

1894-039

Nansemond Co. (Suffolk)

Chancery Causes: Harrison Smith vs Robert Fanny

Mansfield, Wright, Hudgins

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The Depositions of Robert Fanney and others taken by Consent of all parties concerned before me, at the office of R.H. Rawles in Suffolk on the 12th day of March 1884 to be read as evidence on behalf of Robert Fanney in a certain suit in equity depending in the Circuit Court of Household County, wherein Harrison Smith is plaintiff and Robert Fanney is defendant.

Present:-

R.H. Rawles attorney for Robert Fanney
Robt. R. Puntis " " Harrison Smith

Robt. Fanney being duly sworn deposes and says as follows:-

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

Ans Robert Fanney, Age 55, Residence Household County and I know the parties to this suit.

2 Examine Exhibit "A" and say whether it is a deed from Dexter H. Marsh & wife to you?

Ans I cannot read but will have the deed read to me. (The said Exhibit is here shown and read to witness).

3 Is that the deed?

Ans. Yes.

4. Q. At the time that this deed was given you by the grantors or their agent, were there any verbal reservations made to you, stating that Harrison Smith had either an equitable or legal right to the land in controversy, and that you must give him a deed for it yourself?

Ans. None at all sir. —

5. Q. Is the land in controversy a part of the tract embraced in this deed?

A. It is. —

6. Q. Did you ever have either actual or constructive notice that the said Harrison Smith had any right to any part of said land before or at the time this deed was given you?

A. None at all sir. —

7. Q. State whether you were ever informed it was your opinion when you accepted

this deed, that you were purchasing the whole tract including the part now claimed by Harrison Smith?

A. Yes it was my opinion that I was getting the whole tract except two acres and a half to Lon A. Harrell and the deeds that Lord had given to parties when he owned the land.

8.Q. At the date of your deed did Harrison Smith have any deed for the tract he now claims, to your knowledge -

A. He did not.

9.Q. Did the records in the Clerk's Office show that he did not have a deed at that date?

A. They did show it.

10.Q. Did he ever inform you either before or at that time that he either had or claimed a right to said land?

A. He had not.

11. Q. Had anybody else so informed you either before or at that time?

A. They had not sir, that I recollect of.

12. Q. Then at the time that you bought the said land you had no knowledge that the said Harrison Smith had any lien, claim or title, legal or equitable to the land now claimed by him?

Excepted to as leading. -

A. No I did not know anything of it.

13 Q. State what was said to you at the time of the sale by the grantor or their agent, about Harrison Smith and concerning the land he now claims? -

A. Well I don't know that anything was said about Harrison Smith, no further than that I asked what about the darkeys that had no deeds and no title to ~~that~~ the land that were living on it. Harrison Smith being one of the said darkeys.

5
Capt Wright remarked that some
had paid something, some had
paid nothing, but that it did not
amount to more than the rent, and
~~some were~~ on the land that he
did not know were there. - When
I first mentioned to Mr. Wright about
buying the land it was here in
Suffolk, I made a proposition to
give him \$1200 - cutting off the
ship occupied by the darkeys, some
of whom had deeds, and some of
whom had no deeds. I did not
know who had deeds and who
did not. His reply was that he
could not give me an answer until
he wrote to the owners of land -
He heard from them. He came by
my house when I was working in
the cotton and remarked to me that
he had seen the parties and they
said that they would not take \$1200.
but that they would take \$1500. and
sell their entire interest. - Mr.
Wright remarked to me that there
would be between \$300. & \$400. -
that was owing on the land and
that it would be a better bargain

that at \$1200.-, excluding the strip occupied by the darts. - It was my understanding that the money was owing by those that had deeded. When he sold me the land he sold me that years rent. -

14Q. State whether since you have had a deed for this land said Harrison Smith has recognized your title to the land in controversy, and disclaimed any title by paying you rent for the land in controversy. -

A. He has. - He has recognized it by paying rent & by writing letter asking to rent it again. -

Excepted to. - So much of this answer as alludes to a letter is excepted to, and the defendant is notified to file the letter alluded to within a reasonable time from this date. -

15Q. At the time that you bought this land were you either aware of or did you have any notice of any agreements either public or private between the said Harrison Smith and Dexter H

Marsh about this land.

