

1894-012  
Nansemond Co. (Suffolk)

Chancery Causes: Shoemaker Kirk & Co. vs Charles D. Cake

Ludlow, Vaiden, Menck, Westwood, Wills, Cowling,  
Heffelfinger, Brockwell, Newman, Bunting

Folder 1 of 3

OVERSIZE  
Box 1  
- 1 Plat

Kirk & Co

v

Charles D. Cattle

In Court of Mansfield County -

It is agreed that upon the deposit by C. D. Cattle to the credit of this cause in the Farmers Bank of Mansfield of the sum of Eleven Hundred dollars (\$1100) subject to the order of the Court, he may remove the logs now at Everett's Mill, and upon the deposit by him hereafter in the said Bank to the credit of said cause subject to the order of the Court of the sum of (\$1) one dollar per log, he may continue to cut and remove the timber from the land in the Bill and proceedings mentioned and described, until reaching the money paid and deposited he shall <sup>have</sup> paid the sum of \$3000, when he may cut and remove the same without hindrance - the deposit to be made before removal.

Kirk +  
v  
C.D. Baker }.

1882 June 28th:

Agreed to on behalf  
of Kirk + als

Ottlebury atty

Crest Va

4<sup>th</sup> mo 3<sup>rd</sup> 1885

Mr Cunez

Dear Sir

When in conversation with you in Suffolk I made the assertion that the Myers Runty had lightened from this wharf 3500 chords of wood from the tract of timber bought by W Lake of the S R Co, I was sure that I could prove it by my books, but whether part of it was in a hand book and I have lost it I do not know, the amount that I have in one book is 2673 chords, including what is hauled off and is on other property adjoining the land.

There is about five months of the time from the time he commenced hauling that I have no account of in my book, the average of the whole number of months that they lightened is one hundred and seventy eight chords per month; Probably Mr Runty would tell you the number of chords he cut on that tract of land.

I also cut at my mill for W Lake of which no act has been given in my department 75672 feet of lumber, the most of which went to Hampton in his vessel, the rest for loggy rails.

The above should have been sent you several days ago, but delayed in hopes of finding the book.

Yours respectfully  
John J. Thib.

JOHN J. KIRK,  
Nansemond Co., Va.,  
If not delivered within 10 days.

*Creeth Va*  
*4/3, 85*



*W. C. H. Causey*  
*Attorney at Law*  
*Suffolk Va*

All Available Text Successfully Captured

Capt C. H. Causey, of Counsel for Plaintiffs came in after the above deposition was taken and Explained that it was impossible for him to be present as he was at the time engaged in taking depositions in another case by previous appointment. He further said that C. D. Cake, the Dft called at his office and asked him to name an hour when he could be present, to which he replied that he could not name an hour but would come as soon as he could leave the case on which he was Engaged. It was about thirty minutes past one O'clock when Capt Causey called to take part, as Counsel for the ~~Defence~~ Plaintiffs, in the taking of the Depositions, but the witness and Mr Cake had both left & could not then be found. He claims the right to Cross-Examine the witness before the depositions can be used in evidence. He also claims the further right, since Counsel for Defense have re-opened the case after the papers were in the hands of the Court, to take additional testimony for the Plaintiffs.

Jos H. Wright Notary Public.

Shoemaker Kirk & Co  
vs

Charles D. Leake

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  
reinstate with good cause within one  
year from this date.

12

45-

Shoemaker Kirk Heo  
vs  
Charles W Coake

---

Oct-12<sup>th</sup> 94

Whe intend  
CMB

Entered in Chancery  
Order Book No. 2  
Page 589. -

This Deed made this second day of February in the year eighteen hundred and eighty-one between N. Shoemaker of Bucks County in the State of Pennsylvania and J. J. Kirk of Nansemond County, in the State of Virginia, acting for themselves and J. L. Shoemaker of Philadelphia, Pa, and Elias Kirk of Montgomery County, Pennsylvania, their co-owners of the property hereinafter mentioned, parties of the first part, and Charles D. Cake, of Elizabeth City County, in the State of Virginia, of the second part, Witnesseth that the said parties of the first part, in consideration of the sum of Three (\$3000) Thousand Dollars to them in hand paid, or secured to be paid in the manner and at the times hereinafter specified, have bargained, sold and conveyed and do by these presents bargain, sell and convey unto the said Charles D. Cake the following property to wit: all the wood growing or being on a certain tract of land of four hundred acres, more or less, in Isle of Wight County, Virginia, one and a half miles from tide-water at Everett's Bridge in Nansemond County

being a part of the Colonel Whitehead tract, and bounded on the west by a public road leading from Suffolk to Smithfield, and by the lands of Mo. M. Cowling on the east, and by Samuel Godwin's land on the north, and on the south by the land of Kirk, Shoemaker & others. And the said parties of the first part covenant that the said Charles D. Lake shall have the exclusive right to enter upon the said tract of land and cut, take and remove therefrom all the wood and timber on the said land, and the right to construct and use a tramway or bogie track from the said timber-land to the landing on the Western Branch of Chausemand River at Everett's Bridge, and shall also have the free use and occupation of the wharf at Everett's Bridge for the purpose of shipping the said wood or timber.

And the said Charles D. Lake, on his part, having this day paid to the said parties of the first part the sum of Five hundred dollars, part of the purchase money, hereby covenants that he will enter upon the said land and cut and remove the said

timber, and for each and every  
log so cut and removed therefrom  
he will pay to them the sum of  
one dollar until the whole of the  
said sum of Three Thousand dollars,  
the purchase money aforesaid, is fully  
paid and discharged, and that the  
whole sum of the purchase money  
shall be fully paid within eighteen  
months from the date hereof. And  
it is mutually covenanted and agreed  
that the said Charles D. Cake shall  
have four years from the date hereof  
to remove all the timber from the said  
land cut by him or his employees.

And the parties of the first part hereby  
reserve a vendor's lien upon the said  
wood and timber until the whole of  
the purchase money aforesaid is fully  
paid.

Witness the following signatures and  
seals.

|                                                    |        |
|----------------------------------------------------|--------|
| <i>N. Shoemaker</i>                                | (Seal) |
| <i>John J. Hick</i>                                | (Seal) |
| <i>L. S. Shoemaker</i> by <i>N. Shoemaker</i> agt; | (Seal) |
| <i>Chas Hick</i> by <i>John J. Hick</i> agt        | (Seal) |
| <i>C. D. Cake</i>                                  | (Seal) |
|                                                    | (Seal) |

Corporation of the City of Norfolk, to wit:)

I, Theodore S. Garnett, Jr., a Notary Public for the Corporation aforesaid in the State of Virginia, do certify that N. Shoemaker, individually, and as Agent for J. L. Shoemaker, and J. J. Kirk, individually, and as Agent for Elias Kirk, and C. D. Cate, whose names are signed to the writing above bearing date the 2<sup>d</sup> day of February, 1881, have acknowledged the same before me in my Corporation aforesaid.

Given under my hand this 2<sup>d</sup> day of February, A.D. 1881.

Theodore S. Garnett, Jr.  
Notary Public.

Exhibit "A"  
Jillal with Lakis answer -

High on Injunctive

+  
Kenny on do

In the Circuit-Court of the County of Nausumond

J. L. Shoemaker, Elias Kirk &c.

Charles D. Castle

In Chancery.

The Answer of Charles D. Castle to a Bill of Complaint exhibited against him, in the Circuit-Court of the County of Nausumond, by J. L. Shoemaker, Elias Kirk &c. Complainants.

To the Hon George Blodwade of the Circuit-Court of the County of Nausumond.

This Respondent reserving to himself all right of Exception to the said Complainants Bill for its manifest errors and imperfections, for answer thereto answering says.

It is doubtless true. the said Complainants were seized in absolute fee simple of a certain tract of land, which as alleged by them they purchased from William B. Whitehead.

On the Second day of February 1881. the said Complainants did offer for sale, at public auction in the City of Norfolk all the wood and timber then upon a certain tract or parcel of land located in the County of Isle of Wight, and which is the same in said Complainants Bill described - and which said tract or parcel of land - the wood and timber upon which it was proposed to sell - the said Complainants represented both by advertisements in the public papers and representations by them made at the time of the sale, as containing four hundred (400) acres more or less.

Now Respondent purchased the wood and timber then on the said tract of land, at the said sale made as aforesaid.

The Contract or Bill of Sale between this  
Respondent and the said Stormaden &  
Kurtz is filed with this answer Mark  
ed "A" & pranged to be taken as a  
final thing -

said in the City of Nafret, on the 2<sup>nd</sup> day of February 1881. by reason of the representations made by the said Complainant that the said tract of land contained four hundred acres more or less, at the sum of Three Thousand Dollars, that being the highest bid - The original contract was made "9" is filled with this matter and may be taken as a first

This Respondent is a resident of the County of Elizabeth City. He had never seen or known anything whatever of the said tract or parcel of land, until his attention was attracted to the same, by the advertisement of the same for sale by the Complainants as aforesaid, and trusting to and believing in the representations of the said plaintiffs he purchased the wood and timber upon the said tract of land at the sum of Three Thousand Dollars, implicitly believing at the time, that the said tract of land contained about four hundred acres—

A few days prior to the sale, your Respondent, made a short visit to the said lands, for the first time, and went upon the same accompanied by the said J. J. Kirk to ascertain how thickly the said land was set in timber and the quality thereof.

The said Kirk did show your respondent certain lines which he said were the lines of the said tract of land. but he denies the said Kirk showed your respondent all of the lines of the said land - Even if the said Kirk had pointed out to your Respondent all of the lines of the said land - your Respondent having had no experience being without experience in estimating the quantity of land, would have been unable from such representations as to the lines, to have informed himself as to the real quantity in the said tract of land. The said Kirk knew at the time of the visit of your Respondent, that the purpose of his said visit was rather to ascertain the quality of the said timber, and

The probable quantity for acre to be cut from the said premises, assuming the same contained about four hundred acres, as represented and so believed in by your Respondent.

At the time of the visit of your Respondent, and when on the land examining the timber thereon, and having satisfied himself as to the quality of said timber; and desiring to know the number of acres in the said tract - he inquired particularly of the said Kirk as to the number of acres the tract contained, and the said Kirk in reply to the inquiries of your Respondent, assured him, he knew there was about four hundred acres in the tract of land - the wood and timber from which it was proposed to sell.

The said Kirk resided if not immediately upon the said land - at least in its immediate vicinity; seemed perfectly familiar with all matters as to the number of acres in the said tract of land - the quality and quantity of timber thereon. So much so, that from the representations then and there made to your Respondent by the said Kirk, your Respondent did not suppose for a moment any question could ever arise touching the quantity of land in said tract.

Mr. Heffelfinger is a personal acquaintance of your Respondent and their relations are friendly. Mr. Heffelfinger is himself a dealer in lumber and visited the said lands entirely in his own interests. Your Respondent never learned from Mr. Heffelfinger until after the sale - that he, Mr. Heffelfinger had any reasons whatever to suppose there were less than four hundred acres or about that quantity in the said tract of land; and even then, from the impressions made upon your Respondent at the time of the said visit of your Respondent to said premises, by the said Kirk - and his alleged perfect and entire knowledge of the tract - your Respondent was satisfied that the doubts of Mr. Heffelfinger as to the quantity of land in said tract, were erroneous.

and mistaken.

About the 15<sup>th</sup> day of March 1882. your Respondent began to cut the timber from the said tract of land - and he being engaged in his Steam Saw Mill, in the Town of Hampton, County of Elizabeth City; and for this reason being unable to give the cutting of the said timber his personal supervision - placed the same in charge of his employee Mr. J. M. Mills.

About the first of May A.D. 1882. your Respondent was informed by Mr. J. M. Mills, that there was a large deficiency in the quantity of said land, from which he was cutting the timber for your Respondent as aforesaid - that the said tract of land did not contain anything like four hundred acres.

When your Respondent received this information, he employed for Thomas the County Surveyor of the County of Isle of Wight to survey the said tract of land; and to his proposed arrangement; he then discovered. the said tract of land instead of containing about four hundred acres as represented to him as aforesaid, only contained two hundred and eighteen and three-fourths acres - but very little more than one half of the quantity; which the said Kirk represented to your Respondent. the said tract contained. and by reason of the said great deficiency in the quantity of said land your Respondent will not be able to obtain from said premises more than one half of the timber, he supposed he was buying from the representations of the said plaintiffs -

Your Respondent paid to the said plaintiffs the sum of \$1500 before he discovered the great deficiency in the quantity of said land - and upon the discovery of the said deficiency he wrote to the said plaintiffs informing them of the facts in regard to the same - and asking that the difference between your Respondent and the said plaintiffs in regard to the said deficiency might be settled upon some fair, just and equitable basis - The reply which your

Respondent received to this Communication was the Injunction awarded the  
Plaintiffs by the Hon. Mr. Justice upon the Plaintiffs said Bill of Complaint.

Your Respondent has been thereby greatly damaged and injured by  
the said conduct and representations of the said Plaintiffs as aforesaid - for fully  
believing in said representations of the said Plaintiffs - your Respondent at great  
expense and cost to himself, constructed a bogy track from said land to the waters  
of Nausumond River, a distance of two miles at their nearest points to enable your  
Respondent to transport the timber from said lands to the waters of Nausumond River -  
thence to his steam saw mill at Hampton, Town of Digby City - which expense and  
outlay in the building of said Bogy track - your Respondent would never have incurred  
had he known or supposed there were only Two Hundred and Eighteen and  $\frac{3}{4}$  <sup>acres</sup>  
acres in the said track of land - The timber on the said 218  $\frac{3}{4}$  acres not being suf-  
ficient to justify the outlay as aforesaid - whereby a large part of the expense so in-  
curred by your Respondent has been wholly lost to him by reason of the said false  
representations of the said Plaintiffs -

Your Respondent further says that the conduct of the said  
Plaintiffs in the said premises have caused him other great wrongs and injuries  
- they caused his large and expensive Steam Saw Mill to remain idle for some time,  
for the want of timber to supply the same: until it was agreed between your Respondent  
and the said Plaintiffs that your Respondent should deposit to the credit of this  
cause in the Farmers Bank of Nausumond a sum of the full value of this Honorable  
Court the sum of \$1000, and the further sum of \$1 per log, for every log removed  
until the sum of \$3000 was paid - paid as if there had been no false represen-  
tations on the part of the said Plaintiffs - which deposit your Respondent has  
been compelled to make, or he subjected to great and heavy losses before he  
could remove the timber from the said premises - to the very great inconvenience

of your Respondent - he being a person of very limited means - yet able to meet his engagements -

And now having fully answered the said Complainant's Bill of Complaint - Your Respondent - prays that the said Injunction awarded by the Hon C. W. Bill may be dissolved - that so much of the money deposited as aforesaid by your Respondent - to the credit of this cause in the Farmers Bank of Nassau - Suffolk Co., as is just, equitable, right and proper, may be refunded to your Respondent - that your Respondent may have and receive by decree of this Hon. Court, an abatement from the purchase price agreed to be paid by your Respondent - viz \$3000 for the wood and timber on four hundred acres more or less, in proportion to the deficiency in said land - the said tract of land containing in fact but Two Hundred and Eighteen and  $\frac{3}{4}$  acres - as may be ascertained to be just and proper by decree of this Honorable Court - and that the said Complainant's Bill may be dismissed, with reasonable costs to your Respondent &c.

C. D. Coker

County of Elizabeth City

State of Virginia

I, G. M. Peck, Notary Public for the County of Elizabeth City, State of Virginia, do hereby certify that C. D. Coker whose name is signed to the above answer personally appeared before me in my County aforesaid, and made oath that the statements therein set forth are true to the best of his knowledge and belief -

Given under my hand this 11<sup>th</sup> day of August 1882.

G. M. Peck, N. P.

Shoemaker &  
Charles D. Baker

Y. N. City.

Answer of Charles D. Baker -

In the Circuit Court of Hanseman County  
N. Shoemaker, J. J. Kirk  
J. L. Shoemaker and Elias  
Kirk . . . . . Plaintiffs  
vs E. Chay  
Charles D. Cake . . . . . Defendant.

To the Hon<sup>ble</sup> George Blow, Judge of  
the Circuit Court of Hanseman  
County.

Humbly complaining  
shew unto the Court your orator  
John J. Kirk, <sup>of the County of Hanseman, Virginia</sup> for himself and on  
behalf of N. Shoemaker, J. L. Shoemaker  
and Elias Kirk that they are co-  
owners of a certain tract of land  
in fee simple absolute, situated in  
the County of Isle of Wight in the  
State of Virginia, which the above  
named complainants purchased  
of William B. Whitehead as will  
appear by deed duly recorded in  
the Clerk's office of the County of  
Isle of Wight: That on the second  
day of February, 1884 - after due  
advertisement, your complain-  
ants offered for sale by public  
auction in the City of Norfolk

all the wood and timber trees on  
Virginia, a portion of the said tract  
~~tract~~ of land which was estimated  
to contain four hundred acres, more  
or less: That several parties prior  
to the day of sale went upon  
the said premises accompanied  
by the said Complainant John  
J. Kirk to examine the wood and  
timber trees and among them  
the defendant Charles D. Cake,  
that the said Cake was taken  
around the said tract of land  
and through it by your complain-  
ant, J. J. Kirk, and the line trees  
pointed out to him; that also pri-  
or to the day of sale a friend of the  
said Cake went around and  
across the said tract of wood-  
land ~~and~~ (one Heffelfinger of the  
town of Herndon Virginia) and  
doubting whether the tract contained  
four hundred acres your complain-  
ant referred him to an adjacent land  
owner, one John M. Cowling who  
stated that he did not think there  
were more than two hundred  
and eighteen acres: that on the  
said second day of February, 1881

the said Charles D. Lake became the  
highest bidder and purchaser of the  
aforesaid wood and timber trees  
on that certain tract of land owned  
as aforesaid by the complainants  
situated in the County of Isle of  
Wight, about one and one-half miles  
from Everett's bridge in Henric  
County, bounded on the West by the  
public road leading from Suffolk  
to Smithfield; and by the lands  
of John M. Cowling on the East;  
by the lands of Samuel Godwin  
on the North, and on the South by  
the lands of Kirk, Shoemaker and  
others. That by a deed duly exe-  
cuted by the said Kirk and  
Shoemaker (the complainants in  
this bill) and the said Lake (the  
defendant) the said Kirk and  
Shoemaker did bargain, sell  
and convey unto the said Lake  
all their right, title and interest  
in the wood growing or being upon  
the above described tract of land  
for the sum of three thousand  
dollars, paid or secured to be  
paid, as follows to wit: five hun-

dred dollar in cash and thereafter at  
the rate of one dollar per log for  
each and every log cut and carried  
away from the said tract of land  
until the full sum of three thou-  
sand dollars was made up, and all  
of which was to be paid within  
eighteen months from the said  
second of February, 1881 - and the  
said Kirk and Shoemaker  
bound themselves to give the said  
lease for years within which to  
remove all the wood and timber  
from said tract and likewise  
other privileges as will appear by  
a copy of said deed or agreement  
herewith filed and is prayed to  
be read as a part of this bill -

That the said vendor reserved a  
lien upon the said wood and timber  
until the whole of the said purchase  
aforesaid was fully paid -

That the said lease soon after the  
purchase aforesaid began to cut  
and carry away said timber trees  
and for a time complied with  
his agreement and covenant -  
but lately to cut on the day of

, 1882 he has removed Six hundred and seventy logs under a promise to pay the sum of one dollar for each as stipulated above, but has wholly failed to do so, and now refuses to pay anything ~~the~~ under the plea that there are not four hundred acres in the said tract of land - and is moreover now in the very act of rafting and removing another large lot of logs cut from said tract, the said logs being now at Everett bridge in the County of Kennebec and refuses to pay anything to your complainants in utter disregard of his sealed promise and covenants.

