said
 rough diagram, together with perhaps some
 other papers, so as to assist the complainant
 in locating the land which he had already
 agreed to buy in gross, without reference to
 area. - This respondent at various times during
 their negotiations refused to sell the land by the acre,
 and told him that she did not know either the
 boundary lines or the area of the land in question,
 that there had been some disputes with reference
 to the boundary lines, and especially with reference
 to the lines between the lands of Robert N. Smith Esq

and Daniel Brothers Esq. - After an examination in company with disinterested persons, who claimed to know the boundary lines, the complainant expressed himself satisfied, ^{said} that he was willing to take all risks, and agreed to buy in the only way this respondent proposed to sell, viz: in gross and not by the acre.

This respondent was thus particular because she had no definite information either as to the area or boundary lines of the said land, and so repeatedly informed the complainant. -

That it is not true that the complainant has just ascertained the result of the survey made by the County Surveyor, on the contrary shore of the said survey of the Jason Lapsiter and Culloden tract was made about the 1st day of November 1882, and the complainant has known such result ever since that time.

This respondent further answering denies that since the execution of the deed of trust dated 1 January 1883, the complainant has paid her \$2200. Although the complainant is perhaps more nearly accurate in this than in any other allegation in his said bill contained. - He has in fact paid in various sums at different times \$2188⁵¹ of an indebtedness of \$5200. principal.

This respondent answering further alleges that the offer of compromise alluded to in the

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Complainant's bill was in the nature of a threat that, unless she would extend the time for the payment of the last bond for twelve months longer and receive \$400 ± in full satisfaction of the bond overdue for more than twelve months (in which there is now due \$811⁴⁹ of principal) that he would sue out an injunction, by means of which she would become involved in a tedious and expensive litigation.

This respondent avers that she never heard any complaint whatever with reference to any alleged deficiency in the land sold until about two or three weeks ago, when she notified the complainant that she needed her money and would be forced to foreclose the deed of trust unless he paid the balance due. -

This respondent again denies the repeated allegation of the bill that the estimate of the acreage was based mainly, or in any wise on the diagram marked "B" filed with the bill, and again denies that it was delivious to the complainant on the day of sale, and again avers that the said contract was clearly and distinctly a contract of hazard. - And that it was a contract of hazard in which the complainant had every advantage, because his examinations of the land sold had made ^{him} more familiar with their character and boundaries than was this

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respondent. =

This respondent therefore prays that the injunction heretofore awarded in this cause may be at once dissolved, and that the trustee may be permitted to advertise and sell the said land for the satisfaction of respondent's debt in accordance with the provisions of the said deed of trust. -

And this respondent denies all fraud, unlawful combination and confederacy, and having fully answered the complainant's bill she prays to be hence dismissed with her reasonable costs by her in this behalf most urgently expended, and she will ever pray &c.

T. E. Norfleet

Robt R. Prentiss p. d.

2 Sept 1884.

State of Virginia
County of Hanover, to wit:

This day Sarah E. Norfleet made oath before me that the statements made in the foregoing answer so far as made of her own knowledge are true, and so far as made from information derived from others she believes them to be true.

Given under my hand this 9th day of September 1884

Robt R. Prentiss

Comm'r in Chancery

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And, at another day to wit in the Clerk's Office of the said Circuit Court, on the 7th day of September, 1884.

Came the defendant, Sarah E. Norfleet, administering with the Will annexed of Elisha Norfleet, deceased, and Dower of Elisha Norfleet, deceased, by Counsel, and filed Depositions, which, with the Notice and return thereon, is in the words, following

Notice to take
Depositions

To A. William H. Camp, Esqr.

You are hereby notified, that on Tuesday, the 9th day of September, 1884, at the Law Office of Robert R. Prentiss, in Suffolk, Virginia, between the hours of 9 O'clock A.M. and 6 O'clock P.M. of that day, I shall proceed to take the depositions of Sarah E. Norfleet and others, to be read as evidence in my behalf, in a certain suit in Equity, depending in the Circuit Court of Hanover County, wherein I and another are defendants, and you are Plaintiff; and if, from any cause the taking of the said depositions be not commenced, or if commenced be not ^{concluded} ~~completed~~ on that day, the taking thereof will be adjourned from time to time, at the same place and between the same hours, until the same shall be completed.

Sarah E. Norfleet, Adm'r. with the
Will annexed of Elisha Norfleet dec'd
and Dower of Elisha Norfleet dec'd
by Counsel

29 August, 1884.

Robt. R. Prentiss, p.d.

Sherriff's Return
on Notice

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"Executed by delivering a true copy of the within notice
to William W. Camp, this 30 day of August, 1884

J. J. Cox, Deputy for
J. L. Fulgham, Sheriff.

The Depositions of Sarah E. Norfleet and others, taken before
the undersigned, John B. Pinner, a Notary Public for Nansemond
County; pursuant to the annexed notice, on the 7th day of
September, 1884, to be read as evidence in the behalf of
the defendant, in the Chancery Cause of Wm. W. Camp vs
Sarah E. Norfleet, Administratrix with the will annexed
of Elisha Norfleet, deceased, and Dower of Elisha Norfleet,
deceased, and Peter B. Prentiss, Trustee, now depending in the
Circuit Court of Nansemond County.

Present.

R. R. Prentiss, Esq. Counsel for defendant

C. H. Causey .. Counsel for plaintiff

Witness Sarah E. Norfleet, being first duly sworn, in
answer to questions deposeseth as follows:

1. State your age, residence, and do you know the parties to this suit?

Ans: - 50 years - Suffolk, Va. Yes. I know the plaintiff
and am the defendant.

2. State what was the contract between yourself & Wm. W.
Camp, when you sold him the land in the bill described with
all the attendant circumstances?

Ans: I sold all the remainder of the lands of Elisha
Norfleet's Estate, except twenty-six acres. I sold him, as it
was, gross, and not by the acre, for the sum of Six thousand

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six hundred Dollars (\$600) Cash, but it was not paid Cash. I told him all the time, that I asked Eight thousand Dollars (\$8000) for the farm, but he was not willing to give it, and I fell to Seven thousand, and he said, he would give me, six, but I told him I would not take that, and then he offered me Six thousand six hundred. I agreed to let him have it. I thought, in the mean while, I was selling it to W. H. Gay Co. until he purchased it, and then, he told me, it was he, alone. I expected him to pay me one third Cash, I wanted, all Cash, but he said he would pay me one third, cash, and the balance, in one and two years. In the mean time, I told him, I knew nothing about the lines, I could not identify them, I did not know how much land there was, it was only estimated, at so much. And I told him there had been disputes about the lines, not, while Mr. Brothers owned the adjoining land, but when Mr. Hazlett owned it, I had had some little dispute, about the line, and the piece next to Mr. Roth Smith, he & I had had a little spat about it: but, to use Mr. Camp's words, he said, he would fight them out about it. Mr. Camp knew more than I did about the lines: he and Mr. Gay, had been over it several times, and seemed to be satisfied about it, and, moreover, the day when I gave him the Deed, I told him, I wanted to have no more drawback, no more trouble about it: that I sold him all the land, and he rightly understood it.

3. When was the bargain made?

Ans: It was sold, Fall, 1882, in Oct or November, I don't know, which: I could swear to the exact month

Exception.

25 To question & answer, on the ground, that the Deed, Copy & record, is best evidence of Contract.

4. When was possession to be given, & when was the Deed to pass?

Query 4. Excepted to, on the ground, in absence of any written contract, Deed is best evidence.

Ans: It was to be given the 1st of Jan: or if I preferred to stay, I could do so until March, he did not care. When I sold the land, I expected the Deed to pass at once, but he did not comply with the contract, and the Deed was not passed until January. He paid me fifty dollars, when I sold the farm, but the Deed was not passed until January.