A. None at all sir.

The understanding between Mr. Wright and myself when I bought the land was that he was not to receive any more money from them, for the land, rent, or anything else.

Cross. Examined.

1. Q. Did you not know before your interview with Wright that Harrison Smith occupied the land in controversy and had built on it?

A. I knew he was living there but I did not know on what terms.

2. Q. How many of these darkeys have abandoned the land since your deed was delivered?

A. Two - Henry Lawrence Charity Scott Willis Wright - Ben Johnson Mary Powell John Wilson. - Only three of these were on that strip next to the road.

3. Q. How much land on this strip do you
now hold in undisputed possession?

A. I could not tell -

4. Q. Can you not tell, approximately, how
much land ^{there is} ~~you now~~ in that strip,
after taking out the land for which
the occupants now have deeds, and
the lands now in litigation?

A. I have no idea -

5. Q. How much in the whole strip?

A. I don't even know that, I could not
tell. -

6. Q. How do you know that the land in contro-
versy is embraced in your deed?

A. From the very fact that it says it adjoins
the Lee Farm and others. But the
others, is the old Justly farm, now owned
by Degarybody. -

7. Q. Are there not some of those ~~barkeys~~ who
have deeds on that side too?

Ans. Yes they are not on the side of the Lee's Farm, but they are on the side of the road.

8.Q. Did you not promise Harrison Smith and Isaac Hudgins that as soon as you got your deed you would give them deeds for the land occupied by them if ~~if~~ they would pay the balance due?

A. No, I did not. - I remarked ~~to them~~ you had better wait till I got the land I haven't got any deed for it myself yet. - That remark was made to Isaac Hudgins. I don't recollect making any remark to Harrison Smith of that kind. - And after awhile they kept annoying me for deeds and one thing and another, and finally I got tired of it and told them that I did not buy the land to sell and that I never expected to sell an inch of it.

~~9.Q. When did~~

9.Q. State how and when Harrison Smith paid

you any rent for the land in controversy?

A. Well I couldn't tell the exact date -
He paid me from ^{some time} ~~the~~ 17. July up to
near Christmas in 1882. Since he
might have worked and since he
might have paid in money.

10 Q. About how much in money and how
much in work?

A. I could not say anything about that
he paid me at the rate of \$2. per
month.

11 Q. Can you swear he ever paid any money?

A. I would not like to be positive about
that - He might have worked it all
out.

12 Q. Did he ever accept a receipt from
you on account of rent?

A. Yes. I think he has.

13 Q. Did you ever notify Harrison Smith in
writing that if he would come forward

in fifteen days and pay the balance due on the land in controversy, you would make him a deed and dismiss the proceedings in Court?

A. No. sir - I will tell you what I did do though - That is I did it in this way - I went to see Capt. Wright about them Darkeys and I come to the conclusion that if they would pay all the costs and all the damages that they had done to the land, and I would get an equivalent of between \$300 & \$400 - I would give them deeds for the land as I understood when I bought the land that there would be that difference between the \$1200 and \$1500 - proposition - But Mr. Wright gave me a statement to have them written by and when it was read to me it did not suit me, it did not read as I expected to hear it read - and then I authorised Mr. Mansfield to write as stated above - and he thought there would be no difficulty about it and he wrote it as it was sent to the parties -

14. Q Is the notice now shown similar to the one sent Harrison Smith?

Ans. Yes it is the same thing. -
~~Deft~~ put the notice marked "No 1" in testimony in this cause. -
Re X

15- Mr Fannay Can you write?

Ans No Sir:-

16 was Ex No 1 written as you requested it should be?

Ans It was not.

17 What was your proposition to the negroes?

Ans My proposition was that if they would leave all the Cuts and all the Comages, and for writing the deeds and all these things, surveying lands and all expense attached to it, and if I could get an equivalent of from \$300 to \$400 what they owed on the land I would give them deeds for the lands - that is the way I wanted it wrote.