• Forasmuch therefore as your Complainants are remediless in the premises, save in a Court of Equity - where such matters are properly cognizable and relivable they pray that the said Charles D. Lake may be made a party defendant to this bill and required to answer the same on oath, that he, his agents or employees may be restrained and en-

joined from cutting and removing  
any other logs or wood from the aforesaid  
premises in the County of Isle of  
Wight and that he and they be  
further enjoined and restrained  
from removing the said logs now  
cut and lying at Evereth bridge or  
which may be in the waters of Han-  
semond river or its branches and  
for such other, further and general  
relief as the nature of the Case may  
require and to equity may seem  
fit.

And your Complainants will ever  
pray &c.

Causes p. 8.

John J. Kirk

State of Virginia  
County of Henrismond } To wit-

This day appeared personally before  
me, G. H. Causey, a Notary Public for  
the County of Henrismond, John J.  
Kirk and made oath that the  
matter of fact contained in the  
foregoing bill, so far as made of his  
own knowledge are true, and so  
far as made from the information

of others he believes to be true.  
Given under my hand the 21st  
day of June, 1882.

C. H. Causey  
Notary Public

Kirk et al  
vs J Bice & x lts.

Chas. D. Baker

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M. Shoemaker Cal

25<sup>th</sup> { Chy. notes

Charles D. Cake

1882. June 22<sup>nd</sup>: <sup>Sup. And taken from</sup> Sum. in Chy. Xc. issued to July Rules, 1882

" " " Bill & Xc. filed

" " 28<sup>th</sup>: a just. filed

" July 3<sup>rd</sup>: Decree nisi: 7<sup>th</sup> deft.

" Aug: 7<sup>th</sup>: Decree nisi: Compud & cause set for hearing

" Oct: 14<sup>th</sup>: Answer filed

" Oct: 14<sup>th</sup>: My consent of parties given in open Court this cause is

submitted to the Judge of this Court, for record to be made

therein, in vacation

1883. Apr: 14<sup>th</sup>: Continued

" Oct: 13<sup>th</sup>: <sup>Consent of</sup> Order of court, depts. for self & attorney in loco h -

I hope to be heard with the hands of the Ct. for consideration

& determination in vacation, under a power made of this Ct

1884. Apr: 15<sup>th</sup>: Continued

" Oct: 17<sup>th</sup>: Continued

1885. Feb: 21<sup>st</sup>: Vacation Decree L. & for acc. v.

" March 25<sup>th</sup>: Report for

Chy. Notes

Shoemaker Kirk & Als.

Chas L. Baker

March 9.

After a careful examination of the record in this cause. And the authorities, settling the facts, which controls <sup>I am of opinion</sup> it. That the Defendant.

Charles L. Baker was induced to purchase the Timber and Wood growing and being, on a certain tract of Land owned by the Complainants in case of Wright & Co; chiefly, by Representations made to him, before and at the time of said purchase, by said Complainants & their duly authorized Agents.

1 That the said Timber & wood then and there purchased grew upon a tract of <sup>Land</sup> containing four hundred acres. When in fact, the Land by actual survey contained but  $218 \frac{3}{4}$  acres.

And that, <sup>he</sup> had been advised ~~that~~ of the real facts; that he would not have purchased at all, at the price set forth in the contract (\$3000)

2. That the quantity of Acres, in the tract from which the Wood & Timber was sold, was peculiarly within the Knowledge of Complainants -

They knew the Amount of Land purchased by them from Whitehead (800 Acres) and also the No of Acres, on the East side of the Road which had been disposed of, by them previous to the Sale, to Defendant. The Evidence of Juries establishes the fact, that the main Road divided the tract nearly into two equal parts. Hence a simple deduction of the No of Acres already <sup>disposed of</sup> ~~sold~~ from 400 Acres lying in the East side of the Road, would have shown them, at a glance, that in selling ~~the~~ Timber on 400 Acres on the East side of the main Road, was <sup>then</sup> ~~temporarily~~ impossible.

This Information was not equally under the Control of Defendant, <sup>nor was it communicated to him</sup> And by a well known Rule of Equity. the Person in fault, must shoulder the consequences of his own negligence a laud. -

3 I do not regard the fact, that he had been on the land before the Sale. And that the Doctrine of Cuius Est Imperium must apply - should prevail in this Cause.

It is strongly insisted upon,



him by Pless, or their agents.

was induced to make the purchase,

And is entitled, by the well settled  
Principle, governing the Courts of Equity,  
to an Abatement of the purchase money  
which the Defendant contracted to pay  
in the proportion, which  $218\frac{3}{4}$  acres.  
the Actual ~~acres~~ quantity of  
land by survey, bears to 400 acres.  
the quantity represented, in the Contract  
of sale, -

It seems to me, if this principle, is  
not applicable to the case at Bar,  
there would be no remedy to Defendant,  
had he purchased Timber growing upon  
a Thousand acres, when it turned out  
in evidence that at the time of sale  
the Vendor owned but the Timber on  
a Ten acre lot.

I have seen nothing in the authorities  
quoted by Pless Counsel tending to  
shake the conclusions above expressed.  
and therefore, deem it unnecessary to  
enter into an examination of them.

The Condition of the Record.  
Perhaps, required that there should  
be a reference to a Commission  
to ascertain the state of Case between  
the parties upon the Principles above  
decided -

The depositions of John T. Brockwell & others taken <sup>by consent</sup> before me Robt. S. Prentiss, a Commissioner in Chancery of the Circuit Court of Nausemond County at my office in Suffolk Va. on Friday the 2<sup>d</sup> day of November 1883, to be read as evidence in the chancery cause of John J. Kirk v. C. D. Cata now pending in the Circuit Court of Nausemond County:

Present: C. H. Cansey for Plaintiff.  
Thos. Tabb for Defendant.

The witness John T. Brockwell being first duly sworn in answer to questions deposes and says:

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

A. I am 52 years old, live in Nausemond County, I am a saw mill man or lumber man, I live on my farm. - I know Mr. Kirk, but have never been introduced to Mr. Cata, though I have seen him. -

2. Q. Please state whether or not you ever went to look at the tract of timbered land advertised for sale by Kirk & Shornaker in Jan'y 1881, and if so, who went with you and what occurred?

A. I saw the advertisement of the land and came up from Norfolk, went to Mr. Kirk's - he walked with me to the tract of land & showed me the line all around. He then left & I remained all day on the tract walking to and fro. Then I just estimated how much lumber there was on it, to prepare myself for the sale.

3. Q. Did Kirk in any way lead you to believe that the land was to be sold by the acre?

Except as to leading in form -

A. No sir - I don't know that he did. - I don't recollect whether the advertisement stated how many acres there were or not. -

4Q. How long have you been in the lumber business?

A. I commenced for myself in 1867, & have been at it ever since.

5Q. How much merchantable lumber did you estimate could be cut from the tract shown you by Kirk?

A. My basis of bidding on it - I estimated about 1800000 feet of saw timber. - I never dealt in cord-wood & didn't have an eye to that when I was bidding.

6Q. Please state whether or not there was any other kind of timber on the land except what was suitable for saw-mill purposes, and if so, how much?

A. Oh yes. There was a good deal of cord wood there, but I don't know how much, and would not like to say.

7Q. Were you present at the sale in

Norfolk and if so, what transpired?

A. I was present. I think that they first put the land, timber and all up. - But finally took it down, (for what reason I don't know) and sold the timber on the land. They said you might sweep everything off the land. -

8. Q. Were you one of the bidders at the sale and if so state what was the amount of your last bid?

A. I was one of the bidders. I don't know what the amount of my last bid was, ~~whether I was the last bidder~~. I don't recollect. I am satisfied it was a little over \$2000. but cannot say positively for I did not charge my memory with it.

9. Q. In making this bid, did you take into consideration the quantity of cord-wood that could be cut on the land?

A. Well no sir - I did not give it a thought, as I never had dealt in cordwood. -

10. Q. If you had thought of the cord-wood, might it not have influenced you to bid more than you did?

A. Well I don't know but what it might. If I had thought of the cord wood I might have bid more, but I would not like to say what I would have done. -

11. Q. Had you known at the time that about 2000 cords of cord-wood could have been cut on this land, in addition to the saw mill stuff; would it not have been an inducement to bid more than you did?

A. Well yes, I think it would. -

The defendant by counsel objects to this whole deposition, because it is in no manner evidence against

the Defendant C.D. Lake.  
~~The Def~~

John M. Cowling another witness  
being first duly sworn in answer  
to questions deposes and says:

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

A. I will be seventy four the 19 of this  
month, Kausemond County is my  
residence, I have been a farmer, I  
know Mr. Kirk I do not know  
Mr. Lake.

2. Q. Are you acquainted with the tract of  
land, the timber on which was sold by  
Mr. Kirk to C.D. Lake?

A. I have been acquainted with for  
more than 50 years. I have cultivated  
part of it which now has  
timber on it a foot thick at the  
stump.

3. Q. When were you on it last?

A. I think it was last Monday or Tuesday week - 10 or 12 days ago.

4 Q. Since the sale by Kirk to Case, have all the saw-logs been cut from the land which could have been gotten from it?

A. I consider saw-logs, all timber a foot in diameter & upwards, as it runs through the bulk, would be considered saw-mill logs. And they have not been cut. - In passing through the bulk of timber I came upon one portion and estimated one acre to cut 30 cords of wood - the diameter of which, stumpage being from 12 inches up to 23 - and averaging from 30 to 40 feet in length, and some of them measuring 13 inches in diameter at the top. - Two-thirds of the said quantity of wood would have been saw-mill lumber in that area of the acre, I found one tree cut which made three logs. In passing through the bulk of the wood cut by Mr. Bunting I measured the wood from bark to tip end of the

heart - two thirds of which would have come under saw-mill logs, being six, eight and ten inches in half diameter of the tree - and to be four feet four inches in length, which makes one twelfth of a cord in length; more than is a cord.

5-Q Who has been cutting wood on this land since the sale to Coke? -

A. G.W. Bunting & Sons. -

6-Q. State whether or not you have gone over that part of the tract, on which this wood has been cut, and ascertained by actual measurement the diameter of any of the trees cut in the woods.

A. As I went through the main bulk of the timber cut, I am confident two-thirds of the wood Mr. Bunting has cut, from measurement of stumpage and topage would come under saw mill lumber. -

7-Q Have you had much experience in cutting wood and saw mill logs.

A. Within 40 years of my experience I have cut and managed about 7000 cords of wood, and logged Crump's saw mill Eight years. -

8. Q. Have you made any estimate of the quantity of wood. or do you know how much first-class cord-wood has been cut by Bunting & Sons on this land?

A. I don't know but I should judge about 1000 cords. -

9. Q. How much of this 1000 cords would have been suitable for saw-mill logs? -

A. I judge about two-thirds. - A log a foot in diameter, 16 feet long, will make 85-feet. A tree would cut two logs, which would be 170 feet. -

10 Q. Has all the wood been cut on the land which can be obtained from it? -

A. No sir. - Neither the wood nor the saw-mill logs. -

11 Q In your judgment what quantity of saw-mill logs can yet be obtained? 12 inches & upwards in diameter

A That is hard for me. The lumber that has been cut and is to cut would net in my judgment 1000 cords of wood, that might have been converted into saw lumber. Had it have been cut along with the large timber. -

12 Q Do you mean to state that all the large timber on this tract of land would have only cut 1000 cords, or do you mean it to be understood that 1000 cords of wood suitable for saw-logs, have been & can be cut in addition to that which has heretofore been cut into saw-logs?

A. No sir. I mean what comes under Mr Bunting's contract. I don't mean any lumber that Mr. Cole has

converted into logs - I mean what  
Mr Bunting has.

13. Q. State whether or not there are any  
other trees on this land, and for  
what they are suitable?

A. Rail-road ties and dog-wood is  
the only timber, on the land, outside  
of the small - matured pine timber.

14. Q. What quantity of Rail-road ties and  
dog-wood in your judgment has  
been or may be cut on this land,  
also what amount of second  
class wood may be cut.

A. The rail-road tie timber and dog-  
wood and oak for saw-mill purposes  
I should judge to be worth over  
\$100. - Mr. Bunting informs me he  
is now cutting Rail-road tie  
timber.

The second-class wood to quarter  
and halve would exceed 1000 cords.  
That would leave a large surplus that  
might be made profitable for charcoal.

15-Q. Do you know whether or not any saw-logs have been cut on this land since the 5. Octo. 1883? & if not are there not still some trees suitable for saw-mill lumber still on the land?

A. I do not know whether any logs have been cut since 5. Octo. 1883, but I saw some saw-logs along thro' the bulk of the woods. -  
Yes there are still some trees suitable for sawmill lumber still on the land. -

The defe. by counsel objects to this deposition because not relevant to any of the issues involved in this controversy. The defe not waiving his objection proceeds to cross-examine the witness

Cross-Examined:

1. Q. When did you last have anything to do with cutting saw logs?

A. It has been some 7 or 8 years.

2. Q. Has it not been longer than that, & when was it?

A. I don't think it has. It may be - With Col. Darden on my own land - and with Capt. Grump. -

3. Q. How did you sell the lumber to Col Darden?

A. \$150 per thousand - He was to cut it. -

4. Q. How many cords of wood do I understand you to say Messrs. Bunting & Sons can cut from this land? I mean all the wood they can cut for cord-wood?

A. I believe they can cut 1500 cords. A part of that wood would have to be halved and quartered. Their contract would enable them to do that - from 1500 to 2000 cords all told - altogether. -

5. Q. What proportion of this is suitable for saw-logs?

A. One third. - a thousand cords -  
Two thirds I mean. I meant  
to say two-thirds -

6 Q What proportion of the saw-logs  
on this tract did Mr. Mills  
cut in your judgment?

A. I am not able to tell you. I  
don't know. - But this I know  
Mr. Mills has left a large quan-  
7 Q tity of saw lumber that would  
have made from 170 ~~up~~ to 500  
feet per tree. -

7 Q Is there any demand for charcoal  
timber in this country?

A. None.

8 Q After taking out what you say would  
be 1000 cords cut from the saw  
mill logs, how much, and what  
would be the character of the  
remaining wood?

A. It would be small, suitable for fence-  
rails. - Timber grows at the rate of

a quarter of an inch a year -

Q. What would this be worth to put into cord-wood?

A. It would not pay expenses - It would not rate as first class or second class, but would pay five per cent per year in growth -

Further this deponent saith not.  
J. P. Cowling

John P. Cowling another witness being first duly sworn in answer to questions deposes and says:

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

A. I am 36 years old, live in Narsemond, I am a farmer, lumberman, auctioneer, undertaker & contractor. I know Mr. Kirk & don't know Mr. Cate.

2. Q. Are you acquainted with the tract of land the timber on which was sold by Mr. Kirk to C. D. Lake?

A. Yes sir. -

3 Q. When were you on it last?

A. Two days ago. -

4 Q. Since the sale by Kirk to Lake, have all the saw-logs been cut from the land which could have been gotten from it?

A. No sir. -

5 Q. Have you had much experience in cutting wood & saw-mill logs?

A. I have been at it for 20 years. - off and on. - occasionally but not constantly. -

6 Q. How much ~~timber~~ <sup>lumber</sup> in your estimation could have been cut from this land, since Kirk sold the timber standing to Lake?

A. If economically handled about 2,000,000 feet. -

7 Q. ~~How much~~ How many feet can yet be cut on the said land?

A. I suppose if you take everything down to 12 inches at the stump, about 2,000,000 feet. -

8 Q. State, if you know, how many ~~feet~~ cords of wood have been cut on this land by Bunting Sen?

A. About 1300 or 1400 cords. about that amount. -

9 Q. What proportion of the wood already cut by them <sup>would</sup> have been suitable for saw-mill logs? on a basis of 12 inches in diameter, at the stump, and upwards?

A. At least one-half. -

10 Q. How much second growth wood in your judgment can yet be cut by them there?

A. From 1500 to 2000 cords - 1500 at least. -

11 Q State now if you know the price per thousand for timber growing at the distance this tract lies from the water?

A. From \$1.50 to \$2.00 according to quality. -

12 Q State the value of wood per cord - first-class & second class?

A. First class sells \$1.25 about the same distance from the water - second class about 60 cents. -

Cross: Examined:

Objection: Same objection as noted to Jno. M. Cowling's deposition.

1 Q Are you the son of Mr. Jno. M. Cowling?

A. Yes sir. -

2 Q How far do you live from this land?

A. About half a mile. -

3 Q. Did you know it was for sale?

A. I did. I knew the timber was, not the land. -

4 Q. Did you attend the sale?

A. I did not.

5 Q. Being in lumber business why did you not?

A. I had a <sup>water</sup> saw mill on ~~the~~ my hands at the time - and I could not manage a water mill & that tract at the same time. -

6 Q. When was your attention first called to this tract & the timber upon it?

A. Fifteen years ago.

7 Q. How often have you been on it of late?

A. About once a month or once in two months. If for nothing else I go there squirrel-hunting -

8 Q. When were you first asked to estimate the quantity of timber on the tract?

A. About a month before the sale.

9 Q. What do you mean by handling this timber economically?

A. I mean by utilizing the whole tree all that is fit for saw purposes. Many trees would cut two 16 foot logs, that would cut ~~three~~ but would cut two twenty foot logs by cutting two 16-foot logs & leaving the remainder there is a loss of 8 feet. -

10 Q. What is the usual diameter of a saw mill log at the smaller end?

A. From 10 inches to as large as we can get them. The larger the better. -

11 Q. Will it, as a general thing pay to handle saw-mill logs of less than 10 inches at the smaller end?

A. That depends on the distance to haul and the purpose for which you are going to use them. - I have seen them handled to advantage as small as six inches at the smaller end. -

12 Q. What do you mean by handled to advantage?

A. I mean where we want small timbers just squared up for a boggy track or framing, or for box lumber.

13 Q. Is lumber of that kind usually shipped to the markets of the country for sale?

A. Only as piling, or principally as piling. - I believe -

14. Q. Is it not rather a difficult matter to estimate with any degree of accuracy the quantity of timber in a tract of two or three hundred acres of timbered land? -

A. I should say it was to those who were not accustomed to the business.

Further this deponent saith not.

John P. Cowling

John J. Kirk another witness, being first duly sworn in answer to questions deposes and says:

1Q Have you been on the land upon which you sold the timber to C. D. Lake, since the 5-Octo 1883?

A. I have on a portion of it.

2Q When were you there last.

A. I think it was last Tuesday week.

3Q At that time had all the trees suitable for saw-logs been cut and removed?

A. No.

4Q Are there any yet remaining there,

and if so, how many feet in <sup>your</sup> judgment & estimating as suitable, trees measuring 12 inches in diameter at the butt?

A. Yes. - I can't say how many feet for this reason, that we only went down on one side of it, & rode up in a buggy on the other side, but I saw a number of trees still standing as we rode up one side of it. -

5Q. Are there any considerable number of such trees still standing there?

A. Judging from appearances there might be a good many. -

6Q. What is timber like that you sold (like) worth per thousand & on the stump that distance from the water?

A. I paid one party \$2.00 & another party \$1.50 to \$2.00. - The difference being the distance from the water. Part of it being from a half to three quarters of a mile further from water than this timber. -

7. Q. Has not Calk since his purchase from you sold to Beutings & Sons a quantity of cord-wood timber?

A. Yes.

8. Q. How much have they cut up to this time?

A. I do not know. — He has taken ~~400~~<sup>400</sup> cords from the wharf & I should suppose, but I am not a good judge, that there is about 1000 cords in the woods now.

9. Q. Was any portion of the timber cut into cord-wood, suitable for saw-logs?

A. Yes.

The Dept. by counsel makes the same objection as that noted to Mr. Cowling's deposition: —

Cross Examined: —

1. Q. Who was with you when you went to

examining the land?