5. What time, in January, if you recollect?

Ans: I don't remember, I know the notes were given back from 1st January, the 25th: I believe, along the latter part of January, but I don't recollect.

6. At what time, if you recollect, was the paper, marked B, with the Complainant's Bill, handed to the Complainant, before or after the bargain?

Ans: It was handed to him, when he went to survey it.

7. Did he go to survey it, before or after the bargain was made?

Ans: It was after the bargain, but before the Deed was passed.

8. Did the Complainant make any complaint as to the quantity of the land, at the time the Deed was passed?

Ans: No Sir.

9. When did he ^{first} make such Complaint?

Ans: It has been but a short time ago: just before

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he ordered the Bill of Injunction

10. Did you make any representation, as to the quantity of land sold?

Ans: I told him it was supposed to contain, so much, each tract, but I did not know it: it had not been surveyed, since the war.

11. Did he ever offer to buy it, by the acre?

Question 11. Excepted to, generally - ground of exception called for by Defendants Counsel -

Ans: He asked me, what I would take for it by the acre?

12. What was your reply?

Ans: I would not sell it by the acre.

13. Why would you not sell it by the acre?

Ans: Because, I wanted so much for the place, and did not want to have it surveyed or have any trouble with it: did not want to go to that expense, because I did not know the lines.

14. Did you tell Mr. Camp your reason for not selling by the acre; & if so, what was his reply?

Ans: I don't think he asked me my reason, but he said he was willing to run the risk to find the lines.

15. Who drew the Deed?

Ans: Mr. Peter Peattie

16. Did you intend by executing that Deed to convey the land as you have stated your bargain was in gross & not by the acre or not?

Ans: I intended it to be in gross.

17. Why were you thus particular?

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Ans: Because there had been trouble about a piece of land, that was sold in Mr. Harflect's life time.

18. Did you tell Mr. Camp of this trouble?

Ans: I don't remember whether I told him that day, the day the Deed was written, but I had told him about it. I told Mr. Peeters. I did not want any draw back to the Deed when it was written.

19. Did you tell Mr. Camp the history of the rough diagram, marked B?

Ans: I told him it was a plat that William Riddick drew up in his life time, just to show the lands of Mr. Harflect's Estate. It was no surveyor's plat.

20. Is the part of the Calloden tract sold by you to Mr. Camp, marked out in the said diagram?

Ans: No Sir. The part of the Calloden land I sold him, was a part of the Thayer land, but I did not know where the line was.

21. Has any timber been cut from the land, since Mr. Camp has had possession of it? if so, how much, if you know?

Excepted to on the ground of immateriality -

Ans: I don't know how much, he has been cutting all twelve months. I was told he had cut two million feet of plank. He told me he had sold enough off of it to pay for it.

Excepted to - immaterial.

22. How much money has been paid on the bond due 1st. Aug. 1883?

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Ans: Oct 1st '83. Received Two hundred & Eight dollars
& Seven Cents — Decs 8th: '83

received Two hundred & eighty dollars & forty four cents.

Dec. 21st '83 Received Three hundred dollars.

June 30th: '84. Received Six hundred dollars.

23. State the offer of compromise alluded to in
the Complainant's Bill?

Ans: Mr. John Wright came to me & said, that
Mr. Causey had told him, that Mr. Camp said, if I would
take Four hundred dollars, and give him the note that
was due in '83, and give him twelve months more to pay
the other note, he would not bring the bill of injunction,
but if I would not do it. compromise that way, he
would get out a bill of injunction.

Excepted to — Hearsay evidence —

Cross-examined by Counsel for Pltff.

1. In your first conversation with Mr. Camp, in
relation to the sale of the land in question, how many acres
did you estimate there were, in the Home Tract, and also
in the other tract?

— Excepted to, on the ground, that the witness has testified,
in effect, that she never made any estimation of the area of
the land sold —

Ans: I don't remember, what the Deed calls for is what
we supposed it contained, but I did not know it. but I
did not sell it by the acre, when it was sold.

2. Did you not tell Mr. Camp, at one time, that

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you thought there were over 900 acres in the two tracts?
Ans: I don't remember it. I always told him, I did not know the number of acres.

3. Was there any other writing in regard to the land in question, prior to the Deed, dated January 1st. 1883?

Ans: I don't remember. I gave him a receipt for fifty dollars: there might have been, but I don't remember, because, when I sold Mr. Camp the land, I never expected to have any trouble about the matter.

4. When did you first show Mr. Camp, the paper marked B.?

Ans: I would not swear that I showed it to him before he went to make the survey - I might have done so, but I don't remember.

5. Was not an estimate made of the number of acres from the paper marked B, at or before the time the Deed was executed?

Ans: I don't remember it.

6. Did not Mr. Camp ask you how many acres there were in the two tracts you sold him, & did you not tell him that you were certain, the Home tract contained 315 acres?

Ans: No. I did not tell him any such thing. I told him it was supposed to contain so many acres. I handed him a plat, but if he surveyed it, he does not know whether he has the right lines or not. I could not identify it.

7. Do you know whether or not the survey was completed before the Deed was made?

Ans: I do not. I had nothing to do with the survey.

8. Did you not, on the day the Deed was drawn, estimate the Homestead to contain 315 acres, & the Jasen Lapsiter tract to contain 577 acres?

Ans: No. The home tract was estimated to contain 315 acres and the Jasen Lapsiter land & Callodem tract to contain the remainder, whatever it was: but there was not 500 acres in the Jasen Lapsiter tract, first.

9. Did you not estimate all the land sold in the Deed of January 1st. 1883. at 892 acres?

Ans: It was supposed to contain all there was in the Deed, all that the Deed called for but it was not sold by the acre, it was sold in gross.

Re-examined by Counsel for deft.

1. How did you happen to hand Mr. Camp, the paper marked B: what led you to think of that paper?

Ans: It was with some old plats I gave him: I suppose, it was to show him better, how the land was situated.

2. Was that when he wanted to make a survey?

Ans: I think it was.

3. Had he not then, bargained to buy the land?

Ans: ~~Yes~~ ~~Yes~~ He had bargained, yes sir, when I gave him the old plats.

Cross-Examined

* 1. Did not Mr. Camp make an estimate, in your presence of the Total number of acres, from the paper marked B, and was not he, as well as yourself induced to suppose, from that paper, that there were

892 acres of land?

Ans: He might have done so. I dont remember it
and further this deponent saith not
S. E. Norfleet.

The Witness, Peter B. Prentiss, being duly sworn,
in answer to questions, deposeseth, as follows:

1. State your age, residence and occupation, and do
you know the parties to this suit?

Ans: 64 years. Suffolk, Va. - Clerk Hanesman
County Courts, am one of the defendants.

2. Did you draw the Deeds alluded to in the
Complainant's Bill, if so, state the circumstances, as
near as you recollect them?

Ans: I drew, both the Deed of Bargain & Sale, & the Deed
of Trust, referred to, in the presence of all the parties
interested - Mrs. Norfleet & Mr. Camp being the parties
interested: I was requested by the grantor, in the Deed of
Bargain & Sale, to write a Deed conveying all the lands
belonging to the Estate of Elisha Norfleet, deceased, and
which were located on the West side of White Marsh
road, in Hanesman County, Virginia: learning from both parties
that all the real estate, remaining unsold, at that time,
belonging to said estate, except the small piece of land, of
some twenty or thirty acres, known as the Norfleet's Fork
place, was to be conveyed by said Deed: The quantity of
land to be conveyed thereby, being supposed to contain what

the deed calls for - from what occurred in my presence, the day the deed was written & executed, I supposed it was a contract of hazard between the buyer or seller.

3. Did you intend, by the language used in the Deed of Bargain & Sale, to convey that idea, or not?

Ans: I did - unquestionably.

4. Is it your habit, in drawing a Deed of Conveyance of land in the usual way, to say: that the land is supposed to contain so many acres, more or less?

Ans: No.

5. What is the language, usually used?

Ans: "Estimated to contain" or "Containing, by estimation", unless specially requested, to use the term, by the seller, "in gross, and not by the acre". But, in this case, I am fully persuaded, that, if the term or words "in gross and not by the acre" had been employed in the deed, no objection would have been made by the grantee.

6. Then, why, in this conveyance did you use the language "Supposed to contain"? What was your reason?

Ans: Because the grantor, as I then believed, really, had no distinct idea of the absolute quantity or number of acres of land that she was selling; her information, as far as I could determine, having been obtained from her neighbors and friends, as to the quantity of unsold land belonging to her husband's estate.

7. Did this appear to you from the conversation which took place between you and parties, on that day?

Ans: It did.

8. Then, did you or not, intend, that these deeds should be the evidence of a contract of hazard of a sale in gross &

not by the acre?

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Ans: I certainly did look upon it, as a Contract of hazard.

Q. When were these Deeds drawn, if you recollect?

Ans: I think, the Deeds were both written, after the 1st. Jan: '83. tho' the Contract related to the 1st of January, '83.

Cross-examined by Counsel for Pltff:

1. What took place between the parties, on the day of Sale, that induced you to believe, that they, & especially, the grantee, intended a Contract of hazard?

Ans: The Sale took place, previously, to the date of the Deeds, because, I thought, that the grantee ~~thought~~ knew more about what he was buying than the grantor did, about what she was selling.

2. What induced you to think so?

Ans: Because, at the time, he was perfectly satisfied with his bargain, as I supposed, nothing being said or intimated to the contrary, and, I further knew, that the grantee would be pleased to have such a piece of property, which was so contiguous to his saw mill & proposed Rail road ventural, & that I had no doubt, as I said before, that he knew more about Mrs. Nafleet's lands, then on the market, than she did.

3. How many interviews did the parties have with you, in regard to this Sale?

Ans: One interview was had with Mrs. Nafleet, about selling her property: this occurred three or four months before I knew Mr. Camp had bought it. Previous to Mr. Camp's purchase, too, Mr. Camp & I had several casual conversations about this property, relating to title &c but without any intimation on his part, that

he had bought or expected to buy it. It has been Mr. Camp's practice, as a prudent gentleman, to ask me, as Clerk of the Court, in relation, generally, to the title to property, which he and his partner, Wm. H. Gay, Esq. thought of buying - I always looked upon Mr. Camp as being cautious before his negotiations for the purchase of land.

4. How often did you see these parties together in relation to this transaction?

Ans; Only once; and that was on the day when the Deeds were executed & delivered.

5. Did you, on that occasion, have before you, the paper marked, B, filed with the papers in this cause?

Ans: Yes, here ^{are} ~~is~~ some of my figures on it.

6. Please state if you can, what took place in connection with said paper, and for what purpose your figures were made on it?

Ans: I ~~cannot~~ ^{state,} ~~can~~ ^{not} give so many words, what took place, but the figures were made (that is, those that I made) to arrive at, what we supposed to be the unsold quantity of the Norfleet land; My idea was, at what then occurred, that they were made to approximate the supposed quantity to be conveyed.

7. Do you not believe, that both parties thought, that the land in question contained the number of acres named in the Deed?

Ans: I believe, they did, on Mrs. Norfleet's part, from representations made to her by others, & on Mr. Camp's part, that he was familiar with what he was buying.

8. What reason did you have to believe that Mr.

Camp knew what he was buying, & that the tract contained 892 acres?

Ans: Because, Mr. Camp was too prudent a man to buy "a pig in the bag," and from his occupation, as a land buyer, upon which there was a quantity of timber trees, suitable for manufacture, he would not have purchased the property, unless he knew its value, not meaning to say, however, that he knew the number of acres he was purchasing.

9. You have stated, in answer to one of the questions in Chief, that Camp appeared well satisfied with his bargain: do you believe that he would have appeared so well satisfied had he then known, that, instead of 892 acres, he was only getting 682?

Ans: Yes. because, I firmly believe that he knew there was timber enough on it to save himself in any shrinkage in acreage.

10. Please state your reason for this conclusion?

Ans: Because, I believe, as a prudent man, as I have before said, he had gone over the land, and was so well satisfied with his "prospecting," he would not lose any thing by the purchase: Mr. Camp, having been engaged in Saw-Milling operations for quite a number of years, & knew what he was about.

11. Did Mr. Camp ever tell you or any one else, in your presence that he would be perfectly willing to pay \$11,000 for this land, even tho' it should fall short two hundred & ten acres, from the original estimate?

Ans: He did not.

12. Did he ever tell you that he had made so thorough an

examination of this land, as to be able to estimate accurately, its superficial contents, and the quantity of lumber that might be obtained therefrom?

Ans: He did not, because he was too prudent a man to let every body know his business.

13. You have frequently referred to Mr. Camp's prudence & caution: from what source is that knowledge derived, or is it, simply, an opinion of your own?

Ans: I see Mr. Camp, nearly every day, and have casual interviews, along the street, riding & walking, & from my general knowledge of him, as an enterprising man, I take him to be the gentleman I have described, as being a patient and prudent operator, in matters of business connected with his milling operations & rail road venture, with his partners, Mr. Gay, both of whom are cautious, considerate and enterprising gentlemen.

14. Do you think he would have displayed his usual prudence & caution, if he had been equally willing to purchase the lands in question, when the deficiency was so great, & especially, when the Wood land, which, in his estimation, as a saw mill man was the more valuable, only contained 410 instead of 577 acres?

Ans: My idea is, that the many improvements, on the premises, consisting of a large frame dwelling and other convenient out-buildings, entered, largely, into his calculations in the purchase of this property, independently, of the timber trees thereon. As I before said, this dwelling & other houses were contiguous to his operations, & he could afford to be satisfied with

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his purchase.

15. Was this idea derived from any thing said to you by Mr. Camp, in relation to advantages, or simply a conclusion of your own?

Ans: I judge, that the business in which Mr. Camp & his partner were engaged, certainly, justified him, in the purchase of a large body of land, and its contiguity, to his almost daily pursuit.

16. Is it not a fact, that, as far as contiguity of residence to his business is concerned, that, at the time this purchase was made, he could have occupied a residence, immediately adjacent to his saw mill or the saw mill of W. H. Gay Jr.?

Ans: Yes. And it is also a fact, that I believe he had more business from than at his mill, and that he had a little while before that purchase, bought a large quantity of timber trees, about one mile from his Hopedale residence.

17. Please state what was the nature of his business which took him so much away from his mill?

Ans: He was looking for timbered lands. While I saw Mr. Camp, once, on foot, I saw him, at least, ten times in his buggy.

18. Where was he going, when you saw him so frequently in his buggy, and state if you know, how many days were occupied by Camp, in the ^{last} ~~last~~ two years, looking for timbered lands?

Ans: I cannot say, precisely, but for the contracts for the purchase of timber which have been and are now of record and on file in my office, I should judge he was

pretty well "on the pad", either, for himself or W. H. Gay & Co.

19. Do you know, that W. H. Camp, in his own person made the purchases of timber or timbered lands referred to by you in the above answer or that some other member of the Company made them?

Ans: I don't know either of it. He is looked upon as the traveller and operator, generally, of the firm of W. H. Gay & Co. which firm consists of W. H. Gay & W. H. Camp.

20. Is it not a fact that in the purchases of timber during the year '83, that R. F. Dennis was largely interested with W. H. Gay & Co. in the purchase of the most valuable timbered lands in Hanssawand County, made by them, in that year?