A. Mr. John M. Cowling. - He called for me and asked me to go with him.

2. Q. Did Mr. Mills the agent of Mr. Cate ever offer you the wood he sold to Bunting & Son? -

A. Yes. -

3. Q. What was the largest amount you ever offered him for it? -

A. I don't think I ever offered him anything, as I had no money to buy with. -

4. Q. When did you buy the timber of which you have spoken?

A. I bought some last Spring & some this Fall. - I bought of parties who were indebted to me. They were reliable people though, who were dealing with me. And over what they owed me I ~~am~~ to pay them this Fall or

Winter, as with the Lake Timber  
it was to be Cash..

Q How much did you buy?

A. With one party I have had no  
settlement. I do not know. Of  
the other 34,000 feet.

Further this deponent saith not.  
John J. Fisk

John E. Wills a witness for the  
Defendant being first duly sworn  
in answer to question ~~Deposed~~  
and says:

1. Q. Are you the same party who testified  
in this case on the 5 Octo 1883.

A. Yes.

2 Q. How long have you been in the  
saw-mill-log business?

A. For about 12 years. I cut about  
a million feet of saw-logs in the

first 15-months after I commenced which was in 1840. - I have been cutting ever since off and on but not constantly. -

3 Q. What is generally understood among mill men as a saw-mill log - as to size?

A. Nothing under 12 inches at the small end. There is no log rule that will measure any smaller log. -

4 Q. Will it pay to cut any smaller log.

A. No. sir. They don't pay these 12 inch logs don't pay - not if you have got any distance to haul them. It is all slab. - Because there is only 64 feet in them. 16 feet long & 12 inches in diameter. -

5 Q. Are there any logs now on the land belonging to Mr. Cate?

A. There is a few large trees there but they are rotten inside. They have

a mush-room growing on them which is a sure sign that they are rotten inside.

6Q. Are there not some logs there ready for shipment belonging to Mr. Cake?

A. Yes - a few. -

7Q. Were the estimated in the quantity of logs cut for Mr. Cake or not?

A. Yes, they were included. - I think they were measured the 4 Octo 1883, & part of them have not yet been removed. -

8Q. You said in answer the 5. Question on your previous examination that there was scarcely anything worth cutting left on the place. Did you or not have reference to timber capable of being converted into saw-logs, and do you yet reiterate that statement. -

A. Yes sir. -

9 Q Did Mr. J. P. Cowling ever say anything to you as to the timber you were cutting from this place as saw-logs?

A. Yes, he did at Everett's Bridge once. - He said that he would not haul logs as small as I was hauling because they would bring him in debt. -

10 Q Were you the agent of Mr. Calk who sold the timber that was left, after cutting the saw logs, to Bunting & Son?

A. I don't know whether I was his agent or not, but he wrote me word to try and see the lumberman what I could get for it, the highest price I could get and report to him. - I saw Mr. J. J. Kirk first. He offered me \$300. for it. That he said he thought was all it was worth. -

11 Q To whom did you sell it & what did you get for it?

A. Mr. Bunting offered double what Mr. Kirk did. He said he didn't know but what he would lose, but he would buy it for \$600 - as he owned the timber on the other side of it. - And he went to see Mr. Cake & confirmed the bargain. -

12. Was that in your judgment a fair price -

A. Yes. I told Mr. Kirk I thought it was a fair price, at the same time I thought it was worth that. -

13. Is Mr. Kirk also now engaged in the mercantile business?

A. Yes. -

### Cross Examined:

1. Q Have you not a contract with Cake to haul the logs which grew on the land in question to the

It. water, & if so what price was he to pay you?

A. I have such a contract. He was to pay \$2.<sup>75</sup> per thousand - and it was worth \$4. - I would not take another one for \$4. - not to haul as small logs as were on that place - The logs were small & that is why I could not make anything. - Because I cut them smaller than my contract called for - I hated to see the timber lost.

2. Q. Where is that contract?

A. I have a copy. I can't put my hands on it. Mr. Cape also has a copy.

3. Q. What sizes of logs did your contract require you to haul?

A. 12 inches was the smallest for short logs, & the 32 feet logs were not to be less than 10 inches.

4. Q. Did you cut and haul all the 12 inch logs on this land to the water?

A. I havent hauled them all yet, but they are on the track and have been measured up. - There may be a few scattering trees that you could get one log from, but they don't amount to anything. -

5-Q. Do I understand you to state that you have cut all the logs on this piece of land which would measure 12 inches in diameter, at either end?

A. As I stated before there are some few left. -

6-Q. Did you never see ~~a~~ logs less than 12 inches in <sup>at the smaller end,</sup> diameter, cut at saw-mills?

A. Very rarely sir. -

7-Q. Wont it pay to cut any log that will square 4 inches and upwards, for various purposes such as making logg-tracks, rafters, braces & other small scantling?

A. In my experience of carrying on the saw-mill business, I don't think that a man could make enough to pay hand-hire, to sell the lumber. - to say nothing of logging. It is not fit for rafters because the pith in a piece of timber will cause it to crack in seasoning. It might do for bogy ~~the~~ track stuff, if you could find sale for it, but there is no sale for it. -

8.Q. What will a log 12 inches in diameter square?

A. If it is a straight log it will square 8 inches. -

9.Q. You have stated in your examination in chief that a log 16 feet long 12 inches in diameter will make 64 feet. by what rule do you compute it?

A. The Standard rule described by Doyle. -

10.Q. Is that the only rule now in use, in the computation of lumber?

A. Yes that is the general rule in use. The only one I can sell logs by. - And I do not know of any mill that uses any other. - I know 20 mills and they all use it. -

11 Q. How many feet does a stick 16 feet long & 8 inches square contain?

A. There is 85 feet. - But it won't saw that into boards. - All logs are sold by board measurement. -

12 Q. What is the loss in sawing a square stick of timber into such boards?

A. One fifth. -

13 Q. How many trees that would have given logs 12 inches in diameter have been cut into cord-wood by Bunting & Sons? -

A. They cut down a good many trees but I had my hands there to take off the logs, and the tops, they converted into cord-wood. - Probably they

might have cut a few trees at first but I don't think it amounted to very. - I went in there the day after they commenced. - And they had the dimensions to go by. They were to cut no tree that would make a 12 inch log. -

14 Q. How many hands were cutting for Bunting & Son -

A. I knew most of the darkeys, but I never counted them. -

15 Q. Did these men cut anywhere else except where you had already cut the trees that would make logs 12 inches in diameter & upwards?

A. Yes. they cut in an old field where there was not any logs. - As soon as they got on our lines, we would remove them to where we had cut. -

16 Q. Was it possible for you or any other

man to prevent these hands from cutting trees over 12 inches?

A. Well the dozy trees that were unfit for saw-logs, 23 inches in diameter, they might have cut them. - I think they cut some such trees which might be sound at the butt but were rotten & not fit for saw-logs.

17. Q. Can you state that no trees except what were unfit for saw-logs were cut into wood? -

A. Well on one occasion a dozy cut three trees which would have made 12 inch logs. - Those were the only ones I ever saw. -

18. Q. Were you in the woods every day while Buntings hands were cutting?

A. No sir. Not every day, but I notified them that if they cut any trees over that size they could not get any pay for it; because such timber did not belong to Mr. Bunting. -

19 Q. Is that the ~~the~~ only reason you know that these hands only cut trees 12 inches in diameter & under?

A. My log cutters could tell from the falling of a tree whether it was a large one, and they would seek to see it & were glad to have it cut down & if it was fit for logs they would cut it into logs. -

20 Q. How many log cutters did you have?

A. I very rarely had more than two cutting in one day. -

21 Q. Did you have the same two every day. -

A. I did while Bunting's Lands were cutting wood. -

22 Q. Were these log-cutters always near the wood-cutters?

A. Where the timber had not been cut they were. -

23 Q. Which paid you best to haul, large or small logs? -

A. Large logs. -

24 Q. How many feet of logs have you hauled & reported to Cate?

A. I could not tell exactly. Somewhere about 830,000 odd thousand. - If I had my book here I could give the exact amount. I was not aware that my deposition was to be taken today. -

25 Q. When did you finish cutting logs?

A. We have cut a few since the 5. Oct 1883, not exceeding 3000. feet. ~~There~~ We have about finished. There may be a few long logs 10 inches in diameter, to be cut.

26 Q. How many logs have been cut and carried away since you commenced?

A. I could not tell you. I have not

my book with me. - And I have not  
kept an accurate account. I was  
hauling by the thousand feet. -

27 Q. How many rafts of logs have  
been removed?

A. I think about ten (10)

28 Q. How many logs usually compose  
a raft?

A. I could not tell some times we  
would carry 100 more than at  
others. - They run from 400 to 600.  
Sometimes more than that. -

29 Q. How much wood has ~~been~~ cutting  
cut up to this time?

A. I don't know. never heard him say.

30 Q. How much more wood can be cut?

A. I reckon some 400 or 500 cords  
common stuff - maybe 600. -

31 Q. What is first class wood worth

to the shipper per cord?

A. That same wood I was offered \$2.<sup>75</sup> to put on the rail of the vessel. All expense of cutting, hauling & lightering were to come out of that, which would have brought me in debt. - Cutting 80 cents, hauling \$1.<sup>00</sup> lightering 50 cents & the hire of the lighter. I don't know what that would have been. -

32 Q. What was timber worth per thousand and at the same distance from the water which this was?

A. If I had to buy it I would not give over \$1.<sup>25</sup> per thousand feet. - I have bought timber on the water - a good deal nearer for a dollar.

33 Q. Have you not recently bought other timber equally as far from water for \$2.<sup>00</sup> for heart & \$1.<sup>50</sup> for merchantable?

A. I can't say that I have. - I have

bought some just for a bill, that is all heart nearly, and I am to pay the neighborhood price whatever it might be for that, by being right close to the boggy track, so it won't cost much to haul it. -

34 Q. To whom did you agree to pay that price?

A. The heirs of Samuel Godwin's estate..

35 Q. Have you not agreed to pay \$2.00 for heart & \$1.50 for merchandises to some other person? -

A. No sir - I can't say that I have. I have bought some about the same distance for \$1.00 per thousand sand. - just as good as Mr. Cakes' if anything better. - I bought some from Mr. Bunting last Spring. -

Re-examined:

1. Q. At the time Mr. Bunting

commenced cutting under his contract, were there many trees on this land exceeding 12 inches in diameter at the lower end?

A. Since Mr. Bunting commenced we have cut 125 000 feet, probably more. -

2 Q. Was this included in the estimate which you gave on the 5. Octo 1883?

A. Yes. -

3 Q. After a tree is cut down is it cut or sawed into logs?

A. Some time we cut it with an ax, and sometimes we saw it if it is laying good. -

4 Q. How did you keep your account as to the number of thousand feet shipped to Lake?

A. We measured it by the log rule

when it was put on the logs;  
then at night I put on a large  
book that I kept in my writing  
desk -

5. Q. How did Mr. Cake settle with  
you?

A. By the thousand feet.

6. Q. Is there not some stuff on that  
land such as Mr. Geo. M. Cowling  
spoke of, and which characterizes  
as "common stuff," which will  
not pay to cut?

A. Yes sir.

7. Q. Were the wood cutters prohibited from  
cutting into that part of the timber  
from which the saw-logs had not  
been entirely cut?

A. Yes sir. -

8. Q. Some questions have been propounded  
to you in regard to your purchase  
of timber and lumber. - What is

the size of the logs which you cut?

A. I generally cut nothing below 16 inches unless I want a small sill when I sometimes cut a 12 inch log. -

Please state whether or not Mr Kirk or anyone else ever requested you to go upon this land, and show them the stumps or logs you had cut & those which Bunting & Son had cut?

A. No Sir. -

Cross: Examined:

1. Q. Could you tell by looking at the stumps whether your men or Bunting's men had cut down the trees?

A. When it was all cut at the same time no man could tell. - We would cut and the wood-cutters would follow right after us and

you could not tell a fortnight afterwards.

Re: Examined:

Q. Could you not upon going into those woods have told from the stumps & from the tops & the surroundings generally, which trees your men had cut?

A. Yes sir, I could tell from the size of tops, because I knew what size was to be cut. ~~Then~~

Cross: Examined:

Q. Were you in the habit of going into these woods every day & examining the stumps & tops to ascertain whether your men had cut the trees or not?

A. I was in there nearly every day. I examined the trees before they were cut up into wood as a general thing. That was my principal business in there. I was in there very little before they commenced cutting wood.

Further this deponent saith not.  
John E. Mills

By consent the further taking of these depositions is adjourned until the 2<sup>d</sup> day of November 1883.

Present: C. H. Causey, Counsel for Complainant.  
Thos. Jabb, Counsel for Defendant.

John B. Newman a witness for the complainant being first duly sworn, in answer to questions deposes and says:

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

A. I am 62 years old, I live in Isle of Wight, I am a farmer, I know Mr. Kirk, I do not know Mr. Cate.

2. Q. Were you ever present when Mr. Kirk was showing the tract of land, the timber on which was afterwards purchased by Mr. Cate, to parties who came to look at it with a view to purchasing it, and if so state whether or not anything was said about the quantity of land, or the

number of acres? -

Excepted to unless the witness testifies that Mr. Cate was present. -

A. I was present when he was showing it to parties - I happened to be in the woods with Mr. Bunting, Mr. Edwards, Mr. Kirk and Mr. Hostetter, and another gentleman, whose name I do not recollect. - After going round the body of land, some of the party asked Mr. Kirk, would he guarantee 400 acres of land - His reply was that he would not, as he was doing business for another party - That is all I recollect. -

Answer excepted to because Mr. Cate was not present, and that there is a written agreement with reference to the quantity of land. -

Cross Examined:

1. Q. How near do you live to the "Whitehead" lands purchased by Kirk, Shumaker & Co.

how long have you known them?

A. I have known the land all my life-time. Was born near it within a mile or mile and a half of it. I now live about two miles from it.

2 Q. How does the main road from Suffolk to Smithfield divide those lands?

A. I reckon it is very near an equal division -

3 Q. Would or would not this be a very perceptible fact, that is, that the main road very nearly equally divides this land to one who was familiar with the boundaries of the whole of the Whitehead land? -

4. Oh yes. - of course if he was familiar with it. -

Further this Dependent saith not -  
John B. Newman

G. W. Bunting another witness for the plaintiff being first duly sworn in answer to questions deposes and says:

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

A. I am nearly 64 years old live in Hallowell Co., I am a farmer & dealer in cord-wood, and I know the parties to this suit? -

2. Q. Are you acquainted with the land upon which is the timber sold by Mr Kirk to Mr Cake?

A. I know the location of it. It is woodland there is no cleared land.

3. Q. Have you purchased any portion of the timber on this land since Cake's purchase from Kirk & Shornaker? -

A. Yes I have bought <sup>all</sup> the timber then standing, reserving ~~saw logs~~ <sup>and I</sup> think all timber making saw-logs

12 inches in diameter at the little end of a 16 foot log. -

#Q (Mr. Bunting here agrees to file the written contract between himself and Cake as a part of this deposition. - He forgot to bring it with him today) -

4. Q For what purpose did you purchase this timber?

A. I bought it for the purpose of cutting it into cord-wood. -

5. Q How much wood have you already cut?

A. I think about 1000 cords. -

6. Q What is the quality of the wood you have cut - first or second class?

A. Second class. second growth wood. The first growth having been cut off by Mr. Cake & his agent I suppose -

7. Q How much remains yet to be cut?

A. Of course it is guess work, but by cutting it small we may get another 1000 cords possibly.

8. Q At the average price of wood for the past year, what will this entire quantity of wood be worth net?

A. That is hard to tell, it may not net me cost. - That is as near definite as I can make my answer. - Some shipments I may make something on, some I won't. -

9. Q What has been the average price of wood during the past year?

A. The price varies according to the quality, varies considerably. -

10. Q What is the average price <sup>per cord</sup> paid by you for standing timber to be cut into wood at the distance this tract is situated from the water?

A. I have paid from 50 to 75-cents per cord, for good wood, though -

11 Q. What is the price for wood of like quality as this at the same distance from the water. -

A. There is no established price, it is just as a man can make his bargains with those having wood to sell. -

12 Q. State the average rate per cord that you know to have been paid for wood similar to this during the past year?

A. I don't know.

13 Q. Have you sold any standing timber during the past year to any lumbermen, and if so, at what price?

A. No, I can't call to mind having sold a stick of timber during the past year. -

14 Q. Did you ever sell any to Mr. Wells?

A. No, I have never sold any to Mr. Wills. I cannot call to mind that Mr. John E. Wills ever made application to me to buy timber. -

Exception - The foregoing deposition is excepted on the ground that it is not relevant to any of the issues involved in the cause. -

Not waiving above exception the witness is

Cross - Examined -

1. Q. How long have you known Mr. Cake?

A. I met him a little over a year ago. - That was the first time I ever saw him. -

2. Q. How many trees upon this land have you cut above the size specified in your contract with Cake?

Excepted to generally:

A. I don't know for certainty but I don't

suppose over 10 or 12. Some of these were rotten-hearted which Mr Mills had passed over because he found they had defective hearts.

3 Q Were you much upon the land?

A. We were up there every week or two. Some-times I would go between the Hunt-days, which were every two weeks.

4 Q. Is, or is it not a difficult matter to estimate either in feet or in the number of cords, the quantity of wood or timber standing upon two or three hundred acres of land?

A. I think it is very difficult to get at the correct quantity. It is all guess-work. It is so to me.

5 Q. How much first-class cord-wood did you, and can you cut from this land?

A. Very little first class. Strictly

speaking I have cut no first class,  
none that would pass as first  
class in New York - owing to  
the size of it. - The first class  
had been cut off before I took  
hold of it.

6 Q How much of this wood, estimated  
in cords, could have been converted  
into saw logs 12 inches in diameter  
at the smaller end?

A. Well if Mr. Wills has scrapped up the  
timber as I hope he has, according  
to his instructions, that is, cut all  
the trees 12 inches in diameter at  
the smaller end of a 16 foot log,  
which I suppose he has, then there  
can be none left, except these 10  
or 12 trees.

7. Q State whether or not Mr. Wills has  
cut all the trees, with the exception  
of the 10 or 12 you have stated,  
12 inches in diameter at the smaller  
end of a 16 foot log?

A. I do not know positively whether he

has or not, not having been in the woods since Mr. Mills stopped cutting.

8Q. When did he stop cutting?

A. I do not know.

9Q. How many trees of the kind I have mentioned were standing in the woods when you were last there?

A. I don't know. I don't know whether there was one or a hundred.

10Q. State whether or not Mr. Mills has cut this timber <sup>for Mr. Copley</sup> close to his contract?

Excepted to generally.

A. I should think he had as far as I could judge while in the woods.

11Q. Do I understand you to say that of the 1000 cords of wood already cut by you, there were ~~some~~ about 10 or 12 trees, some of which were

were "doby" & rotten at the heart, over the size which your Contract called for, which formed a part of the 1000 cord?

A. That is my impression, that there were only about that.

12Q. Of the remaining quantity which you say you can cut, what will be the ~~character~~<sup>quality</sup> of that wood, as to size &c.?

A. Small, second growth wood. Most of it would make good charcoal wood.

13Q. How much of this will be cut from trees of larger size than your contract with Lake calls for?

A. My own, that I know of.

14Q. Do you believe that there are any trees there now standing of larger size than your contract calls for?

Excepted to generally.

A. I don't know - but I should think not. -

15. Now that you have had an experience of nearly a year in cutting this cord-wood bought from Lake State whether or not you gave Eke its full value?

A. I honestly think that I gave him too much when I come to consider the smallness of the wood and the poor market I have met, I don't think that I would bother with it, if I had it to do over again -

Re: Examined -

1 Q. When you went to count and pay for the wood cut did you examine the stumps of the trees to see if your men had gone beyond the limit of size in your contract?

A. ~~As soon as~~ At the first or second count ~~As soon as~~ I noticed that they had cut some trees over the size - I then stopped them from that part of the woods, and I think I cautioned.

them a hundred times, not to cut any trees over the specified size that I had told them.