Ans: I suppose so, and that Camp, generally, knew what Mr. Dennis was doing in that regard. I do not recollect of ever seeing Mr. Dennis except he were, either, in the Company of Mr. Camp or Mr. Gay.

21. How often would you see Camp, during the week, on an average?

X Ans: Daily - Sunday, not excepted, unless he is on a visit, out of the State, on business.

22. Did Mrs. Harpleat ever tell Mr. Camp, in your presence, on the day the deeds referred to in these depositions, were drawn, that she was selling the land in grofs, and did he say to her, that he was buying this land in grofs, in short, that he was willing to pay \$1000, for the land without regard to its acreage?

X Ans: I don't think any such conversation occurred.

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X with all due politeness & courtesy to Mrs. Hapflet, I don't think she ever heard of the words "in gross" or if she has heard them, she knew the meaning of the words "in gross", at that time. I am confident, no such language was used on that occasion: but I feel sure, that if the words "in gross" were incorporated in the deed, no objection would have been urged by Mr. Camp, then.

23. Please state your reasons for reaching that conclusion?

Ans: Because Mr. Camp was willing to buy, and Mrs. Hapflet, to sell, for the consideration mentioned in the deed. I presume, all the preliminaries in regard to the sale were entered into & agreed upon by them, as to price &c, before they engaged me to write the deed.

24. Was this done in your presence?

X Ans: No, because they were done before they came to me, as I have just said.

25. Was not the inducement to this contract on the part of Mr. Camp, so far as you know, and as to what took place in your presence, on the day the deeds were drawn, the belief that the tracts of land contained 892 acres?

X Ans: I suppose that Mr. Camp thought he was buying the quantity named in the deed, and that Mrs. Hapflet thought she was selling the same. Neither party intending to deceive the other.

Re Examined

1. As the draftsman of the deeds, were you or not led to believe by one or both parties, on the day the

Deeds were drawn, in the presence of both parties, that the Contract was a Contract of Hazard - that the sale was a sale in gross, and not by the acre?

— Excepted to as leading. For the further reason, that a similar question has been asked the witness before - Answer. Yes, as I have stated before.

2. And was this your reason for using the language "Supposed to Contain" in the Deeds?

Ans: It was.

Re Cross-Examined

1. What is the difference between the phrases, "Supposed to Contain", and the one you say, you usually use, to wit: "Estimated to Contain" or "Containing by estimation".

— Excepted to, because it asks of the witness, a legal opinion -

Answer - My idea is, that "Supposed to Contain" carries with it a less degree of certainty than "Containing by estimation" or "estimated to contain", does.

Further this deponent, saith not.

Peter B. Reuter.

The Witnesses on behalf of the Plaintiff, W.H. Gay, being duly sworn in answer to questions, deposes as follows:

1. State your age, residence, occupation, & do you know the parties to this suit?

Ans: about 33 years - Suffolk - Manufacturer. I do.

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2. Did you ever have any conversation with Mr. Camp, in regard to the land purchased by him, from Mrs. Sarah E. Hapleat?

- Excepted to, as irrelevant -

Ans: Yes, sir. We talked about buying the land and a certain number of acres was in the land. I don't recollect the exact number, at this time. I would recollect if I were to hear it called, and we went over the timbered land, and I said, I supposed there were so many thousand of feet of lumber: about five or six hundred thousand, probably, in the tract, and Mr. Camp said that if there were as many acres as Mrs. Hapleat said there were, he thought we could cut a million feet of lumber: but, in the thick woods, it is hard to tell.

~ Corps Examined ~

1. Are you Mr. Camp's partner?

Ans: Yes, Sir.

2. Are you any connection?

Ans: Yes, Sir, he is my son-in-law.

3. Did you have any interest in the timber?

Ans: No, I had no interest in it.

4. Did your Mill saw it?

Ans: It did, Sir.

5. How were you paid for sawing it?

Ans: I bought the timber, at so much a thousand.

6. When was the survey made?

Ans: It was made, I could not recollect when, but I saw

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him when he made it

— Excepted to — not best evidence obtainable —
7. Was it this year.

Ans. It was not made this year

8. What season of the year was it made?

Ans. I can't tell you that, to save my life.

9. Was it last year?

Ans. I could not even tell you

10. When did you first hear that the land fell
short.

Ans. I have heard it some time, but I can't tell
exactly when.

11. Has it been more than a month?

Ans. I should think it had

Further, this deponent saith not.

W. H. Gay

The Witnesses, W. H. Camp being duly sworn, in
answer to questions, depose as follows:

1. State your age, residence, occupation, & do you know
the parties to this suit?

Ans. 36 years — Hancock County — Manufacturer —
I do. I am the plaintiff

2. Please state what took place between Mrs.
Wright & yourself, in regard to the purchase of
the land, in this cause, mentioned?

Ans. Some time in October, I heard through Mr. J.
H. Wright, that Mrs. Wright wanted to sell her place.

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I went out there soon afterwards, to see her about it, and asked her how much she asked for it. She told me she had been asking \$8000, but would take \$7200, and while I was there, that day, she produced some old deeds and plats of the land she proposed to sell: one of the plats, which I lost but intended to be a surveyor's plat of the Home place, and it showed there were 325 acres in that place, with ten acres known as the Fair Grounds, marked off which left 315 acres. (the witnesses here asked to see the paper marked B, in which he said were some figures, marked by himself) on that day Mrs. Hapflect and myself laid this plat on the table & referred to it to get the number of acres she was selling me and we figured it up together to make 915 acres. She afterwards told me she had sold to Mr. Hill, a small piece, I don't recollect the number of acres: we deducted that, which left the amount she gave me a deed for. She told me that day she was sure there was more land than what these ^{deeds} ~~lands~~ represented: I told her, that I thought that was too much for the land, but I would look it over and let her hear from me. Soon afterwards, Mr. Gay & I went out there to look at the land and timber. After looking around there, some, we stopped in the woods. I asked Mr. Gay how much he thought there was there: he said there might be five or six hundred thousand feet I said to him, if the number of acres is here that Mrs. Hapflect says there is, it will cut so much, per acre

= and make so many hundred thousand feet. I then asked
 Mr. Gay, if he wanted any interests in the land. He said, he
 did not, that it was not worth the money that Mrs.
 Hapflect was asking for it. I asked him, then, if I could
 buy the land, at a certain price below Mrs. Hapflect's
 price, if he would want any interest in it. He said
 No, we had better buy the timber, if we could. I then
 saw Mrs. Hapflect at two or three different times,
 afterwards, & she finally agreed to accept \$6000. At
 every interview I had with Mrs. Hapflect, she would
 always mention the number of acres she was selling, and
 seemed to be positive, from the way she was speaking of it &
 from the plots of the land she exhibited about the number
 of acres she was selling, especially, the Home place.
 Soon after I made the bargain with her, I made a payment
 on it, took an obligation bond from her, stating number of
 acres & terms on which it was sold. Some time, in
 January, '83 I went to Mrs. Hapflect's house, as well as I
 can recollect & carried her to the Clerk's Office, and the deed
 was prepared by Mr. Prentiss. the same papers Mrs. Hapflect
~~she~~ showed me when we first bargained for the land were
 produced and the number of acres that was given in the deed
 was gotten from the plots, by all three, Mrs. Hapflect, Mr.
 Prentiss & myself. Mrs. Hapflect was questioned as to the
 number of acres on the plot, and as to how much had been
 sold. The amount arrived at, was by the information she
 gave us. In buying timber or timbered lands, we make our
 estimates of the quantity of timber by the number of acres in

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the tract of land, and my belief is, nobody can tell how much timber in a given piece of land, ^{and} the estimate can only be made, by knowing the number of acres.

3. Was not the inducement on your part to purchase this land from Mrs. Hopley at the price of \$6600, based on the information received from her, that the whole tract contained 892 acres, and had you known at the time there were only 682 acres, would you have made the purchase at that price?

Ans: It was, & I would not: I thought I was buying the land for a little over \$7 per acre: It was all I thought it was worth.

4. Did Mrs. Hopley tell you, when she made the deed, that she was selling this land or for a lump, in price?

Ans: She did not: She always represented to me she was selling a certain number of acres of land.

5. When did you first discover this deficiency?

Ans: When I got a report from Mr. Baker.

(Witness was here shown a paper signed by Ben: P. Baker, County Surveyor, and asked if it was the report referred to)

Q. Is this the report (the one shown to witness as stated above) referred to?

Ans: This is one of them: I had one sometime previous to this, but I don't know now, where it is, but this report covers both tracts.

(The report is herewith filed & asked to be made a part of these depositions & is marked X)

— Paper marked X excepted to as testimony in this cause because secondary evidence —

Witness here shown what purports to be an official survey and plot of what is known as the horse track and asked if the same was made and sent to him by the Nassau and County Surveyor.

7. Is the plot shown what was sent to you by the County Surveyor?

Ans: Yes, it is and is what is referred to in the paper marked X

(It is here requested, that the aforesaid plot be filed among the papers in this Cause and marked Y.)

8. What did you do, when you found out Officially, that this deficiency existed?

Ans: I went to Mrs. Norfleet & told her the land had fallen short, & that there must be some mistake, as to the lines & asked her, if she knew of any one, who could give us any information to establish the lines, she told me, she could not, unless Mr. Frank Rawls could. I had some little talk further, but she did not seem disposed to do any thing further to get the lines established.

9. What did she do?

Ans: She instructed Mr. Prentiss, a Trustee, to advertise and sell the property, at once.

Crops Examined

1. When did you first notify Mrs. Norfleet of the deficiency?

Ans: Soon after I got this statement from the Surveyor.

2. (Which statement: the first or second?)

Ans: The statement dated August 14, 1884.

3. When was the Survey of the Gas on Lapsater & Colloeden tracts made?

Ans: I don't remember.

4. When did you learn the result?

Ans: I don't remember that.

5. Was it in 1883 or 1884?

Ans: I think it was 1883.

6. Are you sure it was not in 1882?

Ans: I think I am.

7. Would you be willing to swear it was not in 1882?

Ans: I answered it just now.

8. Question repeated?

Ans: I don't propose to answer one question a dozen times - Once ought to be sufficient - twice certainly ought to be -

9. Question repeated?

I don't think it was in 1882. I haven't any of the papers before me.

10. Did not the Surveyor furnish you with a Map of the Woodland, soon after the Survey?

Ans: I think he did.

11. Did it show a deficiency of 167 acres?

Ans: I don't recollect now. It showed whatever the Statement of 14 August, 1884 shows. I suppose.

12. Where is that Map?

Ans: I do not know where it is - My Office has been cleaned out and it may be with old papers.

13. Why did you not notify Mrs. Harpell of the

deficiency in the woodland, at the time of this report?

Ans: I was waiting to get a full survey of both tracts.

14. So you never mentioned it, until after the 14. August, 1884?

Ans: Not until after I got a full statement of both tracts - that is, after 14 August, 1884.

15. Was it until after she notified you, that, unless you paid the balance, she would order a sale?

Ans: Yes. It was after that, because she notified me about the 1 August, and I received the report about the 14 August.

16. Did you not examine the lands, and had not the surveyor surveyed the woodland before the deed was executed?

Ans: Not to my knowledge, not that I remember, not before I bought it.

17. Would you be willing to swear, that the surveyor had not reported the result of the survey to you of the woodland, before the deed was passed?

Ans: If I could find the old plat, I could tell you - I can't remember - He started the survey on the Home place, in the Fall of 1882: My intention being to have plats made and incorporate them in the deed, but he never got through with the Home ~~place~~ - And never completed the survey until a little while ago.

18. Did he commence the woodland at that time?

Ans: Not at that time - I don't think he did.

19. How long afterwards?

Ans: I don't know as I have no notes of the time.

20. Could you not say, whether it was, one month or two

months afterwards?

Ans: I could not.

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21. Could you not say that he stopped surveying the Home Place, and immediately commenced on the wood land?

Ans: No. I was not with him, kept no notes, and don't recollect how it was.

22. Did not Mrs: Napflet tell you, that some of the lines were disputed?

Ans: She spoke of a disputed line between her and Daniel Brothers.

23. Did she tell you of her difficulty about land sold by her husband, in his life time?

Ans: I don't remember it.

24. Are you sure now, that the Surveyor ran the lines correctly?

Ans: I am not - that is why I asked Mrs: Napflet to help me - I thought it was her duty. I think she obligated to do it in the deed - I am not positive. It is customary.

25. Did she not tell you that she did not know the lines?

Ans: She told me that she did not know all of them.

26. Did she tell you any?

Ans: No. Can't say she did.

27. Did she not refuse to sell by the acre?

Ans: Yes, but she sold me as many acres for so much money, as I understood her.

(The witness desires to submit to the jury "She may have done so")

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for Yes, in the above answer.)

Re-Examined

1. Had the Survey been Completed by Mr. Baker, and his report made to you, shown, a deficiency of two hundred and ten acres, before the execution of the deed, would you have agreed to have paid \$16000. for the land?

Ans: I would not.

Cross-Examined

1. Supposed it had shown a deficiency of ^{one} hundred and sixty-seven acres, what then?

(Excepted to, on the ground of inexperience, inaccuracy & immaturity)

Ans: I would not, If I had thought it had been that much short, at the time the land was bought.

Further, this deponent saith, not.

W. N. Camp

The following is a copy of the paper, Marked X, filed, and asked to be made a part of the foregoing depositions

"August 14th: 1884

Mr: Wm N. Camp,

Dear Sir:

I have made the calculations of your Home place, or better known as the Elisha Waples Home farm, and find, that it contains two hundred and Seventy two (272) acres, one Road and twenty five poles. The Woodland, four hundred and ten (410) acres, and twenty-five poles. All together, making Six hundred eighty-two acres, two Roads

Paper marked
X

and four poles. (682.0. 2. P. 5 Poles). I will make
the Map for you as soon as practicable.

very respectfully.

Bev. P. Baker. Co. Surv.

The paper marked Y with this deposition purports to be a Map of the Home
Place made by Beverly P. Baker, County Surveyor, dated August the 12th, 1884,
which Map indicates that the said Home Place contains two hundred
and seventy two acres, one Road and twenty Poles.

Virginia: County of Hanover and to wit:

I, John B. Pinner, a Notary Public for the County of Hanover and
in the said State, do hereby certify that the foregoing depo-
sitions of Sarah E. Norfleet, Peter B. Prentiss, W. H. Gay
& W. M. Camp were duly taken, sworn to and subscribed
before me, at the time and place and for the purposes
therein mentioned. Given under my hand this 7th day
of September, in the year, 1884.

Fee \$10

John B. Pinner.

Notary Public

And at another day, to wit: on Friday, the 12th day of
September, 1884, in the said Circuit Court, in vacation.

This Cause came on this day to be heard on the Bill and
Exhibits ~~filed~~ therewith filed, the answer of the defendant,
Sarah E. Norfleet, with general replication thereto, the
notice of a motion to dissolve the injunction heretofore
awarded in this Cause, and the depositions of witnesses,
and was argued by Counsel: On consideration whereof,
the Court, without at this time deciding the said motion,

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doth continue it to the hearing, but unless the said Plaintiff shall pay to the said Sarah E. Norfleet, within fifteen days from this date, the sum of Sixteen hundred dollars, on account of his indebtedness to her, then the said injunction shall stand dissolved, and the Trustee shall proceed, at once, to sell the land, in the Bill described, in accordance with the provisions of the Deed of Trust.