2. Q. Do you know the terms of contract between Wills & Coke -

A. I do not.

3. Q. Can you state positively and of your own knowledge, that only 10 or 12 trees were cut over size, or is it simply a supposition on your part?

A. I can't say positively of my exact knowledge of the fact, but as soon as the first or second count was made, when they had cut those few trees contrary to orders and when Mr. Wills had not yet been, I then stopped them from then, and put the cutters behind Mr. Wills' log-cutters, and kept behind him during the wood-cutting season and consequently I don't see that they could have cut any more large trees where Mr.

Wills had been over and serapped  
up. -

The Re-examination is also objected  
to for same reasons assigned for  
objecting to Examination in Chief.

Further this Depoent saith not.

G. W. Bunting

State of Virginia  
County of Hansemond, to wit  
I Robert Trentis, a Commissioner  
in Chancery of the Circuit Court  
of Hansemond County do certify  
that the foregoing Depositions  
were taken, sworn to and sub-  
scribed before me at the times  
and place mentioned therein.  
Given under my hand this 21.  
day of December 1883. -

Robert Trentis.  
Commr. in Chancery

Fee \$20. ~~X~~

✓  
In receipt  
of Check  
from S W  
Bunting & Son  
to be forwarded  
by mail as per  
his suggestion  
in letter of  
Feb 22<sup>nd</sup> / 83

Know all men by these presents that I,  
C. D. Baker of the County of Elizabeth City,  
State of Virginia, for and in consideration  
of the sum of Six Hundred Dollars lawful  
money to me in hand paid by G. W.  
Bunting and Son of the County of Hanse-  
mond in said State, the receipt whereof  
I do hereby acknowledge, have bargained,  
sold, assigned, transferred and set over,  
and by these presents do grant, bargain  
sell, assign, transfer and set over unto  
the said G. W. Bunting and Son all  
the timber, growing, standing and down,  
except such pine timber as will make  
logs twelve inches in diameter at the small  
ends, on that certain tract of land located  
in the county of Isle of Wight in said State  
containing about 214 acres, being the same  
tract of timber purchased by me of  
Shoemaker, Kirk & Co. And it is expressly  
understood and agreed that the said  
Bunting and Son are to use and enjoy  
the wharf privileges and conveniences  
conveyed and assigned to me by the  
said Shoemaker, Kirk & Co.

In testimony whereof I have hereunto  
subscribed my name and affixed my  
seal this the 28<sup>th</sup> day of February 1883.

C. D. Baker

(Seal)

State of Virginia

County of Elizabeth City to-wit.

I, A. S. Segar, a Commissioner in Chancery  
for the Circuit Court of the County of  
Elizabeth City, in said State, do certify  
that G. D. Coker, whose name is signed  
to the within writing, bearing date the  
28<sup>th</sup> day of February 1883, has acknowledged  
the same before me in my county  
aforesaid

Given under my hand this the 28<sup>th</sup>  
day of February 1883.

A. S. Segar,

Commissioner in Chancery

G. D. Coker } will  
to } of  
Burling & Son } Sale.

1884  
Jan. 1. Filed with  
G. W. Bunting's deposition  
7.27.

1884 January 2.

Memorandum: This day Mr. Geo. W. Bunting personally appeared before me and made the following statement:

"In my answers to the 13 and 14 questions I find ~~on~~ ~~off~~ on my examination in chief I find that I was very much mistaken, and I regret that my memory then was so much at fault, for I sold Mr. John Esells last Spring large heart timber then standing on the "Pruden" land for one dollar per thousand, about the same distance from the water as the "Kirk Shewmaker" land is. When I answered the question my mind was only on the Kirk Shewmaker land, and hence I entirely forgot all about the "Pruden" land."

Geo. Bunting

This memorandum is made at the request of Mr. Geo. Bunting, in the absence of counsel on both sides.

Robt. A. Huntis

Court in Chancery

Kirk

Counts.  
N. Depositions

Cake.

To N. Shoemaker; J. J. Kirk; J. L. Shoemaker  
and Elias Kirk -

Take notice that we shall on ~~in~~ Friday  
the 5<sup>th</sup> day of October 1883, between the hours  
of 6. A. M. and 6. P. M. on that day at the  
office of J. H. Wright in the town of Suf-  
folk, County of Nausemond, proceed to  
take the depositions of J. E. Wills and others,  
to be read, as evidence in our behalf in  
a certain suit in equity pending in the  
Circuit Court of the County of Nause-  
mond, in which you are plaintiffs and  
I am defendant - If from any cause  
the taking of the said depositions should  
not be commenced, or if commenced should  
not be concluded on that day, the taking  
of the same will be adjourned and con-  
tinued from day to day at the same  
place and between the same hours  
until the said depositions are comple-  
ted

Very Respectfully -

E. D. Lake

By Thomas Galt, atty.

1853. September 29. Executed and a copy hereof  
delivered to R. H. Lantry, Attorney for the said  
plaintiff and J. J. Kirk, J. L. Lantry Stff

The Deposition of Geo E. Mills, taken, pursuant to notice hereto annexed, before me, Geo M. Wright, a Notary Public for the County of Hansemanow in the State of Va, to be read as evidence in behalf of C. D. Cake, in a certain matter in controversy depending and undetermined in the Circuit Court of Hansemanow County wherein Shoemaker, Kirk & Co are Plaintiffs and the said C. D. Cake is Defendant.

Present - Geo. D. Cake Jft.

Geo E. Mills being first duly sworn upon the Holy Evangelist of Almighty God Depo-  
seth & saith as follows:

1<sup>st</sup> Q What is your age, residence and occupation?

Ans I am 33 years old, reside in Dist of Wright Co, and am engaged in getting lumber.

2<sup>d</sup> Q Do you know the parties to this Suit?

Ans I do.

3<sup>d</sup> Q Are you in any way connected with any of the parties?

Ans I am not.

4<sup>th</sup> Q Do you know any thing of the lumber purchased by C. D. Cake the Defendant from the Plaintiffs Shoemaker, Kirk & Co?

Ans I do. I live near the land from which the timber was sold, having been raised within about one mile of it, and lived there all my life, and am very familiar with it.

5<sup>th</sup> Q Can you state the quantity of timber which Cake has obtained by said purchase, how much he has cut and how much he will yet cut?

Ans Mr Cake has about finished cutting. I have measured up all logs cut up to the 4<sup>th</sup> dist and the total amount is 833448 ft. There is left on the place scarcely any thing now worth cutting. Mr Cake contracted with me to get the timber off the land at a certain price per thousand, and in this way I have measured and kept an accurate account of all the timber cut.

6<sup>th</sup> Q What would timber such as that sell for on the stump, that distance from water?

Ans About  $\$1\frac{26}{100}$  per thousand for lumber of that quality.

7<sup>th</sup> Q Have you ever had any offered you, if so at what price and did you purchase it or not?

Ans I have repeatedly bought it, the same distance from water, at that price. I have some now engaged, immediately on the water at  $\$1\frac{50}{100}$  per thousand.

8<sup>th</sup> Q State whether or not this land from which

Mr Cake purchased the timber has been surveyed since he purchased; if so state when and by whom?

Ans It was surveyed the latter part of May 1882 by Col E. M. Morrison of Smithfield, who was the County Surveyor of Isle of Wight Co. I was present when the survey was made and went around the land with the Surveyor - And further this Depoent saith not.

John E Mills

Taken and subscribed before me this 5<sup>th</sup> day of October 1883.

Jno H. Wright. N. P.

Shoemaker, Kirk & Co  
v  $\frac{2}{3}$  In Chancery -  
C. D. Cate.

Deposition of  
Jas E. Wells.

5

The depositions of John J. Kirk and others taken before me Robert P. Pantis a Commissioner in Chancery for the Circuit Court of Nausemond County, to be read as evidence in the Chancery cause of N. Shormaker, J. J. Kirk, J. L. Shormaker and Elias Kirk against Charles D. Calk, now pending in the Circuit Court of Nausemond County. - These depositions are taken by consent this 6 day of September 1882 at the office of Withers Pantis in Suffolk. -  
Present:

A. Canby for the Plaintiffs.

Wm. Tabb for the Defendants.

1. Q. The witness John J. Kirk being duly sworn in answer to questions deposes and says - State your age, residence? Do you know the parties to this suit?

Ans. 42 years of age on 8. August 1882. - I reside in Nausemond County. - I know the parties to the suit. -

2. Q. Were you on 2. Feby. 1881 one of the owners

of the tract of timbered land lying in  
Isle of Wight, near Ericks Bridge?

Ans.

Yes.

3 Ques.

Was a part of that tract of land advertised  
to be sold on 2. July. 1881 in the City of  
Norfolk at public auction? -

Ans.

Yes. -

4. Q.

Was the said land sold pursuant to said  
advertisement? -

Ans.

No - the land was not sold.

5. Q.

Was any sale made on that day?

Ans.

Yes. ~~at~~ a body of timber was sold.

6. Q.

Who was the purchaser?

Ans.

Mr. C. D. Cake of Hampton. -

7. Q.

Had Mr. Cake ever been on the land in  
question, upon which the timber stood,  
prior to the purchase? and if so state  
when and what took place between  
you and said Cake on that occasion.

Ans.

Yes, he had been on the place. I took  
him around, showing him the line trees,  
and where there was no line tree for  
a considerable distance, I told him it  
ran a straight line to the starting  
point. I took him through the centre  
of it as near as I could. And I  
asked him if he would like to look  
any farther and he said, no. - I

don't recollect anything more. He was in a hurry and went away on his boat - He may have asked me about the number of acres - I don't recollect.

8 Q. Did any other parties look at this land, while advertised for sale, and if so, give their names, and state what took place between them and you?

Ans. Mr. Neffelfinger was the first. There was quite a number, Mr. Bunting and others. Mr. Neffelfinger inquired very particularly, if I knew how many acres there was - and I told him I did not.

Then on coming down to the store and in the store he asked me - if I could recommend any <sup>one</sup> who I thought would know how many acres there were in the place - I told him that I thought John M. Cowling could give him the information desired. - He sat down and wrote to Mr. Cowling at once. And it is supposed by me that he received an answer as I saw a letter go through the Post office for Mr. Neffelfinger.

9. Ques. Did you ever guarantee to any person the number of acres in this tract?

Excepted by Defts. Counsel on the ground that the written contract is the best evidence.

Ans. No. most emphatically. -

10 Q. When the sale took place in the city of Norfolk, did Mr. Cake know that only the timber on the land and not the land itself, was being sold?

Ans. I think so. -

11 Q. State whether or not any conversation took place between yourself & Mr. Cake in Norfolk after the sale in question had been made, and before the agreement between Cake and yourself & Shoemaker had been drawn & signed?

Ans. Question objected to because there was a written contract between the parties, by depts. Counsel.

Ans. Immediately after the sale Mr. Cake came to me, & spoke to me I introduced him to Mr. Shoemaker. I then congratulated him on his purchase and a moment after he turned to me and says "there is not as many acres in that piece of land as <sup>you</sup> represent it" I then said we do not know how many acres there is in the piece as we never have it surveyed.

12 Q. Have you complied with your part of the agreement up to this time?

Ans. Yes.

13 Q. Has Mr Lake complied with his obligation under the agreement & if not wherein has he failed?

Ans. No. He has refused to pay for the logs according to the written agreement.

14 Q. Was this contract between Lake, yourself & Shoemaker to have been recorded?

Ans. Yes it was to have been recorded by him. He took the only written copy & said he would have it recorded at once.

15 Q. What passed between Lake and yourself on the day he was restrained from the further removal of logs from the land in question after having failed to comply with his contract?

Ans. On the morning in question, immediately after breakfast, he met me on the upper end of the wharf, & after passing the morning salutations,

I says to him. I suppose you  
have come over after more logs.  
I suppose you received my  
letter addressed to you a few  
days ago, informing you that  
Mrs. Shoemaker requested me  
not to let any more logs go off  
of the wharf until the others were  
paid for. & then I says to him that  
I will have to prohibit you from  
removing any more logs from  
the wharf. I am sorry to do so. &  
he then said you will have to stop  
me legally, then after general conver-  
sation not relating to the matter  
in hand. he says I knew how  
many acres of land there <sup>was</sup>  
in the piece & had had <sup>before the sale</sup> <sup>look</sup> <sup>plenty</sup> Counsel  
advised me to go ahead  
and buy, I then left him.

Ques. Ex m. by Depts Counsel.

1st Q. Is this a part of the land known  
as the Col. Whitehead land?

Ans. Yes.

2d Q. How much land did you & Mr. Shoemaker buy of which this forms a part?

Ans. Eight (800) Hundred acres more or less

Q 2 Is there any prominent line, which divides these lands which you purchased of Col. Whitehead in about two equal parcels?

Ans None that I know of.

Q 2 Does not the main road divide them into about two equal parcels?

Ans I do not know, the road runs through the place, but I do not know whether they are equally divided or not.

Q 2 Were you not informed at the time or about the time of the purchase that the main road did divide them in two equal parts?

Ans. I was not present when the property was bought.

Q 2. On which side of the main road is the <sup>land</sup> timber you sold. Calk?

Ans. On the right hand side going North.  
Q 2 On which side is the Griffin track?

Ans On the right hand side going North.

Q 2 On which side is the J. J. Kirk track?

Ans. On both sides.

9. Q. How much land of the J. J. Kirk land is on the same side of the road, <sup>on which the land</sup> on which is the timber you sold Cuke?

Ans. To answer positively I don't know. Should suppose about thirty acres on the right hand side going north with the Cuke land.

10. Q. How much land is there in the Griffin tract?

Ans. I do not know.

11. Q. Can you form some idea

Ans. No.

12. Q. Is the Cuke Griffin & the parcel of the Kirk land you speak of all of the Whitehead land, which you purchased on the right hand side of the main road?

Ans. Yes.

13. Q. Do you mean to say that the land the timber upon which you sold Cuke, was one half of the land you purchased from Col. Whitehead?

Ans. I don't know.

14. Q. Give me your opinion as

as to whether you think it is one  
half or not?

Ans: I don't know what to think of  
it. the place lays in such a  
position that it is hard to tell.

15<sup>th</sup> 2. Think over the matter and let me  
have your opinion?

Ans: General exception to this line of  
examination by J. P. P. A. G.

Ans. I can't come to any better con-  
clusion if I were to think all  
day.

16. 25. How long have you been living  
on this land?

Ans. Will have been there eleven years  
on the 1<sup>st</sup> Jan. 1883.

17 25. Is this land a third or fourth  
or fifth, in point of quantity  
of the land you bought of Col  
Whitehead?

Ans. I don't know.

18 25. Why was it that you represented  
in your advertisement for the  
sale of it, that it contained 400  
acres if you don't know?

Ans. I did not represent it so!

19 2. What were the representations made  
in the advertisement of the sale? in  
regard to quantity of land?

Ans: It was represented as 400 acres  
more or less.

20 Q. Were you present at the  
time of the sale when Coker  
purchased?

Ans: Yes.

21 Q. Why did you permit that rep-  
resentation to be made that there  
was 400 acres if you knew  
nothing of the quantity?

Ans: I did not think it made any  
difference

22 Q. Do you mean to say that it makes  
no difference what sort of a rep-  
resentation you make whether  
true or not, when you are selling  
a piece of property?

Ans: It really does make a difference  
when it is done intentionally  
but we had no intention to defraud  
& as parties looking at it in the  
woods I invariably told them  
when asked, how many acres  
there was, that I did not know  
that they must use their own judgment

23 Q. Then you made this representation  
that there was 400 acres, without  
knowing whether it was true or false.

Ⓟ

8  
Ans. Yes.

24<sup>th</sup> Q. What opportunity did you have  
for judging of the quantity of  
land before being sold?

Ans. I never was but ~~twice~~ <sup>three or four times</sup> in the timber  
before the sale. Then I once went  
after a log on one of the main paths.  
And once went through the same  
path to a negro's, I was around  
it <sup>on two sides of it</sup> immediately after the whitehead  
purchase. I was in there twice be-  
fore the advertisement was put in  
the paper. -

25<sup>th</sup> Q. How did you happen to be  
in there on these two occasions you  
speak of & who was with you at  
the time?

Ans. The first time in there with my driver.  
Can't remember his name. & I think  
also my log cutter was present. &  
on the second time Mr. Newman was  
with me.

26<sup>th</sup> Q. What was Mr. Newman doing with  
you?

Ans. He had informed me that a negro  
had chopped a tree with the intention  
of making it the line tree.

27<sup>th</sup> Q

Then I understand you to say

that you had been around two sides of it before the ~~Whitehead~~<sup>Cake</sup> purchase and had been ~~through~~<sup>into</sup> the land twice besides, is that it?

Ans. Yes.

28. Q. Then how was it that you undertook to show Cake the boundaries of this land?

Ans. Well the road is one side, and the other is a long crooked side.

29. Q. Why was it that when you advertised the sale of the land & timber you only sold the timber.

Ans. By request of persons in the auction room.

~~30. Q.~~ The witness here desires to amend his answer to the 28<sup>th</sup> Question and says as follows in answer to the same. I had said previously that I had only been on two sides of it, but have been on three, -

30. Q. ~~How much~~ What parcels of the original Whitehead purchase do you yet retain

Ans. I do not know.

31. Q. How much of the original Whitehead purchase do you yet retain?

Ans. I do not know

33. Q. How much of the Whitehead purchase have you sold?

Ans. I do not know

33 Q. To whom have you sold any portion of the Whitehead purchase?

Ans. One part to James M. Griffin, I don't know how much.

Question and answer excepted to the deed will show. —

34 Q. When did you make this sale to Mr. Griffin?

Ans. Last fall, or about one year ago.

35. Q. Was it before or after the sale to Lake.

Ans. I don't know.

36 Q. Is Griffin the only one you have sold any of the said land to.

Ans. No, I bought it from the firm, in a trade, since the sale to Lake.

37 Q. Do you know the names of the parcels which comprise the Whitehead purchase.

Ans. No.

38. Q. Have you ever been around the lines which comprise the original W. purchase?

Ans. Yes.

Re Examined by Peps Atty.

1st Q.

What has been your chief occupation since you have resided in Virginia

Ans.

I have been a general merchant I suppose more than any thing else.

2 Q.

Have you ever been sufficiently familiar with tracts of land to enable you to accurately estimate their area by going through & around them?

Ans. x

No.

3 Q.

Did you write the advertisement which appeared in the Norfolk Virginian.

Ans.

No.

4th Q.

Were there not two advertisements

Ans.

Yes.

5 Q.

Do you know whether or not both advertisements stated positively that there were 400 acres in the tract?

Ans.

Yes I know.

6 Q.

Did you not go through the land with Cate as well as around it.

Ans. \*

I tried to but could not succeed in getting through very well. I went

until Lake was satisfied.

7. Q. Have you any interest in the Lake purchase at the present time?

Ans. No. I traded my interest to Mr. Shoemaker last Oct. —

Re x m.

1. Q. Where have you been merchandising at upon or near these Whitehead lands?

Ans. At Everett's, on the land

2. Q. Have not these lands been under your charge or under your supervision for the past ten or eleven years?

Ans. Yes.

3. Q. Who wrote the advertisements that appeared in the Norfolk Virginian?

Ans. I do not know positively, but suppose the auctioneer.

4. Q. Did you have any communication with the auctioneer, in regard to the sale, before or after the sale?

Ans. Yes, he asked the conditions that we wanted it put up for.

5. Q. Where did the auctioneer get his information from in regard to the description of the property?

Ans. I do not know.

6 Did you ever see a copy of the advertisement before the sale?

Ans. I think I must have. I think I had a copy of the paper that had it in it - but I am not positive about it. I don't know whether it was the first or second advertisement that I saw.

And further this deponent saith not.

John J. Kirk

John M. Cawling being introduced by the defendant, deposes and saith as follows -

1. Q. What is your age where do you reside, and what is your occupation?

Ans. I am seventy three years of age, reside in Hanscom and my occupation is a farmer.