And both Plaintiff and defendants are allowed to take further testimony between this date and the first day of the next term of the Court.

And, at another day to wit: in the Clerk's Office of the said Circuit Court, on the 29th day of September, 1884, came the defendant, Sarah E. Norfleet, Administrator with the Will annexed of Elisha Norfleet, deceased, and Doweress of the said Elisha Norfleet, by Counsel, and filed a deposition, which, with the notice and return thereon made is in the following words following:

To William N. Camp, Esq.

Take Notice, that on Monday, the 29 day of September, 1884, at the Office of Robert R. Prentiss, in Suffolk, Virginia, between the hours of Nine O'clock, A.M. and Six O'clock, P.M. of that day, I shall proceed to take the depositions of Beverly P.

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Baker and others, to be read as evidence
in my behalf, in a certain suit in Equity,
depending in the Circuit Court of Hantsman
County, wherein I am defendant, and you
are plaintiff; and if from any cause, the
taking of the said depositions be not
commenced, or if commenced be not
concluded on that day, the taking thereof
will be adjourned from day to day or
from time to time, at the same place
and between the same hours, until the
same shall be completed.

17 Sept: 1884.

Sarah E. Norfleet,
Admrx: with the Will
annexed of Elisha
Norfleet dec'd. and
Dowress of the said
Elisha Norfleet,
by Counsel

Return on
Notice

Service of this notice is hereby accepted
C. H. Causey
R. H. Rawles. Attys.

The deposition of Beverly P Baker taken before me, Lee Britti, a Notary Public for the County of Stanssmond, pursuant to Notice hereto annexed at the Office of Robert R Prentiss, in Suffolk, Virginia on the 29th day of September 1884, between the hours of 9 O'Clock A.M. and 6 O'Clock P.M. to be read as evidence in behalf of Sarah E Storfleet Adm'r with the will annexed of Elisha Storfleet, dec'd and dower of the said Elisha Storfleet, in a certain suit in equity depending in the Circuit Court of Stanssmond County of Virginia, wherein she is defendant and Wm A Camp is plaintiff

Present.

R R Prentiss Counsel for defendant.

C H Causey " " Plaintiff

The witness B P Baker, being duly sworn deposed as follows in answer to questions:

1st Question

State your age, residence, occupation, and do you know the parties to this suit?

1st Answer.

Between forty four and forty five years of age, resides in Stanssmond County, by Occupation a farmer and County surveyor, & I know the parties to this suit.

2nd Question.

When did you survey the Elisha Storfleet wood land (described in the deed from Sarah E Storfleet to Wm A Camp as the Jason Lopeter and part of the Callodem tract?

2nd Answer

Oct 31st and Nov 1st 1882

3^d Question When did you make the map of the said woodland?

3^d Ans. Nov 3^d 1882.

4th Question When was the said map delivered to the said Com
St Camp.?

4th Ans On or before the 13th of November 1882.

5th Q. How do you know this?

5th A. Because on the 13th of Nov. Mr Camp and myself
examined said map, and on that day he paid
me for the same.

6th Q. In the survey of the said woodland are you sure
that the line between Daniel Brothers' woodland
and the said woodland is correctly surveyed?

6th A. Mr Daniel Brothers said that I was across the line
on him a little. There are fourteen chains
and forty one links that on which I found no
line trees and I do not know that the said line
is exactly correct. but think it is.

7th Q Are you sure that all the lines of the home
place have been correctly found.?

7th A I do not know exactly how to answer it, unless
I could see the deeds, Mr Camp told me he claimed
to high water mark on the Mill Pond, Mr Harrison
Willis said to the mill run, I made calculations
to the mill run, except the 9 acre piece, which
was made at high water mark, Had the survey
been made at high water mark all the way
the area would have been about ten or twelve
acres more.

8th Q.

Is there any dispute about the 9 acre piece alluded to?

8th A.

I have never heard any

Cross Examination by Counsel for Plaintiff

1st Question.

When did Mr Camp first know from you the acreage in his entire purchase from Mrs Norfleet?

1st Answer.

I sent the acreage to him by mail and I suppose he received it about the 18th of August 1884.

2nd Q.

Excepted to by Counsel for Plaintiff is irrelevant.

Did Mr Camp in your presence ever say any thing to lead you to believe that his purchase from Mrs Norfleet was a contract of hazard?

2nd A.

I do not know that he did, but Mr Camp did state to me that he and Mrs Norfleet would have a hauling over about the matter.

3rd Q.

Did you not understand from Mr Camp that if there was any considerable discrepancy in the acreage of his purchase that he would expect Mrs Norfleet to make it good?

3rd A.

I did so understand him.

Re examination by Counsel for defendant.

1st Q.

When was this conversation first alluded to?

1st A.

Some time in the latter part of August 1884 I know at the time I brought the snap of the home place that Mr Camp made use of the hauling work

2nd Q.

When was the survey of the home place commenced; when completed and when was the map delivered?

2nd A.

It was commenced on the 16th of October 1882, completed, the 12th of August, 1884, and the map was delivered sometime in August 1884.

Exception by counsel for plaintiff upon the ground that the map which is already filed in the papers already in the hands of the judge is the best evidence.

3rd Q.

Why was there so much delay on your part between the time you commenced to survey the home place and the time you completed it?

3rd A.

I was waiting for instructions to complete it.

4th Q.

Were you instructed by Mr Camp to make the survey in October 1882, of the "home" place

4th A.

I commenced it and worked one day on it, and waited for further instructions and completed it in August 1884.

5th Q.

Were you or not instructed to stop surveying the "home" place in Oct 1882, after having worked one day on it?

5th A.

Not that I recollect of.

6th Q.

Why did you stop?

Excepted to by counsel for plaintiff upon the ground, that by such questions he (counsel) seems to be leading his witness.

6th A.

Because I did not have instructions to go ahead

7th Q.

What were your instructions when you commenced the survey of the home place?

8th A.

Mr Camp asked me to survey the home place (Mr Elisha Hensley's home place.)

9th Q.

Then can you not tell why you did not obey your instructions?

9th A.

I did obey and worked one day.

10th Q.

When Mr Camp instructed you to survey the "home" place do you mean to say that you obeyed his instructions by working one day and then leaving it for nearly two years uncompleted?

10th A.

I do and when I received further instructions I completed it.

11th Q.

And if you had not received such further instructions, do I understand that you would have never completed it?

11th A.

No, I would have never completed it without further instructions.

1st Question

Rebros examination by counsel for plaintiffs
Did not Mr Camp tell you at the time he employed you to survey the land in question that he wanted to know the acreage before the deed was prepared?

1st Answer.

If so, I do not recollect it.

2nd Q.

Was not the delay in regard to the "home" place caused by want of knowledge as to the lines

2nd A.

I do not know for

And further this deponent saith not.
Signed B P Baker.

Virginia

County of Nansemond, to wit:

I, Len Britt, a Notary Public for the County of Nansemond, in the said State of Virginia, do hereby certify that the foregoing deposition of Beverly B Baker was duly taken, sworn to, and subscribed before me at the time and place and for the purposes therein mentioned Given under my hand this 29th day of September 1884

Notarys fee \$5.00

Signed Len Britt N.P.

And Now, at this day, to wit, at a Circuit Court held for the County of Nansemond, at the Court House, in the Town of Suffolk, on the same day and year first herein mentioned, to wit: on Tuesday, the 14th day of October, 1884:

This Cause came on this day to be further heard upon the bill, the answer of the defendant Sarah E. Norfleet, with replication thereto, and on the Exhibits and examinations of witnesses, and was argued by Counsel:

On Consideration whereof, the Court doth adjudge,

order and decree that the injunction heretofore awarded the Complainant in this Cause be dissolved, and that the bill of the plaintiff be dismissed, and that he pay to the defendants their costs by them about their defence in this behalf expended.

But this decree is suspended for sixty days from this date, in order to give the plaintiff an opportunity to apply to the Court of Appeals ^{Appeal and} for an ^{and} ~~an~~ ^{Superseas.}

Teste:

Manassas Circuit Court Office

November the 29th: 1884

Peter B. Prentiss, Clerk.

D.M. ³³ ~~34~~ Examined.
William W. Camp

^a
vs { Copy Record

Samuel E. Norfleeth
Adm'r. &c of Elisha
Norfleeth, decd &c.

Virginia Sc:

William N. Camp.

Complainant.

Against } In Chancery

Sarah E. Norfleet, Administratrix with
the Will annexed, of Elisha Norfleet,
deceased, and in her own right, as
Dowress, of Elisha Norfleet, deceased,
and Peter B. Prentiss, Trustee Defendants.

Pleas at the Court House, in the Town of Suffolk,
before the Circuit Court for Nansemond County,
on Tuesday, the Fourteenth day of
October, in the year One thousand eight hundred
and eighty-four.

Be it remembered, that heretofore, to wit: on the
23rd day of August, in the year, 1884, came the Complain-
ant, by his Attorneys, and filed his Bill against the
Defendants, which Bill is in these words:

"In the Circuit Court of Nansemond County - In
Chancery:

To the Hon. George Blow, Judge of said Court:

Humbly Complaining, sheweth unto your Honor, that
your Orator, William N. Camp, did, on the 1st.
day of January, 1883, purchase from Sarah E. Norfleet,
Administratrix with the Will annexed, of Elisha
Norfleet, deceased, certain lands, situated in the County
of Nansemond, in the State of Virginia, to wit: First. The

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"Home" tract, supposed to contain three hundred and fifteen acres, more or less." Second: A tract, known as a portion of the Jason Lapsiter and Culoden tracts, supposed to contain Five hundred and Seventy-seven (577) acres, more or less, making an aggregate of 892 acres, for the sum of Six thousand six hundred dollars, as will appear by a duly authenticated Copy of a Deed from said Sarah E. Norfleet, Administratrix, &c to said William N. Camp, herewith filed, marked "A", and is prayed to be taken as a part of this bill - That, by a rough diagram and memorandum presented to your orator, on the day of Sale, above stated, he was induced to believe that the lands sold contained 892 acres or very nearly that quantity - Said Memorandum and diagram being herewith filed, marked "B", and is prayed to be taken as part of this bill. That, in accordance with the belief, that the aggregate area was 892 acres, your orator paid to the said Sarah E. Norfleet, Administratrix, &c, fourteen hundred dollars (\$1400.00) and executed a Deed of Trust to secure the remainder of the purchase money, as will appear by a Copy of said Deed, herewith filed, marked "C", and is, prayed to be taken as a part of this bill. That your orator has just ascertained, from a survey made of said lands, by Beverly P. Baker, the County Surveyor of Nausarumund County, that there is a deficiency in the "Home" tract, which was supposed to contain 315 acres, of 43 acres - And a deficiency in the "Jason Lapsiter" and "Culoden" tracts, which were supposed to contain 577 acres, of 167 acres, making a Total deficiency of 210 acres, so that your orator, has only acquired by his purchase, 682 acres,

41 instead of 892 acres. Your orator further states, that on the 1st day of January, 1883, in the Deed of Trust aforesaid, to Peter B. Prentiss, the Trustee, therein named, he promised to pay to said Sarah E. Norfleeth, Adm^x &c, fifty-two hundred dollars, twenty-two hundred dollars of which, have been paid, and all the remainder of which, according to the tenor of the bonds given in evidence of the credit portion of the purchase money is now due, and while your orator has offered to adjust the matter in Controversy, without appealing to the aid of this Court, said defendant wholly declines and positively refuses to make any abatement of the purchase money on account of the large deficiency in the acreage of the said land, and although she well knows, that the Contract for the said land was not one of hazard, but that the estimate of the area of the land sold to your orator was based, mainly on the diagram and memorandum marked "B" and herewith filed, and which was delivered to your orator on the day of Sale together with several other papers - That notwithstanding your Orator's offer to adjust the matter in Controversy, the said defendant has ordered the said Peter B. Prentiss, Trustee, to advertise and sell the said land, and, pursuant to said instruction, the said Trustee has already taken steps to sell said land, and your Complainant knows that said Trustee, has already prepared his advertisement to sell said land under the Deed of Trust above referred to, a copy of said advertisement being herewith filed, marked "X" and is prayed to be taken as a part of this bill. Your orator is ready and willing to pay to the said defendant, whatsoever is adjudged to be due, but, as the deficiency of 210 acres, in a tract represented to contain 892 acres is so

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^{very} great, your orator is forced to ask the aid of this Court for relief. Hence, since your orator is remediless in the premises, save, in a Court of Equity, where matters of this sort are alone and properly cognizable and relievable, he prays that the said Sarah E. Norfleet as Administratrix with the will annexed of Elisha Norfleet deceased, and in her own right, as the Doweress of Elisha Norfleet, deceased, and Peter B. Prentiss, Trustee, may be made parties defendant to this bill, and required to answer the same on oath, and that an injunction may be awarded by your Honor to prohibit and restrain Peter B. Prentiss, Trustee, from proceeding to sell said land under the Deed of Trust aforesaid, until the matters in controversy, as set forth in this bill of Complaint are fully heard and determined by this Court, and that such part of the sum of \$6600, agreed to be paid for 892 acres of land, as may seem equitable and just be abated for and on account of the said deficiency of 210 acres, and that whatever sum is rightly due to said Sarah E. Norfleet as Administratrix, and also as Doweress of Elisha Norfleet, deceased, may be decreed to her; and that all further and general relief as the nature of the case may require, and to Equity, may seem meet, shall be given. And your orator will ever pray &c.

Wm: N. Canby
by C. H. Cansey, Atty:

Rawles & Cansey, p. q."

State of Virginia

Houseman County, to wit —

This day William N. Canby personally appeared before me

and made oath, that the matters of fact contained in the foregoing Bill, so far as his own knowledge extends, are true, and, in so far as derived from the information of others, he believes to be true.

Given under my hand, this 20th day of August, 1884.

C. H. Causey, Notary Public.

On the motion of the plaintiff and for good cause shown, injunction is awarded according to the prayer of the bill, to enjoin and restrain Peter B. Prentiss, Trustee, from taking any steps to foreclose the Deed of Trust referred to, till the matters in controversy be passed upon by some competent Court of jurisdiction, and fully heard and determined. But, the Complainant in this suit is not to have the benefit of this order, until he, or some one for him, shall have executed before the Clerk of the Circuit Court of Nausaunt County, a proper injunction bond with good security, in the penalty of Five hundred dollars, conditioned according to law.