2. Q. Do you know the Whitehead land which were purchased by Kirk Shoemaker & Co? the plaintiffs in this suit?

Ans. I do, I was the manager of the land up to the time of the purchase from Whitehead.

3 Q. How does the main road divide these lands?

Ans. The main road divides them nearly equal. I think the west side contains a little the most land.

4 Q. On which side of the road is the Lake purchase?

Ans. On the East side.

5 Q. On which side of the road is the land purchased by Griffin from Shremaker & Kirk, and how much land on the East side did Griffin purchase from them?

Ans. (The latter clause of question excepted) The land is on the East side, and there is about 120 acres of it.

6 Q. How much of the land now held by J. P. Kirk obtained by him from Kirk & Shremaker, and a part of the Whitcomb purchase, is also located on the East side of the main road?

Ans. That piece of land is  $\frac{1}{2}$  mile long and will average 300 yds in width, & will make between 50 & 60 acres on the East side of the road. —

7 Q. Have you not had considerable  
experience as surveyor -  
Ans. I have.

~~1st Q. Has~~ ~~X~~ ~~made by~~ ~~Pltfs atty.~~  
~~1st Q. Has~~ ~~X~~ ~~made by~~ ~~Pltfs atty.~~

1 Q. Did any one ever inquire of  
you about the No: of acres in  
Cahis purchase?

Ans. No,  
2 Q. Was any inquiry ever made of  
you about the quantity of timber  
on said lands.

Ans. Mr. Hefflefinger wrote to me to know  
what amount of lumber was on  
that land, I replied to him that there  
was about 100 acres that would  
average about 20 cords per acre  
which I thought would make 2000  
feet of saw lumber per cord. -  
& the balance of the lumber on the  
premises, & the balance of the  
lumber was small immatured  
lumber, - the second growth would  
over-run 1000 cords.

3 Q. And further this deponent said  
not.

for M. Lowling

State of Virginia,

County of Hansemond, to wit:

I Rob. S. Prentiss a Commissioner  
in Chancery for the Circuit Court of Hansemond  
County, do certify that the foregoing depositions  
were taken, sworn to and subscribed at the  
time and place mentioned therein. -

Given under my hand this 8. day of  
September 1882.

Rob. S. Prentiss  
Comm. in Chancery

Fee \$5.-

J. J. Kirk & Co

Depositions of  
N. J. Kirk and  
Jno. M. Cowling.

Chas. D. Case

The depositions of Jacob Heffelfinger and others taken before me Wm J. A. Cumming, a notary public for the County of Elizabeth City, Virginia - taken by consent, at the office of Thos Tabb, Esq. in Hampton on the 3<sup>d</sup> day of October A.D. 1882, to be read as evidence in behalf of Kirk and Shoemaker, in a certain suit in equity depending in the Circuit Court of Hansemond County Virginia, where in C. D. Lake is defendant, and Kirk and Shoemaker are plaintiffs.

Present. C. H. Causey Esq. Atty for Plff.  
" Thos Tabb " " " Dft.

Mr Jacob Heffelfinger being first duly sworn deposes and says:-

1 Ques. by Mr Causey. What is your name age residence and occupation?

Ans. Jacob Heffelfinger. 42 yrs of age, Hampton. Am a lumber merchant.

2<sup>d</sup> Ques. Do you know the parties to this suit?

Ans. I have met Mr Kirk twice, and Mr Shoemaker once. Mr Cake is a neighbor of mine. I am well acquainted with him.

3<sup>d</sup> Ques. State where, and under what circumstances you first met Kirk?

Ans. I first <sup>met</sup> Mr Kirk at his home in Nausaemond County, I believe. I went there to look at a tract of timber land, he had advertised for sale.

4<sup>th</sup> Ques. Did Mr Kirk show you over this land, and if so state what took place between you, as to the quantity of land contained in the said tract? (This question is excepted to by Mr Tabb Atty for the defendant. Wm J A Cunningham Notary)

Ans. Mr Kirk did show <sup>me</sup> around the said tract and over it. According to the best of my recollection, I asked Mr Kirk whether the quantity

ty of land advertised, was in the tract. He said, that from the quantity of land they had purchased originally, there ought to be that much land in that tract, or words to that effect. He did not know whether the quantity was there or not. I asked him whether he had any plat or survey of the tract. He said he had not. He then told me, - whether in response to a question from me or not. I do not remember, - that a man named Cowling, knew more about the land, than any one else in that vicinity. I understood from him that Mr Cowling was an old surveyor, that was the impression left upon my mind. He positively declined to sell the tract by the acre, said it must be sold in a lump of the whole. This is all that I remember in regard to the quantity of land, that passed between us.

5<sup>th</sup> Ques. Were you present in Norfolk on the day of sale of the timber on this tract? and if so, state whether or not; you had any con-

versation with Mr Cake, as to the quantity of land in said tract?

Ans. I was present at the sale, I had conversation on the day of the sale with Mr Cake, in regard to the quantity of land. I know that I had conversation with him after the sale with regard to the quantity of land. I don't think I had any conversation before the sale as to the quantity of land. I had as to the value of the timber. The whole thing is quite indistinct in my memory. All I recolled- as to the conversation after the sale is that I gave Mr Cake the information I had received from Mr Cowling as to the quantity of land. That I distinctly remember and that is the only thing I do remember distinctly. I dismissed the whole thing from my mind. I did not tell him how many acres there were. I gave him the information I had received from Mr Cowling, which was in writing. My recollection is he had estimated it on his paper at 225 acres. I am not positive as to that.

For the this deponent says not.

Jac. Beffefinger.

Mr C. D. Lake. was recalled <sup>by Mr Jabb</sup> and the following questions propounded.

1<sup>st</sup> Ques. You have just heard the answer of Mr Jas Heffelfinger given to the last question propounded to him by the plaintiffs Counsel with reference to a paper received by him - Mr Heffelfinger - from Mr Cowling, please state what has become of that paper.?

Ans. I dont know. I think I must have destroyed it. I searched my papers for it. and could not find it.

2<sup>d</sup> Ques. State the contents of that paper to the best of your knowledge and belief! (Note - Generally excepted to by plaintiffs attorney Mr C. H. Causey (Note))

Ans. The paper was a letter written to Mr Heffelfinger by Mr Cowling, giving a general ~~ad~~ making a proposition to cut the timber for him, in case he bought. On the back of the paper was a diagram of the woods, with the different plots of large trees marked on

it, and with the number of acres in each, and about how many cords of wood each would cut per acre, the balance of the wood was marked Old fields. I don't recollect that the whole quantity of land was given on the paper, but only the plats of the large trees.

Ques. If you had known at that time, that there was only two hundred and twenty five acres in the tract what would have been your action in the matter?

Ans. I should have declined buying at the price - \$3000<sup>00</sup> -

Ques. When was it that Mr Heffelfinger gave you this paper, what time in the day and where?

Ans. It was after the sale and at the auction house. I don't remember the hour.

Ques Have you had any conversation with Mr Heffelfinger in

regard to this matter since the day of the sale?

Ans. I dont recollect but once just after I had it surveyed and found out the number of acres of land, I believe I told him that in his office.

Cross Examination by McCauley.

1<sup>st</sup> Ques. Where were the articles of agreement between yourself and Kirk & Shoemaker drawn and signed?

Ans. In the office of Mr. Garnett on Main Street - Norfolk.

2<sup>d</sup> Ques. Who were the auctioneers who made the sale -

Ans. That I dont know. I know where the house is, it is on the south side of Main Street - on the corner of either Roanoke Avenue or Commerce Street.

3X Ques. Did you return to the auction house after the contract had been drawn and signed?

Ans. I did not.

The witness desires to state that he put no confidence in the paper, because he supposed the parties who sold the land knew more about it than any outsiders, and Mr Cordley who made the paper, was an entire stranger to me and I knew nothing in the world about him.

Further this deponent saith not.

C. D. Cate

Virginia.

Elizabeth City County, to wit.

I, Wm J. A. Cunningham, a notary public for the County of Elizabeth City in the State of Virginia do hereby certify that the foregoing depositions of Jac. Heffelfinger, and C. D. Cate, was duly taken sworn to and subscribed, before me at the time and place and for the purpose therein mentioned. Given under my hand this      day of October A.D. 1882.

Wm J. A. Cunningham.

Fee \$1 <sup>50</sup>/<sub>100</sub> -

Kirk & Shoemaker  
vs. } In Chancery  
Case.

Depositions of  
Jas. Heffelfinger & others

The depositions of C. D. Cake and others, taken before me, W<sup>m</sup> J. A. Cumming, a notary public for the County of Elizabeth City, Virginia - taken by consent, at the office of Thos Tabb Esqr, in Hampton, on the 3<sup>d</sup> day of October A.D. 1882, - to be read as evidence in behalf of C. D. Cake, in a certain suit in equity depending in the Circuit Court of Nansemond County, Virginia - wherein C. D. Cake is defendant, and Kirk and Shoemaker are plaintiffs -

Present C. H. Causey Esqr Atty for Plff  
Thos Tabb Esqr " " Dft.

Mr C D. Cake being first duly sworn deposes and says.

1<sup>st</sup> Ques. State your name, age, residence and occupation -

Ans. Chas D. Cake. Hampton Va. 43 years, lumber dealer.

2<sup>d</sup> Ques. Are you the same person that mentioned in the plaintiffs bill, as

the purchase of the timber upon  
a certain tract of land located in  
Isle of Wight County near Everetts  
bridge - owned by Shoemaker, Kirk  
& Shoemaker?

Ans. I am.

3<sup>d</sup> Ques. How did you know any thing  
about this land and timber?

Ans. From advertisement seen in  
Norfolk papers.

4<sup>th</sup> Ques. Had you any previous knowl-  
edge and acquaintance with this land  
and timber?

Ans. None whatever.

5<sup>th</sup> Ques. Did you ever visit this  
land and when was the first time  
that you ever saw it?

Ans. I went on the land about  
three or four weeks before the day  
of sale.

6<sup>th</sup> Ques. What was the object of your visit?

Ans. To see how the land lay in regard to getting the logs out, and the quality of the timber on it.

7<sup>th</sup> Ques. What portion of the land was shown you?

Ans. That I don't know. I was taken around part of the lines.

8<sup>th</sup> Ques. Why is it that you can't explain it?

Ans. Because I was a perfect stranger there, and didn't know the land at all. I was ~~know~~ no judge of the quantity of land in a piece of woods.

9<sup>th</sup> Ques. What experience have you in estimating the quantity of land in given tracts?

Ans. None at all.

10<sup>th</sup> Ques. What was the quality and

character as to quantity of timber upon the land shown you?

Ans. The quality of the timber was fair, and the quantity I estimate at about 5000 feet - to the acre.

11<sup>th</sup> Ques. Who showed you the land?

Ans. Mr J. J. Kirk -

12<sup>th</sup> Ques. Did any thing pass between yourself and Mr Kirk at this time in regard to the quantity of land and if so, what was it?

Ans. Going through the woods, I could not tell any thing about the shape of the land, and was anxious to find out about the shape, so I could tell, if I purchased it, how far the farthest part of the land was from the river, as it was my intention to run a bogy track, if I bought it. I wished to know the distance for this purpose, I asked Mr Kirk if there was any plot of the land. He said there was not. I then ask

ed him how he knew there was 400 acres there. He said they knew they had 400 acres there, Supposing they knew exactly what they had, I asked no more questions.

13<sup>th</sup> Ques. Did you ever have this land surveyed, and if so, why did you have it surveyed?

Ans. I am not much of a hand at keeping date. About the middle of May I had the County Surveyor to survey the land. I was lead to have it surveyed, by the report of Mr J. E. Wills who was cutting the timber off of it. He wrote me saying he thought he had cut about half off. which was about four hundred thousand feet; and that he was confident he would not get a million of feet off the place. As this was so much below the quantity that I estimated in buying it, I felt sure the quantity of land must be short as well as the timber.

14<sup>th</sup> Ques. Who is Mr Wills, that is in what relation does he stand to you in this matter?

Ans. Mr Wills. is the gentleman who is cutting the timber and delivering it - at the water on contract for me.

15<sup>th</sup> Ques. Do you convert this timber into lumber, and if so where is your mill?

Ans. I do. My mill is in Hampton.

16<sup>th</sup> Ques. Did you build any bogy track from this timber to the water, and if so how long is the track and about what did it cost you?

Ans. I did. The track is about two miles long - and cost me including the bogies, between \$700 and \$800.

17<sup>th</sup> Ques. Would the timber on 220 acres of land justify you in incurring this expense for a bogy track?

Ans. I think not. I should not have

By Jno. R. Ludlow & Co.

Real Estate Auctioneers

No. 123 Main Street, Corner Roanoke  
avenue

400 acres of timbered land in  
Harrison County for sale at Auction  
We will sell at our auction room no.  
123 Main Street, on Wednesday, February  
2d. 1881, at 12 o'clock M. 400 acres  
of timbered land, one and a half miles  
from tide water, at Everett's bridge, Har-  
rison County, Va. It is a part of the  
Columbia tract, and is bounded  
on the west by a public road, leading  
from Suffolk to Smithfield and  
bounded by the lands of John M. Bowling  
and J. J. Kirk and others. It is estimated  
that there is at least two million feet  
of good saw mill timber and a vast  
amount of cord wood on the tract.

The purchaser will have the use of the  
wharf to ship the lumber, and also  
have the privilege of constructing a log  
road from the timber to the landing.  
Persons wishing to see the land can do  
so. Can address J. J. Kirk, Everett's Bridge,  
Harrison County, Va. This is a rare  
chance and lumbermen would do well to at-  
tend this sale. - Terms of sale - One half cash  
balance by 6, 12 & 18 months at 6 per cent interest  
Jno. R. Ludlow & Co. General Auctioneers

"B"

Office of the *Norfolk Virginian*,  
Daily and Weekly

Corner of Main & Commerce Streets,  
(*Virginian Building*)

M. GLENNAN,  
Proprietor

Norfolk, Va., Sept. 29th. 1882

*Timber For Sale.*

To Saw-mill men and Lumber  
dealers - 300 or 400 acres of timber  
land containing some 1,000,000  
feet of original growth pine  
timber for sale very low near  
Everetts bridge, Nansemond County,  
Va. Apply to or address J. J. Kirk  
Everetts Bridge

Nansemond County Va.  
de-17-6t.

1882

"A"

"A"

was satisfied with the quality of timber, and from his statement the quantity of timbered as advertised, that is I was satisfied that if the quantity of land he said, was there, the quantity of timber would be there.

4<sup>th</sup> X Ques. Did you not go across this land, as well as partly around it?

Ans. Three different times Mr Kirk attempted to carry me across, a short route, to some other part of the line. Each time he got lost, and brought me out to the same piece of timber, which was the largest or appeared to be the largest trees in the wood. The only time we crossed it so far as I know, was when we came out, we made a short-cut across to the main road.

5<sup>th</sup> X Ques. How many saw mill logs have you cut and moved from this tract of land since the purchase?

Ans. I think about 500000 feet?

X<sup>th</sup> Ques. How many logs?

Ans. I suppose about 3000 logs - between 2500 and 3000 logs.

6<sup>th</sup> X<sup>th</sup> Ques. Have you complied on your part with the agreement made between yourself and Kirk and Shoemaker as to the payment for the logs cut and moved?

Ans. I have not. The Court stopped me from removing the logs, and took the case in hand itself. The money has been paid in the Bank of Maine upon order of Court, to such amount as to satisfy the plaintiffs, until the suit is decided.

7<sup>th</sup> X<sup>th</sup> Ques. Had you complied with the terms on your part for the purchase, when the restraining order was issued?

Ans. I had not. After learning that the timber and land were both short in quantity, I declined making farther payments until the

difference was adjusted.

8<sup>th</sup> X Ques. Does the amount, paid into Bank since the restraining Order was issued, added to the amount paid before that time, make up a sum, fully sufficient; to cover the number of logs cut and moved by you, from the said Tract; according to the agreement?

Ans. It does not. I was informed by counsel that no more money would be required for me to deposit in Bank, until the suit was argued.

9<sup>th</sup> X Ques. Have you finished cutting logs on this tract?

Ans. I have not.

10<sup>th</sup> X Ques. Do you know how many logs can yet be cut on this tract?

Ans. I do not.

11<sup>th</sup> X Ques. After the cutting of the saw mill logs is completed, can not a large quantity of cord wood be cut?

Ans. That - I don't know. There is a quantity of second growth timber on the land, but whether it will make saleable wood or not - I am not informed.

12<sup>th</sup> X Ques. Did you not state in Norfolk, after the sale of the timber upon the land had been completed, and before the agreement - was drawn and signed either to J. J. Kirk or Nathan Shoemaker, that there were not 400 acres of land in the tract?

Ans. I did not. I knew nothing of the quantity of land at the time I bought.

13<sup>th</sup> X Ques. How much money do you still owe to Kirk and Shoemaker, to complete fully on your part; the agreement signed by you on the 2<sup>d</sup> day of February 1881 - all of the purchase money <sup>being</sup> now past-due?

Ans. Fifteen Hundred dollars, including the \$1100 now in the Bank of Newbern - by order of Court.

Re Direct Examination by  
Mr Tabb.

1<sup>st</sup> Re Dir<sup>t</sup> Ques. How much money have you paid plaintiffs? and how much have you deposited in Bank to the credit of the Cause?

Ans. Paid plaintiffs \$1500-, and deposited in the Bank of Nassaumond to the credit of the cause \$1100.

2<sup>d</sup> Re Dir<sup>t</sup> Ques. What newspaper was it, in which you saw the advertisement of the sale of this land?

Ans. The Norfolk Virginian.

3<sup>d</sup> Re dir<sup>t</sup> Ques. What difference was there if any, in these advertisements, which you saw. Were they all similar or was there any difference in them?

Ans. I don't recollect of seeing but one. The one I saw was headed. "400 acres of land and two million feet of saw logs for sale". If there was another different from this, it must have

been before I subscribed for the paper.

The witness was here handed the two advertisements marked respectively "A" and "B". and asked the following question.

4<sup>th</sup> Red<sup>n</sup> Ques. Take these Advertisements and say which of them was the one you saw!

Ans. The one marked "B"

5<sup>th</sup> Red<sup>n</sup> Ques. I understood you to say in your answer to the fifth cross question, that you had cut about 500000 feet; was that about the yield of the 3000 saw logs, which you say you cut from this place?

Ans. Yes. The logs were very small averaging about seven to the 1000 feet.

Re Cross Examination by  
Mr Causey -

1<sup>st</sup> Re X Ques. Did J. J. Kirk ever tell you that there were 400 acres in this tract; and that two million feet

of saw logs could be cut therefrom?

Ans. He told me he knew there was 400 acres of land in the tract, I don't recollect - his saying any thing of the quantity of timber

Re X<sup>th</sup> Ques. When it was determined on the day of sale to sell only the timber on the land, and not the land itself, was there any declaration made by Kirk or Shoemaker that there was 2000000 feet of timber on the said land, or in regard to the quantity of cord wood that could be cut?

Ans. Not that I recollect of.

Re Examination resumed, by Mr Lobb.

Re X<sup>th</sup> Ques. What did the auctioneer do, at the time this land was sold by him - How did he describe the land?

Ans. He opened an account <sup>book</sup> and read an advertisement cut from the Norfolk Virginian. The same one

that is marked "B". After some talk among the parties present, he said it had been decided to sell the timber off of the land and not the land. He then commenced taking bids and knocked it off to the highest bidder.

2<sup>d</sup> Re<sup>d</sup> Ques. Were Shoemaker and Kirk present - at the time he read the advertisement?

Ans. Yes Sir, both were present.

3<sup>d</sup> Re<sup>d</sup> Ques. Was anything said by Shoemaker, Kirk or the Auctioneer at the time of the sale, as to the quantity of the land or the quantity of timber thereon, other than the statements set forth in the advertisement?