To the Clerk of Circuit
Court of Nausaunt
County

C. W. Mardaugh
Judge of the Court of
Hastings, City of Portsmouth

The following is a copy of the Exhibit "A" filed with the foregoing Bill:

"Whereas Elisha Norfleeth, by his Last Will and Testament, which was duly recorded in The Clerk's Office of the County Court of Nausaunt County, Virginia, on the 10th day of January, 1870, appointed Jethro Ridelick, his Executor, who duly qualified as such, and, has since, died: And whereas Saml E. Norfleeth,

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the widow of said Elisha Nafleet, deceased, has duly qualified
 in Nansemond County Court aforesaid, as the administering de-
 bonis non with the will annexed of the said Elisha Nafleet, deceased:
 And Whereas the said Elisha Nafleet, by his Last Will and
 Testament, authorized his Executor to sell certain Real Estate:
 And Whereas the parcels of land hereinafter described, have
 been sold to William N. Camp: Now Therefore, This
 Deed, made, this First day of January, AD, 1883, between the
 said Sarah E. Nafleet, administering with the will an-
 nexed of Elisha Nafleet, deceased, of the one part, and William
 N. Camp, of the other part, Witnesseth: that the said party of
 the first part, in consideration of the sum of Six thousand,
 Six hundred (6600) dollars, doth grant with general warranty
 unto the said William N. Camp and his heirs and assigns
 forever, the following tracts, pieces or parcels of land, situate,
 lying and being in Cyphers Magisterial District, Nansemond County
 and State of Virginia, and bounded as follows: First, The Home
 tract, supposed to contain three hundred and fifteen (315) acres, more
 or less, and adjoining the lands of Joseph P. Hall, John F. Pinner,
 Robert R. Smith, Levi C. Thayer's Estate, and the White Marsh
 road, together with all and singular the appurtenances belonging
 to the same. Second, a tract (known as a portion of the Jason
 Lapsiter and Colloeden Tracts) supposed to contain five hundred
 and seventy-seven (577) acres, more or less, and adjoining the
 lands of the said Levi C. Thayer's Estate, Richard Williamson's
 Estate, Charles H. Hill, Olof R. Busby, Thomas Triggs, Daniel
 Brothers and John M. Galbraith, together with all and singular
 the appurtenances belonging to the same — The lands hereby sold

and conveyed, being all on the West side of the White Marsh road, and embrace all the lands (including the Downer lands of the said Sarah E. Norfleet, as the widow of the said Elisha Norfleet) owned by the Estate of the said Elisha Norfleet, deceased, except a tract of Twenty-six (26) acres, lying on the East side of said road, and is generally known as the Fork of the Road Tract.

Witness the following signature and seal.

Witness

J. H. Rawls.

Sarah E. Norfleet ^{Seal}

Admin: with the will annexed of
Elisha Norfleet, deceased.

In the Clerk's Office of Nansemond County Court, the 25th day of January, 1883. This Deed was acknowledged by Sarah E. Norfleet, Administrix with the Will annexed of Elisha Norfleet, deceased, and thereupon admitted to record.

Teste:

Peter B. Prentiss, Clerk

A Copy:

Teste:

Peter B. Prentiss, Clerk.

The following is a copy of the Exhibit "B", filed with the foregoing Bill: which exhibit, is written entirely in lead pencil, and is endorsed, also in pencil as follows. "Memo: of S. E. Norfleet's lands & No. of acres in each tract not sold to this date. Oct. 29/75"

$$\begin{array}{r} 315 \\ 460 \\ \hline 775 \end{array}$$

325 Home tract
 149 in white marsh Road
 26 East of Norfolk Road
 418 from Superior tract
 918 acres all of S.E. land not sold

Thomas, John S.E. Norfolk

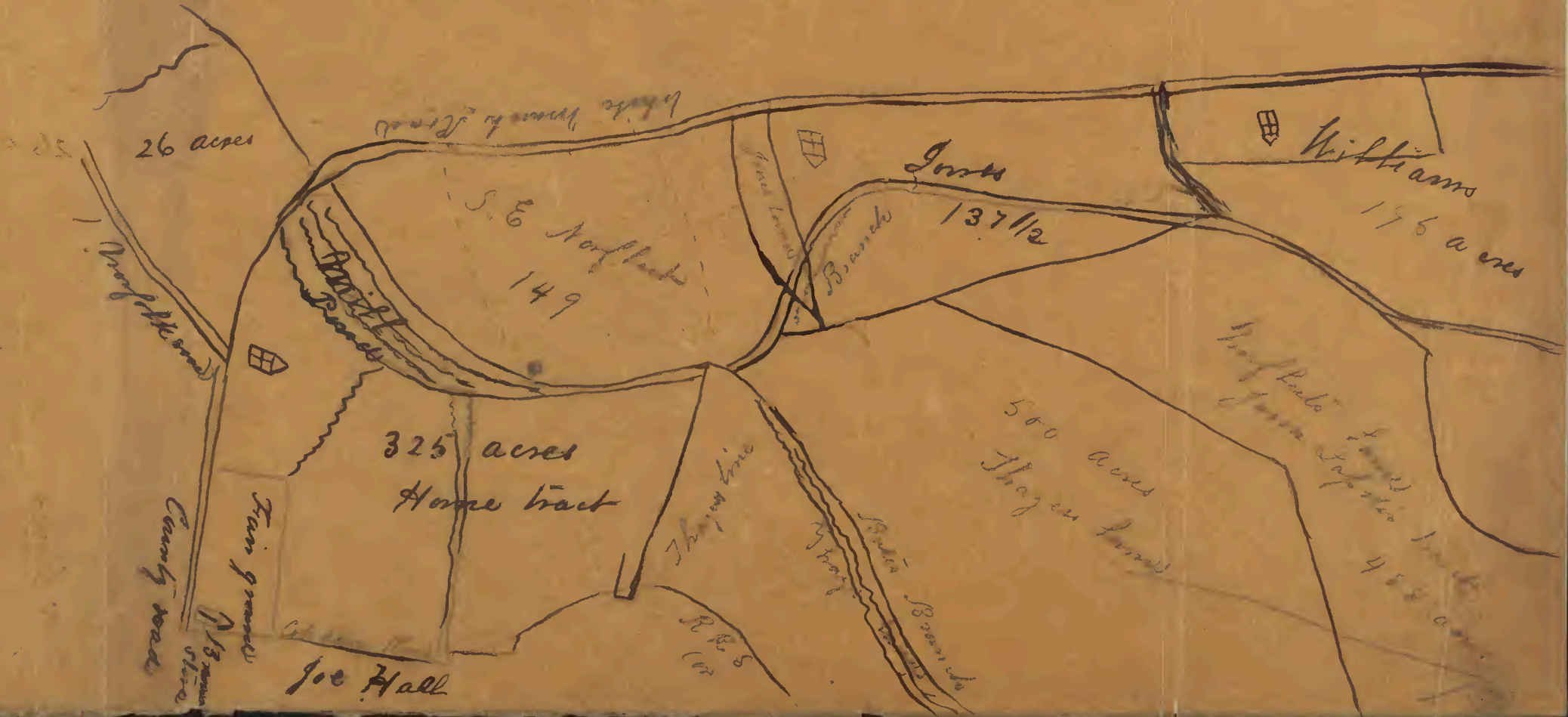
made this 29th of Oct 1875

Plot of S.E. Norfolk
 In Jones
 7 William Thayer's

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$$\begin{array}{r} 315 \\ 460 \\ \hline 775 \end{array}$$

$$\begin{array}{r} 528 \\ 63 \\ \hline 460 \end{array}$$



1178
Camp v. Norfleet's Adm

D. M. 33 Q.

From the Circuit Court of Nansemond

1178
Norfleet's
Adm
1178

August 14th 1884

Mr Wmth S. Camp

Dear Sir

I have

~~made the calculations of your home~~
place. - or better known as the Elisha
Norfleet's home farm. and find
that it contains two hundred
and seventy two (272) acres one
rood and twenty poles. - the
woodland four hundred and ten
(410) acres, and twenty five poles.
all together making six hundred
eighty two acres two Roods and
five poles. - (682 A. 2 R. 5 Poles)
I will make the map for you as
soon as practicable

Very respectfully
Geo. P. Baker co. surv.

X