Ans. When the Auctioneer read the advertisement stating the quantity of land, I asked the question: "Mr Kirk has told me there is no survey of the place, how do

you know there is the quantity of  
land there advertised?" Mr Shoe-  
maker said from the quantity  
of land bought, and the quantity  
sold, there should be 400 acres  
left..

Further this deponent saith not.

C. D. Carke

Virginia

Elizabeth City County, to wit

I Wm J. A. Cumming, a notary public  
for the County of Elizabeth City, in the  
said State, do hereby certify that the  
foregoing deposition of C. D. Carke  
was duly taken, was duly taken sworn  
to and subscribed before me, at the  
time and place and for the purpose  
therein mentioned. Given under my  
hand, this            day of October A.D. 1882.

Wm J. A. Cumming  
Notary Public.

Fee \$2<sup>50</sup>, Chgd to defendant.

Postage 24 Total \$2.74

Kirk & Shoemaker  
vs. } In Chancery  
Coke.

Deposition of  
C. D. Coke.

The Deposition of John R. Lindlow  
and others taken before me W. H. White  
Notary Public, in the City of Norfolk  
Va. by consent of parties to be read  
as evidence on behalf of the plain-  
tiffs in a certain suit pending in the  
District Court of the County of Hanse-  
mond, wherein M. Shoemaker and  
others are plaintiffs and Charles D.  
Pike is defendant.

Present, T. S. Garnett Jr. Counsel for  
Plaintiffs, and -

Thos. Tabb, Counsel for defendant.

John R. Lindlow being duly sworn  
deposes and says as follows:

1<sup>st</sup> Ques. Are you the Auctioneer who made sale  
on the 2nd day of February 1881, of the timber  
in controversy in the above named  
cause?

Ans. I ~~was~~ the Auctioneer.

2<sup>nd</sup> Ques. State what you did and said at  
the time of said sale, and who was  
the purchaser of said timber?

Ans. On the 2nd day of February 1881

between 12 and 1 o'clock I commenced the sale of the property by reading the advertisement (marked "B" filed with the deposition of C. D. Cake, in this cause) after crying the property for some minutes I found it impossible to sell it as a whole so I advised Mr Shoemaker to sell the wood upon the terms, Some one in the crowd suggested that the terms of the sale be altered and he suggested that \$300 be paid cash and one dollar for each log as it was cut and carried off the place until the whole of the purchase money should be paid. Mr Shoemaker suggested \$1000 - cash, agreeing to the \$1.00 per log as there was some dissatisfaction to that I persuaded him to take the \$300 - cash and the \$1.00 per log until the whole was paid. Some one in the crowd asked me if I knew there were 2,000,000 feet of lumber on the tract. I said I did not know what the amount was, but referred them to Mr Shoemaker, who said it had been estimated by lumbermen that it would cut 2,000,000 feet of good lumber.

and also a large amount of cord-wood.

I think it was Mr. Cake who said to me that he had been over the property with J. J. Kirk, and that he was satisfied with the statement made. This conversation occurred before I put it up for the second sale. Then the property was cried and sold to C. W. Cake for \$5,000.

3 Ques. What memorandum of this sale did you make on your book? Read a copy thereof.

Ans. "W. Shoemaker to Mrs. R. Lindow & Co.  
1881 February 2nd, Sale of timber to C. W. Cake for \$3000 - Commissions \$75 - advertisement in Virginian \$11.<sup>70</sup>!"

4 Ques. Was C. W. Cake the purchaser present near you during all the time you have referred to, at the sale?

Ans. Yes, about five or ten feet from me.

5 Ques. Did he ask you whether or not you knew the number of acres of land in the tract?

Question objected to because of a written agreement and also a leading question.

Ans. I don't remember, I read the advertisement.

I recollect his asking me in regard to the number of feet the timber would cut. I referred him to Mr Shoemaker.

6 Ques Were there other bidders at the sale?

Ans Yes, there were three or four.

7 Ques Did you make it distinctly understood whether you were selling timber or land?  
If so, which?

Ans. I was selling the timber upon the land and not the land, and so distinctly stated it at the sale.

8 Ques Did you hear any person at the sale say anything about the timber?

Objection withdrawn, Question objected to.

Ans. I heard Mr. Cake say that he had been upon the land and knew all about it, or words to that effect, and was satisfied or words to that effect.

I do not undertake to give his exact language after this length of time.

9 Ques. Did you hear any other person at the sale, among the bidders, express himself in the hearing of the bidders, on the subject

Ans I did not on the day of sale. But on the day before the sale I had a conversation with Mr Howard Johnson about it.

10 Ques. Was Mr. Batchelder of Batchelder Collins present at the sale.

Ans. He was. I think he asked about the number of feet that could be cut from the tract. I answered that the advertisement said 2,000,000 of feet, and referred to Mr Shoemaker who sanctioned it.

Cross-examined by Counsel  
for Defendant.

1 Ques. Were you personally acquainted with Mr Cake before the day of sale? How often had you seen him before and since the day of sale.

I cannot remember when I first saw him. It may have been on the day of the sale. I would not know him if I was to meet him.

And further this deponent saith not.

John B. Reed

The foregoing deposition of John R. Ludlow  
was taken and subscribed before me this  
day and is now so certified by me by con-  
sent of parties accordingly.

Given under my hand this 7th day of  
March, at the City of Norfolk, in the year  
1883.

Wm H. White

Notary Public

Kirk &c

vs }

Case.

Deposition

of

John R. Ludlow.

Reexamination of J. J. Kirk.

Witness J. J. Kirk being duly sworn deposes & says as follows:

1st Q for Plaintiff.

Mr. Kirk has said in response to the 12<sup>th</sup> Q in his examination in chief that he asked you if there was any proof of the land in question and you said there was not, and that he then asked you how you knew there were 400 acres in it, and that you replied you knew you had 400 acres; did you ever make such a statement to Mr. Coke or to any body else?

Ans.

I have no recollection of doing so. I several times when asked invariably said no. At one time to Mr. Newman, Mr. Bunting and three other gentlemen whose names I forget from Norfolk. They asked me the question or at least one did if we would make up the number of acres, and I emphatically said no and that every one must judge for himself. I told every one who asked if there were 400 acres that I did not know, and that we had never had it surveyed. I think there some half dozen parties who came to look at it, Mr. Heffelfinger was one. In the store, after coming from

the words, he says to me do you know  
how many acres there are in this piece  
of timbered land, and I said no. He then  
asked me the question, do you know of  
any one who could give me the desired  
information, <sup>I said</sup> I think Mr. M. Cowling could  
give it, as he knows more about the land  
than any one else. He asked for pen and  
paper and then I wrote to Mr. Cowling.  
I forwarded the letter through the post office  
to Mr. Cowling and I have reason to be-  
lieve that he received an answer, as  
I am postmaster and have to examine  
the letters as they pass through in the  
mail bags I saw ~~the~~ a letter pass  
through to Mr. Hoffminger and think it  
was Mr. Cowling's handwriting.

2 E.

Mr. Cole, in response to 3 crop A, said I went  
upon the land with Mr. Kirk and went  
around about one half the line as he told  
me, and was satisfied with the quality of  
the timber & from his statement the quantity  
of timber as advertised; that is, I was satis-  
fied that if the quantity of land he said  
was there, the quantity of timber would be  
there, how much land did you tell him was  
there

Ans. I have no recollection of telling him any  
thing or of any other time.

3 Q Did you ever make a statement different from that you made to Mr Heffelfinger in which he says you positively declined to see this land in any other manner than by the lump?

Ans. We did not offer to see any other way than by the lump.

4. Q- Mr Coke in response to the 12 Cross Q which is as follows; did you not state in Norfolk after sale of timber upon the land had been completed and before the agreement was drawn and signed either to J. J. Hark or Nathan Spoonster that there were not 468 acres in the tract, but as stated I do not know nothing of the quantity of land at the time I bought it; is that what he said to you?

Ans. No. He says to me there are not as many acres as you represented, & I said Mr Coke I do not know how many acres there are as we never had it surveyed.

5 Q- Was that before or after the agreement was signed?

Ans. Before.

Cross Examination  
1<sup>st</sup> Q for defendant. When was <sup>it</sup> that these persons visited the land of whom you have spoken? At various times previous to the sale.

2 Q. How long before the sale?

Ans. They were there almost every day for about three weeks, for the last few days before the sale they were there every day.

3 Q. When was Coke there, how long before the sale?

Ans. I think it was about 10 days or two weeks.

4 Q. Was any one else there from Hampton except Heffelfinger and Coke?

Ans. It seems to me there was but I am not positive.

5 Q. What makes you think so?

Ans. I have a faint recollection of persons saying they were from Hampton.

6th Q. Then you can't speak positively as to that?

Ans. No.

7 Q. How often was Coke there before day of sale?

Ans. Once.

8th Q. Did you see the first advertisement for the sale of this land?

Ans. I had a paper sent to me, but do not know whether it was the first or second advertisement.

9 Q. Do you know whether or not it was advertised twice?

Ans. Yes.

10 Q Why was a difference made in the form of the advertisements?

Ans I do not know.

~~11 Q~~

11 Q for plaintiff.

Do you know who wrote the first?

Ans Nathan Shoemaker told me he did.

2nd Q Who wrote the second?

I do not know.

And further this deponent says not.

Signed

John J. Kirk

Attest fee \$2.50.

E. E. Hollond, N. P.

Re-Exam<sup>d</sup> of  
I & Kirk

The depositions of Galba Vaiden,  
and others taken before me, Wm J. A.  
Cunning, a notary public for the Coun-  
ty of Elizabeth City, in the State of Vir-  
ginia, by consent of parties, at the Of-  
fice of Thomas Tabb Esqr in the town  
of Hampton Va, on the 13<sup>th</sup> day of  
November A.D. 1883. between the hours  
of 6. A.M. and 6. P.M. of said day, to be  
read as evidence in behalf of C. D.  
Coke, in a certain suit in equity de-  
pending in the Circuit Court of the  
County of Nansemond, wherein C. D. Coke  
is defendant and Shoemaker and Kirk  
are plaintiffs —

Present —

J. S. Garnett Esqr Attorney for Plaintiff —  
Thos Tabb Esqr " " Defendant —

Galba Vaiden, a witness of lawful age, being  
first duly sworn testified as follows —

1<sup>st</sup> Ques State your name age, residence, and oc-  
cupation —

Ans. Galba Vaiden — I am 38 years old, am a saw-  
yer, and reside in Hampton

2<sup>d</sup> Ques. Where are you at present employed?

Ans. At the Huntington Industrial works, am-  
engaged in sawing.

3<sup>d</sup> Que. State whether or not you have had  
any experience, in the business of converting  
saw logs into lumber, and if so what has been  
that experience?

Ans. I have been sawing about 12 years -

4<sup>th</sup> Ques. What do you define to be a saw log, as  
to size -? (Question objected to by Plaintiffs Coun-  
sel, for the reason that the quality of timber is not in  
Ans. issue in this suit, W. J. A. Cunningham H. P.).

Ans. Well sir, I would not consider any tree  
under 12 inches at the stump, for a saw log -

5<sup>th</sup> Ques. What is the general value of a log, 12 in-  
ches in diameter, as compared with larger logs?

Ans. That is a question I hardly know how to an-  
swer. It is customary to measure the num-  
ber of feet of board measure, and determine  
by the number of feet. There is no difference  
in the price between the smaller and larger -

6<sup>th</sup> Ques. What is the lowest size of a saw

mill log, I mean such logs as saw mills purchase to be converted into lumber, now what is the smallest size as to diameter at the small end?

Ans. Saw Mill men never buy anything under 10 inches -

7<sup>th</sup> Ques. How many logs of that size would you find upon an average, in a raft of five hundred logs - ? (Objected to, by Counsel for Plaintiff, as immaterial, R.P.)

Ans. Excepting the boom logs, not one in fifty.

8<sup>th</sup> Ques. How much timber is there in a log of that size?

Ans. If it is a straight-log it will cut 36 feet, if it is crooked it won't do it.

#### Cross Examination -

1<sup>st</sup> Cross Ques. What is the price of saw logs, delivered at your mill?

Ans. I have nothing to do with that part of the business. It depends on the quality - from \$6. per thousand feet to \$8.<sup>25</sup> per thousand feet -

2<sup>d</sup> Cross Ques - Do you know, whether any of the timber in controversy in this suit, was ever brought to be sawed up by you?

Ans - There never was any.

3<sup>d</sup> Cross Ques How long have you been employed at the Normal School Industrial Works?

Ans - I commenced there, the 16<sup>th</sup> day of last September, 2 years ago -

#### Re Examination

1<sup>st</sup> Re Exam In the estimate you have given in the value of the logs at the mill, does that include the cutting, hauling, rafting, risk of transportation and the value of the tree itself?

Ans - It does -

2<sup>d</sup> Re Exam How many logs, of the smallest size of which you have spoken, do you, upon an average, saw into lumber, at the Huntington Industrial Works?

Ans - We get very few of that size, we saw

upon an average, twelve to fifteen thousand feet of lumber in a day -

And further deponent saith not -

G. Jaiden,

Hudson Mench, a witness of lawful age, being first duly sworn, deposes and says as follows

1<sup>st</sup> Ques. State your age, residence and occupation?

Ans. I am about 47 years of age, live in Warwick County, Am an engineer by Trade, not engaged in any business, just now.

2<sup>d</sup> Ques. Please state whether or not, you have had any experience in the business of saw milling, and if so what has been the character of that experience?

Ans. Well sir I have been in that business, I believe some ten or twelve years. I can't exactly remember the number of years - I have cut and had timber hauled to the mill, and bought timber in rafts -

3<sup>d</sup> Ques. What, in your experience, is the smallest log, it would pay a man to purchase, haul to his mill, and convert into lumber?

Ans. Nothing under twelve inches at the small end -

4<sup>th</sup> Ques. Are logs, even of that size, desirable to purchase for the purpose of converting into lumber?

Ans. No. Sir -

5<sup>th</sup> Ques. Why - not

Ans. They are generally sap, by the time they are slatted down, they are too small to convert into boards -

6<sup>th</sup> Ques. Is, or is it not, a difficult matter to estimate with any degree of accuracy, the number of feet, of timber upon two or three hundred acres of land, when standing, will cut into lumber?

Ans. Yes Sir. I should think it was rather a difficult task -

## Cross Examination -

1<sup>st</sup> Cross Ques. - Where have you worked, as an engineer, in the saw mill business?

Ans. Well, I have worked there in Warwick County. Nowhere else -

2<sup>nd</sup> Cross Ques. Do County saw mills, in your experience, manufacture, any thing but heart lumber?

Ans. Oh yes, they manufacture sap, too -

3<sup>rd</sup> Cross Ques. - What is the proportion usually manufactured, by such mills, of heart and sap respectively?

Ans. - That is a pretty hard question to answer. - I suppose, about one third heart - the rest sap. It depends upon the quality of the timber -

4<sup>th</sup> Cross Ques. - Do not County mills use large quantities of small logs, say, from twelve to fifteen inches at the butt?

Ans. - Very few -

5<sup>th</sup> Cross Ques. - Have you ever bought standing timber for sawing into lumber?

Ans. - Yes sir. I don't know how much, I have bought considerable. I could not say, in twelve years, off and on - as I have bought timber some half a dozen different times, and I have bought from a good many different parties -

6<sup>th</sup> Cross Ques. How did you estimate its value?

Ans. About \$3. - per thousand on the stump standing -

7<sup>th</sup> Cross Ques. Were you able, by inspecting it, while standing, to form a satisfactory estimate of its value?

Ans. Not at all times -

8<sup>th</sup> Cross Ques. But generally?

Ans. Well there is more guess work about it, than any thing else. It is not a very satisfactory way of buying timber to either party. I believe I have made some good bargains, and I have made some bad ones -

## Re Direct Examination

1<sup>st</sup> Re Dir. Ques. Does not the price of timber, depend very largely, upon the quality, and proximity to water?

Ans. Yes Sir.

2<sup>d</sup> Re Dir. Ques. What was the quality of this timber for which you paid \$3<sup>00</sup> per thousand?

Ans. Very fine timber, nice heart timber, clear of knots.

3<sup>d</sup> Re Dir. Ques. In the third Cross question you were asked, what is the proportion usually manufactured, by such mills, of heart and sap, respectively? Does all the sap lumber, come from the small logs?

Ans. No sir, not all. In proportion there is more from the small logs than from the large ones.

4<sup>th</sup> Re Dir. Ques. Is, or is it not frequently the case, that a large log, will sometimes yield a large proportion of sap lumber?

Ans. Oh yes - of sap timber, it is bound to -

And further deponent saith not -

Hudson Merch

Wm J. Westwood, a witness of lawful age  
being first duly sworn, deposes and  
says as follows -

1<sup>st</sup> Ques. What is your age, residence and  
occupation?

Ans. Am 47 years old. Hampton - am  
a lumber-man.

2<sup>nd</sup> Ques. Where are you, at present employed?

Ans. I have charge of the saw mill and  
lumber yard department, of the Hunting-  
ton Industrial Works, Normal School.

3<sup>rd</sup> Ques. Is, or is not the Huntington Indus-  
trial Works, one of the largest establish-  
ments, in its saw mill department, in  
this section of the State?

Ans. It is, on this side of the James River  
I know of none any larger -

4<sup>th</sup> Ques. How long have you been at the head of the saw mill department of these works

Ans. About two years and a half I think, two or two and a half. I have been employed there over four years.

5<sup>th</sup> Ques. What is the smallest ~~saw mill~~ log in point of size, that you would define as a saw mill log? (Objected to by Counsel for plaintiff for reason stated in objection  
Ans. to a similar question above written

Wm J. Cuning H.P.)

Ans. Well, Observation and experience has taught me that a log of less diameter than twelve inches at the small end has no value as a saw log.

6<sup>th</sup> Ques. How many logs of that size, in a raft of five hundred logs, would you be willing to take as saw logs?

Ans. Very few, except as boom logs. It would depend entirely upon the rest of the logs. If the rest of the logs were large logs I would be willing to take more than otherwise. If I were making a

contract, I don't think that I would bargain for any thing less than thirteen inches from the fact that, "a small log if it has any sort of crook in it, you can't get the lumber that the rule call for out of it." (Question and answer objected to as irrelevant by Counsel for plaintiff. H.P.)

7<sup>th</sup> Ques. Why is it that logs as small as twelve inches at the smaller end are not desirable as saw mill logs? (Same objection as above H.P.)

Aus. Because the larger part of it is consumed in slab and saw curf. My impression is that they will not hold out according to Scribner's or Doyle's rule. In fact I know it.

8<sup>th</sup> Ques. Have you seen the logs brought from the County of Nantsemond or Isle of Wight, which Mr. Cake has been converting into lumber at his mill in this place, <sup>and which is the timber in controversy in this suit.</sup> during the last twelve months or more, and if so what kind of logs were there, as a general thing, in point of size?

Aus. I have seen several rafts which

Mr Cake has had during the past twelve months which I understood came from the neighborhood of Everett's Bridge, though I have no positive knowledge of the fact, which were rather small in size, <sup>much</sup> smaller than those which have been coming to our mill during the same time.

9<sup>th</sup> Ques. - What was the quality of that lumber, and what would have been a fair price for it, standing? (Objected to, on the ground that <sup>the</sup> quality of the timber in controversy, is not in issue in this suit, N.P.)

Ans. - So far as the quality is concerned they did not seem to have much heart, but they were smooth logs. As to the price, that would depend upon the locality - I cut, eight or ten years ago timber in Isle of Wight County near Rock Wharf from three fourths to a mile and a half from the water - which was seventy six cents a cord standing - that same wood sold for ten dollars per cord in New York. I can't say positively what lumber was selling at them, but about three years after that, lumber was at least twenty five per cent higher than it has been in the last twelve months.

## Cross Examination -

1<sup>st</sup> Cross Ques - Did you see, any of the rafts of logs - brought to Hampton by Mr Cake from Naussemond County, in the Spring of 1882.?

Ans. I have seen all the rafts that he has had. I pass by there every day twice a day except Sunday. (Counsel without waiving objection as to the witness's testimony)

~~2<sup>nd</sup> Cross Ques~~ - touching the quality of the timber.

asks the following question -

2<sup>nd</sup> <sup>Cross</sup> Ques. What was the character of the first two or three rafts brought -

Ans. So far as my knowledge goes they were about the same. There might have been some little difference but none that was observable to me. One raft might have <sup>had</sup> a log a little larger than the others. I looked upon all of them as small logs - They looked to be all about the same to me - I have never seen an extra large log among any of them.

3<sup>rd</sup> Cross Ques - Please state, what is understood by saw mill men, and by yourself

as one of them, by the expression you have used - that the logs in these rafts were smooth -

Ans - I would call a raft a smooth raft, when a large proportion of the logs were clear of knots and other defects.

4<sup>th</sup> Cross Ques - Does this add to the value of the timber -

Ans - Yes sir -

#### Re Direct Examination

1<sup>st</sup> Re Dir Ques - Is it not sometimes the case that a log <sup>is</sup> smooth on the exterior, and knotty in the heart?

Ans - Very frequently the case -

#### Re Cross Examination

1<sup>st</sup> Re X Ques - Did you see any of the lumber made by Mr Cake from these logs?

Ans - Well I have passed by buildings which were being erected of that lumber but I never stopped to examine it.

2<sup>d</sup> Re X Ques - Where were those buildings?

Ans. They were about town, Mr Hudgins right on this street, I noticed in passing There are a good many. - there is one here on Banks lane - there is a colored Church up here I think is built - of it -

3<sup>d</sup> Re X Ques - Were any such buildings being erected, at the Normal School or on their grounds?

Ans - Most of the buildings there are brick - No sir, there are none such to my knowledge - edge -

4<sup>th</sup> Re X Ques - Were any such buildings being erected, on any government property near there?

Ans. Not to my knowledge -

5<sup>th</sup> Re X Ques - Then to what buildings do you refer, when you speak of passing them?

Ans - I refer to Mr Hudgins house, Mr Roche's, - there were others that I cant call to my mind - Mr Cake bought lumber and furnished for buildings - I also referred to the Third Colored Baptist Church

5  
Those are all I referred to -

And further deponent saith not -

<sup>affirm</sup>  
H. J. Westwood

C. D. Cake, a witness of lawful age, being first duly sworn, depose and says as follows

1<sup>st</sup> Ques. How long have you been in the saw mill business, and what is your experience?

Ans. About four years. Built the Huntington Industrial Works and ran them for about eighteen months, then built a mill of my own which I have been ~~2<sup>nd</sup> Ques.~~ running since -

2<sup>nd</sup> Ques. What is understood among saw mill men, to be a saw mill log, as to size?

Ans. Twelve inches at the small end - All log rules for measuring logs, are left blank up to the twelve inch mark.

3<sup>rd</sup> Ques. What was the character of the timber manufactured, from the lumber, purchased

from the plaintiffs in this suit? (Objected to as irrelevant to the issue in this suit - H.P.)

Aus. - About Second rate - The timber was so small and inferior, that all joists and timber required to be strong and of good quality, I had to buy from other saw mills.

4<sup>th</sup> Ques. How much lumber have you gotten from this land?

Aus. - We have measured, including all the logs now in the woods, cut but not hauled, and the rafts at Everett's Bridge - eight hundred and thirty three thousand four hundred and forty eight feet - This is Mr John E. Wills measurement, which I settled by -

5<sup>th</sup> Ques. - Does this include all the saw mill timber you will get from this property?

Aus. - This is all I expect to get - as all the trees have been cut that will make saw logs - the few now standing, being rotten hearted and defective, not fit for saw logs -

6<sup>th</sup> Ques. Have you sold any timber from the land, and if so, what have you sold,

and to whom?

Ans. I sold Messrs Bunting some, at Suffolk. All the timber on the land, that would not make saw logs, twelve inches at the small end -

7<sup>th</sup> Ques. What was the character of the logs obtained from this land, as to size? (Objected to as not relevant N.P.)

Ans. They were very small averaging not more than One Hundred and Fifty feet to the log -

8<sup>th</sup> Ques. Why is it that saw mill men, are unwilling to take logs less than twelve inches in diameter at the small end?

Ans. Because it does not pay to handle them. You can handle logs of about 400 or 500 feet as quick as you can one of 64 feet. Carry logs seldom carry more than one log at a time, no matter what the size - And in rafting, it takes the same quantity of rafting gearing, for the small ones as it does for the large ones -

1<sup>st</sup> Ques. - Are logs twelve inches in diameter at the smaller end, generally saleable at the mills, as saw logs?

Ans. In all contracts, I have made for logs, I have always specified twelve inches at the small end as the smallest log, and we expect them, but very few that size, as it does not pay timber dealers to cut so small a log.

### Cross Examination -

1<sup>st</sup> Cross Ques. - You have stated, that this timber was small and inferior, - name an instance in which you had to buy joists from other saw mills, for that reason?

Ans. Mr H. L. Schmelz's brick store, - Mr W. W. Roach's store - Mr Geo. A. Schmelz's store, there may be other places I don't think of just now

2<sup>d</sup> Ques. - Were you furnishing the above named parties, with the lumber, made by you from this timber? and did they refuse to take it?

Ans. - I was furnishing the lumber for

the buildings. The lumber I was sawing was too small and knotty to cut the joists required for the buildings. All of the ~~logs~~ large enough to cut the timber for those buildings, being too knotty, to have the requisite strength.

3<sup>d</sup> Cross Ques. Did you then have to take these back?

Ans. I never offered joists cut from this timber, as it would be a waste of material <sup>to cut joists from timber</sup> from timber that was unsuitable.

4<sup>th</sup> Cross Ques. Did you offer to Mr Schmelz lumber made from this timber and deliver a part of it to him, which he refused to take?

Ans. I did not. I never offered any lumber, except such as would fill the contract except in the case of George Schmelz, when the contract said nothing in regard to the dryness of the timber. When I bought other timber and carried it there, he objected to it because it was green. This was timber I bought from Traut & Baker in Portsmouth.

5<sup>th</sup> Cross Ques How often have you visited the land in question?

Ans. Some five or six times.

6<sup>th</sup> Cross Ques When were you there last?

Ans. Some two or three months ago, I think since I was there.

7<sup>th</sup> Cross Ques Have you been there since the first of June 1883.?

Ans. Yes, I have been there since then.

8<sup>th</sup> Cross Ques Have you been there, since the first of September?

Ans. I think not. I know it was warm weather, and I walked from Hollidays point about three miles, and made Wills take me back.

9<sup>th</sup> Cross Ques From whom do you get your information as to the standing trees now on it?

Ans. From Mr J. E. Wills.

10<sup>th</sup> Cross Ques. What price did Brunting pay you for the cord wood?

Ans. Six Hundred Dollars -

11<sup>th</sup> Cross Ques. How many logs, have been rafted and brought away by you, in all?

Ans. I should think between five and six thousand, ~~We~~ never count the logs.

12<sup>th</sup> Cross Ques. Can you not tell, almost exact-ly, how many logs you have gotten off the land?

Ans. That is as near as I can come to it. Between five and six thousand -

13<sup>th</sup> Cross Ques. Have you no account, showing the number of rafts you have received here?

Ans. I have -

14<sup>th</sup> Cross Ques. State how many?

Ans. We have had ten rafts, and a half a raft to come. The rafts are usually small averaging not more than seventy five or

eighty thousand feet.

15<sup>th</sup> Cross Ques - How many logs are usually in a raft of Eighty thousand feet?

Ans - Of those logs, I should think about five hundred and fifty - I have never counted the logs in a raft, but have six hundred and fifty rafting dogs, which I usually send over - six hundred and fifty dogs - raft about six hundred logs - and I generally have from <sup>dogs</sup> twenty five to fifty left over -

16<sup>th</sup> Cross Ques - Did you have any difficulty in selling the lumber made from this timber?

Ans - I did not - Our trade requires cheap lumber, almost entirely. I found no difficulty in selling it at a reduced rate.

17<sup>th</sup> Cross Ques - What price per thousand did you get for it?

Ans. From Ten to Twelve Dollars at retail

## Re Direct Examination

1<sup>st</sup> Re Dir Ques. Does the five or six thousand logs you speak of include the logs yet to be taken from the place?

Ans. It includes all the logs we have brought away and all that are there now.

2<sup>d</sup> Re Dir Ques. Why was it you were not able to furnish the timber for the houses you have mentioned, from the lumber cut from this land?

Ans. Because the timber was too inferior as I stated before the logs that were large enough to cut the joists was all too knotty.

3<sup>d</sup> Re Dir Ques. You say you get Ten or Twelve dollars a thousand for this timber manufactured; what does such lumber generally sell for standing

Ans. It depends a good deal on the location. Lumber, the distance from the water that this is, would not be worth more than one dollar and a quarter a thousand. Had I have known when

I thought this, that the quantity was so small  
I would not have given \$1 per thou-  
sand for it -

And further deponent saith not -  
C. D. Coker

Virginia -

Elizabeth City County. to wit;

J. W. J. A. Cumming, a notary public in and  
for the County of Elizabeth City in the  
State of Virginia, do hereby certify, that  
the foregoing depositions of Galba Varden,  
Hudson Meuch, Wm. J. Westwood, and  
C. D. Coker, were duly taken, sworn to,  
and subscribed before me, at the times  
and place, and for the purposes therein  
mentioned.

Given under my hand this 13<sup>th</sup> day of  
November A.D. 1883.

Wm. J. A. Cumming  
Notary Public -

Notary Fee \$5.<sup>00</sup>

Charged to C. D. Coker - deft -

Shoemaker & Kirk  
vs { In Chy  
C. D. Lake

Depositions of  
Galba Vaideu & others

1853.

Decr: 31<sup>st</sup>: Came to hand,  
under cover, sealed.  
Peter B. Dentis. Clerk

N. Shoemaker, J. J. Kirk, J. L. Shoemaker  
and Elias Kirk . . . . . Plaintiffs.  
Against } In Chancery in Newbern Cir: Co:  
Charles D. Coker . . . . . Defendant

Statement of Plaintiffs' Costs:

up to and including removal of

Cause from the District for said Court

Clerk, including by Record \$36.00

Att: Fry . . . . . 14.50

Shff. Newbern . . . . . 50.

Peter B. Pentis, Counsel in Chy . . . 30.00

E. E. Holland, U.P. . . . . 2.50

Wm. J. A. Cummings . . . . . 1.50

Appellant's Costs in Court of Appeals . . . 121.21

Total . . . . . \$208.21

April 19th 1887.

Peter B. Pentis, Clerk  
of the Circuit Court in  
Newbern County.

Conts

1882.6

1887.4.22  
1882.7.2  

---

4.9.20

{ 3000.00 whole amt

1640.63 amt pd

1359.37 bal. due Aug 2<sup>nd</sup> 1882

28 1/2

10874 96

27187 4

679 68

3874204

4.53 not paid

391.95 not due May 22-

1359.37

173-1.32

1500

251.32

208.21 Cents

\$459.53

Interest & Cash

Supreme Court of Appeals,

CLERK'S OFFICE,

Richmond, Va., March 3<sup>d</sup> 1887

C. H. Causey esq

My dear Sir

I send you herewith decree in  
Shoemaker agt Leake.

In taxing the costs I find that  
the clerk of the circuit court of Nause  
monied on it to mark his fee  
for the copy on it, I therefore could  
not tax it here, but, he can add  
it to the amount taxed by me as  
it is a part of your recovery.

There is a small balance of  
clerk's fees due me of \$2.59 -  
which is a part of the \$121.21.

Yours very truly

Geo. H. Fay Cor

Supreme Court of Appeals,

CLERK'S OFFICE,

Richmond, Va., July 26<sup>th</sup> 1887

Le. H. Lantry esq

My dear Sir

Enclosed please find  
bill in case of Shoemaker  
against Lake amounting to  
\$92.62 for which please

send check

and much oblige

Yr very truly

Geo. H. Fay Cor.

|                         |          |
|-------------------------|----------|
| Pay previously paid —   | \$6.00   |
|                         | 92.62    |
|                         | <hr/>    |
|                         | \$98.62  |
| Expenses in Court below | 23.00    |
| Copy record             | <hr/>    |
|                         | \$121.62 |
| Trick to Richmond       | 10.00    |
| " " " " " "             | 5.00     |

N. Shoemaker, J. J. Kirk, J. L. Shoemaker and  
Elias Kirk

(C. A. Causey esq)

188 6 To CLERK OF SUPREME COURT OF APPEALS OF VA., at Richmond, Dr.

July Order and Copy allowing appeal against Lake  
61 docketing cause 18 attorney 10 paper 25 pe  
tition and record 30 Superintends \$68 copy  
25 return 15 printing record & copy \$90<sup>00</sup> \$9262

CHANCERY SUMMONS.

**The Commonwealth of Virginia,**

TO THE SHERIFF OF NANSEMOND COUNTY GREETING :  
YOU ARE HEREBY COMMANDED TO SUMMON *Charles D Lake*.

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 *July* next to answer a  
Bill in Chancery, exhibited against *him*  
in the said Court by *N. Shoemaker, J. J. Risk, J. L. Shoemaker and Elias Risk*.

and have then and there this Summons. Witness, PETER B. PRENTIS, Clerk of our said Court, at his office, this *22<sup>nd</sup>* day of *June* 1882, in the *106<sup>th</sup>* year of the Commonwealth.

Teste :

*Peter B. Prentis* Clerk.

Memo.

To prohibit and restrain Charles D Lake, his  
Agent or employees from removing any of the  
logs cut from the tract of land owned by Kirk and  
Shoemaker, and now lying at Everett's Bridge landing  
in Stansmond County, or in the waters of Stans-  
mond River, or its branches, until the further order  
of the Circuit Court of Stansmond County.

Teste:

Peter B. Prentiss, Clerk

Causey 69  
N. Shoemaker & al.

Sum. in Chy. &c

Charles D. Lake

To July Rules, 1882

Pro: B. No: 1. page

See: 69

1882. June 22<sup>nd</sup> Executed and a true copy hereof this day  
delivered to Charles D Lake.

J. H. Rawls Dyfer  
J. L. Fulgham Shff.

In the Circuit Court of Mansfield County

N. Shoemaker, J. J. Kirk, J. L. Shoemaker  
and Elias Kirk . . . . . Plaintiffs  
Against } In Chancery.  
Charles D. Coker . . . . . Defendant.

Statements of Plaintiffs' Costs, up to and including final decree.

Clerk, Circuit Court, including }  
Copy of the record. } \$36.00

Att. & Tax . . . . . 16.50

Sheriff . . . . . 50

Robert B. Pender, Comm'r. in Chg. . . . . 50.00

E. E. Hollander . . . . . Notary Public . . . . . 2.50

Wm. J. A. Cummings & Bates . . . . . 1.50

Appellants' Costs, in Supreme Court of Appeals 121.21

Total \$208.21

Teste:

1887. April 19th:

Peter B. Pender, Clerk  
of the Circuit Court of  
Mansfield County.

Shoemaker, Ruth Mae  
is of State of Calif  
Calif

Know all men by these presents, that we, John J. Kirk  
and Robert Lawrence

are held and firmly bound unto the Commonwealth of Virginia,  
in the just and full sum of Three hundred dollars, to which  
payment well and truly to be made to the said Commonwealth,  
we bind ourselves and each of us, our and each of our heirs, executors  
and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 28<sup>th</sup> day of January AD, 1886.

And we hereby waive our Homestead Exemption, as to this obligation.

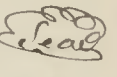
The Condition of the above obligation is such, that whereas  
The Clerk of the Supreme Court of Appeals, has issued a writ  
of Superseas in the name of the Commonwealth of Virginia,  
to The Sheriff of

County directed, commanding

the said Sheriff, that from all further proceedings, on a certain  
Decree, pronounced by The Circuit Court of the County of Newmarket  
on the 21<sup>st</sup> day of February, 1883, in a suit, in which N. Shoemaker,  
J. J. Kirk, J. L. Shoemaker and Eliza Kirk were Plaintiffs, and  
Charles D. Lake, was Defendant, he altogether supersede: but on  
said writ, the said Clerk of said Court of Appeals, has endorsed,  
that it is not to be effectual, until the petitioner or one of them, or  
some one for them, shall enter into bond with sufficient security  
in the Clerk's Office of the said Circuit Court, in the penalty of  
Three hundred dollars, conditioned as the law directs, and a certifi-  
cate of the execution thereof, together with the name or names of the  
security or securities endorsed thereon, by the Clerk of the said Circuit  
Court.

Now if the said N. Shoemaker, J. J. Kirk, J. L. Shoemaker and  
Eliza Kirk shall prosecute the said writ with effect, or shall well

and truly pay the amount of the Decree aforesaid of the said  
Circuit Court, and all such costs and damages as shall be  
awarded, in case the said Decree shall be affirmed; then, the  
above obligation is to be void, otherwise, it is to remain in full  
force.

John J. Kirk   
Robt. Lawrence 

John J. Kirk Sal:  
To: { Supersedeas Bond  
Commonwealth.

1886  
Jan: 28<sup>th</sup>

THOMAS TABB,  
ATTORNEY AT LAW.

Hampton, Va., Jan'y 24<sup>th</sup> 1886.

Hon P. B. Prentiss.  
Clerk of Court.  
Suffolk.

My dear Sir.

I have the honor  
to inclose to you the supersedeas in Shoemaker  
v. W. C. Calk - the service duly acknowledged by  
the defendant C. D. Calk.

With my warmest wishes for your  
wellfare.

I am Truly & Sincerely,  
Thomas Tabb

Know all men by these presents, that we, John J. Kirk and Abram J. Petron, are held and firmly bound unto Charles M. Cake, in the sum of Five hundred dollars, to the payment whereof well and truly to be made to the said Charles M. Cake, 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 22<sup>d</sup> day of June, A.D. 1852, and in the 10<sup>th</sup> 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 M. Shoemaker, J. J. Kirk, J. L. Shoemaker and Elias Kirk, on their Bill in Chancery against Charles M. Cake, addressed to the Hon<sup>ble</sup>: George Blair, Judge of the Circuit Court of Hanscomand County, has obtained from the Hon<sup>ble</sup>: C. W. Hill, Judge of the Hastings Court of the City of Portsmouth, an injunction, to prohibit and restrain Charles M. Cake, his agent or employees, from removing any of the logs cut from the tract of land owned by Kirk and Shoemaker, and now lying at Everett's Bridge Landing, in Hanscomand County or in the waters of Hanscomand River or its branches until the further <sup>order of</sup> the said Circuit Court of Hanscomand County.

And whereas, it is provided by the order of the said Judge, granting the said injunction, that the Plaintiffs, in said Bill are not to have the benefit of said injunction, until they or some one for them shall have executed before the Clerk of the Circuit Court of Hanscomand County, a proper injunction bond with good security, in the penalty of Five hundred dollars, conditioned and payable according to law: Now therefore, if the said M. Shoemaker, J. J. Kirk, J. L. Shoemaker and Elias Kirk shall pay all costs as may be awarded against them, and all damages which may be incurred in case the said injunction be dissolved, then, this obligation to be void, otherwise to remain in full force and virtue.

John J. Kirk Seal  
H. Petron Seal

M. Shewmaker & Co.

to J. H. Bond

Charles D. Cook

1882

June 22nd

H. Shoemaker, J. J. Kirk, J. L. Shoemaker  
and Elihu Kirk

<sup>vs</sup>  
Charles D. Lake

Injunction is awarded according to the prayer of the bill to prohibit and restrain the said Charles D. Lake or his agents or employees from removing the logs cut and removed from the said tract of land in the bill and exhibits mentioned, now lying at Everett bridge in the County of Hennepin or in any of the waters within the County of Hennepin.

But the plaintiffs in this suit are not to have the benefit of this order until they or some one for them shall have executed before the clerk of the Circuit Court of Hennepin County a proper injunction bond, with good security in the penalty of five hundred dollars, conditioned and payable according to law.

To the clerk of  
of Hennepin Co.  
June 22<sup>nd</sup> 1882

C. M. White

Myon S  
order

In Vacation.

Circuit Court of Monmouth County on  
the 21. day of February 1885.

Shoemaker, Kirk & Co

v.  
Charles D. Case.

+ + +  
It is further ordered that one of  
the Commissioners of this Court ascertain and  
report to this Court at its next Term the  
account between the plaintiffs and defendant  
on the basis of \$1640.<sup>53</sup> as the purchase  
price of the said timber and wood.  
The Commissioner will report any matter  
deemed pertinent by himself or specially  
required to be stated by any of the  
parties interested. - + + -

An Extract, Teste,  
Peter B. Pontre. Clerk

**Commissioner's Office,**  
**SUFFOLK, NANSEMOND COUNTY, VA.**

*18 March 1883*

To

*A. Shoemaker, J. J. Kirk, J. L. Shoemaker  
and Elias Kirk -*

Plaintiffs,

and

*Charles D. Lake*

Defendants.

You are hereby notified that I have fixed upon the *25<sup>th</sup>* day of *March*  
next, to take and settle, at my office, the following accounts, to-wit:

*"The account between the plaintiffs and defendant  
on the basis of \$1640.<sup>63</sup> as the purchase price  
of the timber and wood in the bill described -  
and any other accounts deemed pertinent by  
me or required by any of the parties interested"*

required to be taken by the decree of Nansemond

*21.* day of *February* 1883 in a suit in Chancery depending in  
said Court, in which you are parties, plaintiffs and defendants; at which time and place you  
are required to attend.

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

*Circuit* Court, rendered on the  
*Robt. N. Prentiss,*  
Commissioner in Chancery.

Shoemaker, Kirk P.

11 Comm<sup>4</sup> Notice

Chas D. Lake

We acknowledge legal and  
sufficient service of the  
within notice -

Shoemaker, Kirk &  
4 Gt. Bowry St.

I.

Account between the plaintiffs and defendant  
on the basis of \$1640.<sup>63</sup> as the purchase  
price of the timber and cut wood in the  
bill described.

|                                          |                        |
|------------------------------------------|------------------------|
| To amount due by Charles Drake           |                        |
| to plaintiffs for timber & wood.         | \$1640.63              |
| By Cash paid to plaintiffs by said Drake | 1500.                  |
| " Balance of Principal due plaintiffs    | 140.63                 |
|                                          | \$1640.63    \$1640.63 |

|             |                                        |          |
|-------------|----------------------------------------|----------|
| 1882 Aug 2  | To balance of Principal due Plaintiffs | \$140.63 |
|             | " interest from 2. August 1882 to the  |          |
|             | 15 April 1885 - 2 yrs. 8 mos 13 days   | 22.80    |
| 1885 Apr 15 | " Balance Principal and interest       |          |
|             | due by Drake this day.                 | \$163.43 |

II.

Account showing the amount of money  
in the Farmers Bank of Mansfield to the  
credit of this cause.

|             |                                              |           |
|-------------|----------------------------------------------|-----------|
| 1882 July 3 | Amount of Cash deposited by C. Drake         | \$1100.   |
| 1885 Jan. 1 | Interest at 5% credited on the books of Bank | 135.51    |
| " " "       | Balance                                      | 1235.51   |
| " April 15  | Interest at 5% for 3 mos. & 15 days          | 18.02     |
| " " "       | Prin. & interest due this day                | \$1253.53 |

# Alternate Statement

Interest calculated @ 6 per cent per annum.

|      |          |                                                      |                  |
|------|----------|------------------------------------------------------|------------------|
| 1882 | July 3   | Cash deposited by Cake                               | \$1100.-         |
| 1885 | April 15 | Interest @ 6 p/c for 2 years. 9 mos.<br>and 12 days. | 183.70           |
| "    | "        | Prin & interest due this day                         | <u>\$1283.70</u> |

Commissioners Office,  
Suffolk Co. 25 March 1885.  
Shoemaker, Kirk & Co

N.  
Charles D Cake -

To the Circuit Court of Nantuxmond  
County.

Pursuant to the decree pronounced  
in the above entitled cause on the 21. day of  
February 1885 (an extract of which is hereto  
attached) the undersigned at the request of  
counsel has taken the accounts therein  
directed, - after having first given the notice  
required by law (which with the acknowledg-  
ment of counsel is herewith returned) -

Account I needs no explanation -

Account II is made at the request of the  
defendants counsel. The Banks officials

state that no contract for interest was made at the time the deposit was made, and therefore they have credited the interest at the rate of 5 per cent per annum. - The alternate statement shows what the balance would be if calculated at six per cent per annum. -

All of which is respectfully submitted  
this 25 day of March 1885 -

Robt. W. Hunt

To \$5.75

Commissioner in Chancery

Shenandoah Kirk Co.

11 *Delivered* Commr's  
Report  
Dated 25 Mar. 1885

Charles D. Case

del. by the

1885 March 25th J.P.A.

clerk

VIRGINIA:

In the Supreme Court of Appeals, held at the State  
Court-house in the City of Richmond, on Friday  
the 25<sup>th</sup> day of February 1887

N. Shoemaker, J. J. Kirk, J. L. Shoemaker and Elias Kirk appellants  
against  
Charles D. Lake appellee } upon an appeal

from a decree pronounced by the Circuit Court of the County  
of Hansemond on the 21<sup>st</sup> day of February 1885.

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 arguments of counsel is of  
opinion for reasons stated in writing and filed with  
the record that the circuit court of Hansemond erred in  
the decree rendered herein on the 21<sup>st</sup> day of February  
1885, in abating the purchase money due under the con-  
tract of purchase in this cause from three thousand  
dollars to sixteen hundred and forty dollars and  
sixty three cents, and that the said decree is wholly  
erroneous. The court doth therefore adjudge and  
order that the said decree be reversed and annulled  
and that the appellee do pay to the appellants their  
costs by them expended in the prosecution of their  
appeal aforesaid here.

It is further adjudged and ordered that this cause  
be remanded to the said circuit court of Hansemond  
County, with instructions to decree the specific perfor-  
mance of the contract of purchase of the timber in  
this cause and proceed to a final decree in accor-  
dance with the foregoing opinion of this court and  
the views herein.

Which is ordered to be certified to the said circuit court of Hansemond

appellants costs in the  
Supreme Court of Appeals  
not including fee for  
transcript, which is not  
noted

\$121.21

A Copy  
Teste, Geo. N. Taylor, C. C.

Shoemaker to them

Copy decree.

cake

N. Shoemaker, J. J. Kirk, J. L. Shoemaker  
and Elias Kirk, appellants,  
vs.

Charles D. Cake, appellees.

This cause, wherein a copy of the decree of the Supreme Court of Appeals, <sup>dated the 25<sup>th</sup> day of February, 1887,</sup> reversing the decree of this Court entered herein on the 21<sup>st</sup> day of February 1885, has been duly entered of record on the 4<sup>th</sup> day of March 1887, came on this day to be finally heard, and was argued by counsel.

On consideration whereof, and in accordance with the instructions of the said decree of the Supreme Court of Appeals, dated the 25<sup>th</sup> day of February 1887, the Court doth adjudge, order and decree that the said Charles D. Cake, the appellee in this cause, make specific performance of the contract of purchase of the timber in the bill and proceedings herein mentioned, and that the said Charles D. Cake forthwith pay unto the said N. Shoemaker, J. J. Kirk, J. L. Shoemaker and Elias Kirk, the appellants, <sup>or their attorneys of record</sup> the balance of the unpaid purchase money under said contract, to wit: the sum of Thirteen hundred and fifty-nine dollars and thirty seven (\$1359.37) cents with interest thereon at the rate of six per Centum per annum from the 2<sup>nd</sup> day of August, 1882, till paid, and the costs by them about their suit and appeal in this behalf expended, which said

costs amount to the sum of Two hundred and Eight dollars and twenty-one (\$208.<sup>21</sup>) cents.

And in default of payment of the said principal sum with interest thereon and costs as aforesaid Execution shall issue therefor against the said Charles D. Cake.

N. Shoemaker,  
J. J. Kirk et al,  
vs. } In Chancey  
Charles D. Cake.

Decree of specific  
performance, in  
accordance with  
decree of Feb 25<sup>th</sup>  
1887. rendered by  
Sup. Ct. appeals.

To be entered  
C. M. H. C.  
June 8<sup>th</sup>  
1887.  
Entered on the 2<sup>d</sup> of 1887

Ru  
Shoemaker &

v

Charles D. Carter

7

By consent of parties given in open Court:  
this cause is submitted to the Judge of this Court for decree  
to be made therein in vacation.

Rick  
as  
Coke

1885  
Oct Term

Rough sketch

To be entered

Geo. W. Wood

J. Tall

Entered - Chancery Order  
Book No. 1 - Page 594

Kirk & Shoemaker vs  
Cabe

In this cause, by leave of the Court, and with the assent of all the parties thereto, depositions of witnesses may be taken by either or both plaintiffs and defendants within the next thirty days, at the expiration of which period the papers in the cause are to be placed in the hands of the Court for consideration <sup>and determination</sup> in vacation under a former order of the Court.

Kirk & Shoemaker  
+  
Cahen

1883 Oct <sup>13</sup> #26

Rough sketch  
To be entered  
Geo. T. C. C.

Cahen

Ind. and O.B. No 1 page 636

Shoemaker, Kirk & Co

vs  
Charles D. Cate

7

This cause this day again came on to be heard upon the papers formerly read, and the report of Com<sup>r</sup> Robt. R. Prentiss filed March 25<sup>th</sup> 1885, to which report no exceptions have been taken, and was argued by counsel. On consideration whereof the Court respecting the aforesaid statement, doth adjudge, order and decree that said report of Com<sup>r</sup> Prentiss be and the same in all other respects, is hereby confirmed - The Court doth further adjudge, order and decree that Shoemaker, Kirk & Co or C. H. Cansy their attorney check upon the fund on deposit to the credit of this cause in the Farmers Bank of Nansumond, Suffolk Co<sup>t</sup> for the sum of One Hundred and forty dollars and sixty three cents with interest thereon from the 2<sup>nd</sup> day of August 1882 at the rate of six per cent per annum - that Charles D. Cate or Thomas Galt his attorney check for the balance of said fund on deposit in said Bank to the credit of this cause - But before the said Charles D. Cate shall have the benefit of this order he shall enter into bond with sufficient security, before the Clerk of this Court in the sum of \$1500 conditioned to pay the plaintiffs the amount to which they may hereafter be adjudged entitled to recover from said defendant, should the decree pronounced in this cause on the 21<sup>st</sup> day of February 1885 be reversed -

~~And it appearing the object of this suit having been accomplished it is ordered to be removed from the docket~~  
This decree being entered by consent of <sup>plaintiffs</sup> ~~defendants~~ and with the distinct understanding between them that it shall in no wise prejudice the rights of either

Sturges v. Kirk  
vs  
Charles D. Kirk

Decree

To be Entered -

Wm. B. Kirk  
Geo. T. Brown

copied

We concur in this decree  
Thomas Tall  
atty for defendant  
C. H. Brown  
Counsel for

party and that the appeal when taken and all  
other proceedings shall be conducted as  
if the money hereinbefore directed to be paid  
to Calk or his attorney was still in said  
Bank.

In the Circuit of the County of Hansemond

Shewmaster, 18th H<sup>o</sup>

is

Charles D. Castle

This cause having by consent of parties given in open Court, and entered of record, been submitted to the Judge of this Court for decree to be made therein in vacation. This cause then this day came on again to be heard <sup>Bill & exhibits filed therewith; the answer of the defendant C. D. Castle & exhibits filed therewith and general replication thereto,</sup> upon the ~~pleadings~~ and the depositions of witnesses and was argued by counsel. On consideration whereof: it appearing to the Court from the evidence in the cause, that the defendant Charles D. Castle was induced to purchase the timber and wood upon a tract <sup>of land</sup> represented by the plaintiffs as containing four hundred acres, which tract in fact only contained  $218\frac{3}{4}$  acres, and that the said defendant would not have purchased the said timber and wood at the price of \$3000. had he known that the said tract of land only contained  $218\frac{3}{4}$  acres: and it furthermore appearing to the Court that the said plaintiffs had reasons to know at the time of said sale, not only that the tract of land from which the timber and wood was sold to the defendant Charles D. Castle could not possibly have contained four hundred acres, but that in fact it only contained about the quantity subsequently ascertained, viz  $218\frac{3}{4}$  acres. The Court doth adjudge order and decree that the purchase money for the said timber and wood be abated from \$3000 to the sum of \$1640<sup>63</sup>. It is further ordered that one of the Commissioners of this Court ascertain and report to this Court at its next term the account between the plaintiffs and defendant on the basis of \$1640<sup>63</sup> as the purchase price of the said timber and wood. The Commissioners will report any matter deemed pertinent by himself or specially requested to be stated by any of the parties interested. It is further ordered that the defendant recover of the plaintiffs his costs.

And the plaintiffs <sup>desiring</sup> ~~to~~ present their Petition to the Supreme Court of Appeals for an appeal, it is ordered that this decree be suspended in the month of July day, but before the said plaintiffs shall have the benefit

Shoemaker. Kent St.

or.

Charles D. Case

Decree

The Clerk of the Circuit Court of the  
County of  
"Hanseman" will enter this as  
vacation decree.

Geo. B. Low.

Feb. 21<sup>st</sup> 1885.

of this jurisdiction, they shall enter into bond with a qualified security in the  
sum of \$1000 conditioned according to law.

To C. D. Cake, and Thomas Tabb, his counsel:

Take Notice that we shall on  
the ~~2nd~~ <sup>2nd</sup> day of ~~October~~ <sup>November</sup> 1883, between the hours  
of 6 a.m. and 6 p.m. of that day, at the office of  
R. R. Prentiss, a Commissioner in Chancery, in Suffolk,  
Nansemond County, Virginia, proceed to take the  
depositions of J. T. Brockwell, John J. Bunting and  
George W. Bunting, N. Shoemaker and others, to be  
read as evidence in our behalf in a certain  
suit in equity pending in the Circuit Court of  
Nansemond County, in which we are plaintiffs  
and you are defendant. If from any cause  
the taking of said depositions should not be  
commenced, or if commenced should not be con-  
cluded on that day, the taking of the same  
will be adjourned and continued from day to  
day at the same place and between the same  
hours until the said depositions are completed.

N. Shoemaker, J. J. Kirk, J. L. Shoemaker,  
and Elias Kirk, by

C. H. Causey & } counsel  
White & Garnett } <sup>for</sup> plaintiffs.

Oct. 11<sup>th</sup> 1883.

Kirk &  
M } Notice  
Coke & Co. to

late depos<sup>rs</sup>

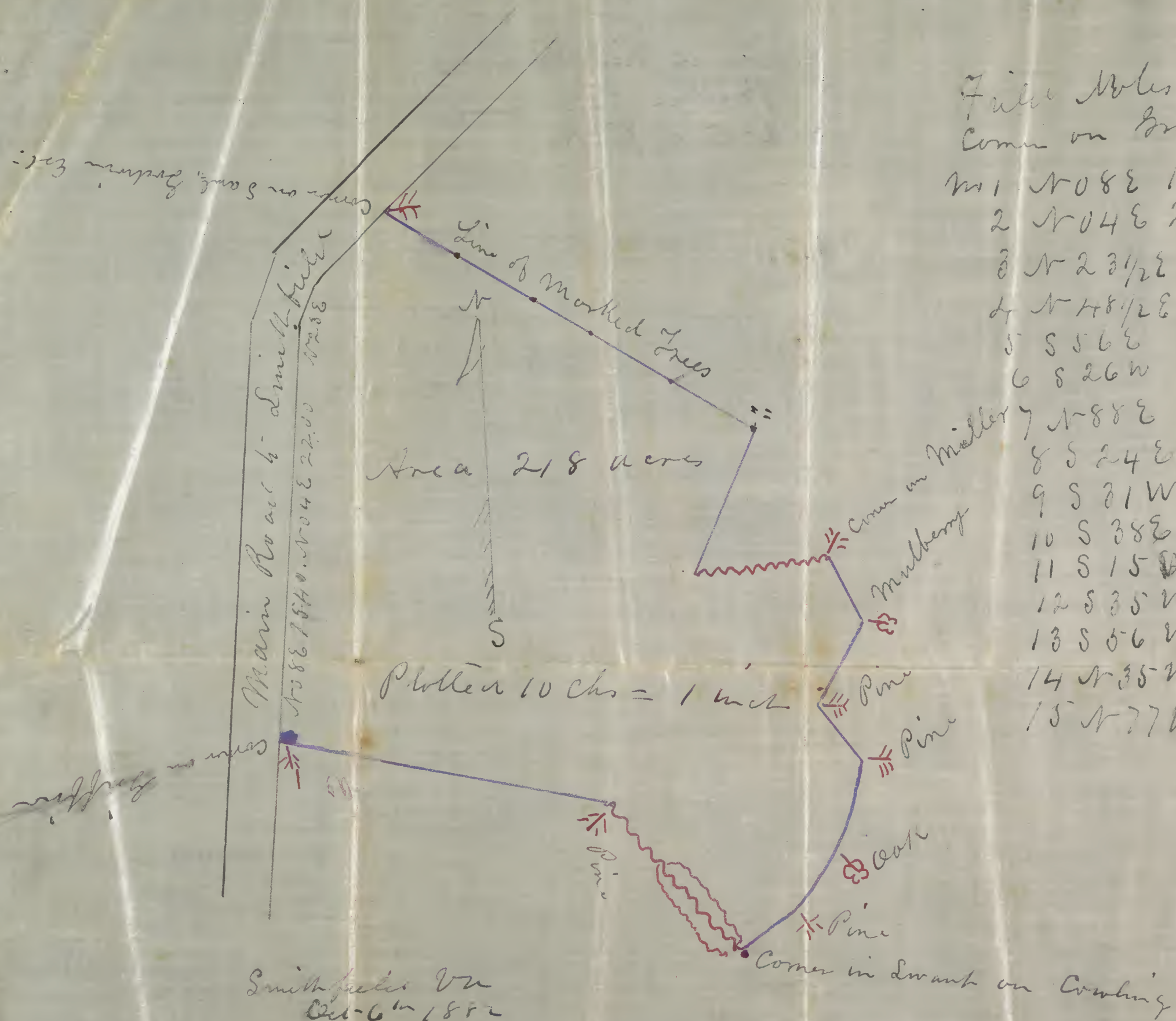
Oct 11<sup>th</sup> 1883: —

Service accepted

Thomas Tall

Att, for C. D. Lake

Nov. 2<sup>nd</sup> 1883



Field Notes. Commencing at a Pine  
Corner on Griffin, Main Road

|      |            |       |
|------|------------|-------|
| No 1 | N 08 E     | 15.40 |
| 2    | N 04 E     | 22.00 |
| 3    | N 23 1/2 E | 4.60  |
| 4    | N 48 1/2 E | 8.40  |
| 5    | S 56 E     | 39.00 |
| 6    | S 26 W     | 13.50 |
| 7    | N 88 E     | 12.00 |
| 8    | S 24 E     | 6.40  |
| 9    | S 31 W     | 8.45  |
| 10   | S 38 E     | 6.60  |
| 11   | S 15 W     | 6.00  |
| 12   | S 35 W     | 9.50  |
| 13   | S 56 W     | 7.00  |
| 14   | N 35 W     | 17.00 |
| 15   | N 77 W     | 31.00 |

I hereby Certify, That the above is a  
Correct Plot of Land belonging to C. D. Coker  
near Meredith's Bridge in the County of Isle of Wight  
and its area is 218. acres.

E. M. Morrison  
Co. Surveyor of Isle of Wight -

Field Notes & Plot  
of  
Land, near Everett  
Bridge belonging  
to C. D. Kake.