18 Was it so written?

It was not.

19 Did you after that meet the parties in person and make your same proposition as you testified you wanted it written to them in person?

I did, but did not recognize Ex no 1 at all because it wants wrote as I wanted it to be or order it to be wrote and I made them the above proposition.

And further this document saith not.

(witness
R. H. Rawls)

Robert ^{his} Fanney
mark

Joseph R. Mansfield being duly sworn
deposes and says as follows:-

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

A Joseph R. Mansfield, 33, Houseman County, I
know the parties to this suit

21 Examine Ex no 1 and say if you wrote
it?

An Yes Sir:-

22 Was it written according to Mr. Fanney's order
I mean just exactly as he wanted it,
or in other words did you put in it all
the requirements that Mr. Fanney wanted
in it?

A No sir I did not. I simply copied the
form he gave me.

23 What else did he say he wanted in it and
why did you not put it in?

A He told me he wanted me to say in addi-
tion to what was there, that of the parties

concerned would pay all the damages to the land, costs of surveying, writing of deeds and all other costs, he would give them a deed for the land.

The reason why I did not write that was that that form says pay all expenses and I thought that covered all the costs he mentioned, and thought it unnecessary to make that addition.

24 Was anything said about the negroes paying also the balance due by them on the land?

A I don't remember whether there was or not. The form said so, I don't know whether Mr. Fannery did or not.

X ems

25 Were the notices written and sent according to the form handed you by Mr. Fannery with Mr. Fannery's knowledge that the form had not been altered?

A Yes Sir.

And further this document said not.

Joseph P. Mansfield,

John A. Wright a witness introduced in behalf of 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

Ans. I am forty four years old, reside in Suffolk, am an
attorney at Law & know the parties to this suit.

2. Q State whether ^{you} sold the "Lord" or "Capps"
farm to Robt Fanny, if so, state
with particularity the circumstances
connected with the sale and the
bargain with reference to certain
colored men who occupied the land,
especially as to Harrison Smith?

Ans. I did sell the "Lord" or "Capps" farm, as attorney
for the owner, to Mr. R. Fanny. Some time in the
Spring, I think, of 1882 Mr. Fanny applied to
me to know upon what terms the farm could
be bought. I replied that I had no authority to
sell for less than \$1500⁰⁰, and that this price did
not include any of the lots on the road from Prin-
gles to Dirve's Store, but the land represented by
a survey made by Clark Chatfield, which
contained One Hundred and Sixty Five acres
and the Eastern boundary was line of lots on
the road from Pringles to Dirve's Store. Mr. Fanny

offered me \$1200⁰⁰ for the lot of land so described to him, which I declined but told him I would communicate his offer to the owner, which I did. The owner declined the offer, but came down and looked over the property, which he had never seen before. He then authorized me to sell the 165 acres, and his equitable interest in the lots bargained for by the several negroes, including Harrison Smith, for \$1500⁰⁰. I afterward saw Fanny & told him the terms. At the same time he asked me what was the condition of the lots bought by the negroes, which I explained to him, stating that they all owed together I thought between two and three hundred dollars, which they would have to pay to him and he would have to make them the Deeds. I also stated to him that the balance due by the several negroes would in any opinion nearly make up the difference between the price offered by him & the price asked. Mr Fanny agreed to take the property on these terms. I did not suppose there could be any misunderstanding, and I prepared the Deed which was Executed. In writing the Deed I supposed the Lee farm extended across the Road & joined the "Capps"^{land} somewhere near the Cross Swamp, hence I made it one of the bound-

Saries, & the "others" all used to in the Deed were the negroes who owned lots adjacent.

3. Q. Did you notify Robert Fanny ^{before the sale} that Harrison Smith had equitable title to the land in controversy and that he would be entitled to a deed on payment of the balance of purchase money?

Ans. I did. I gave him the names of all those who had purchased small lots, and also told him that some had paid nothing & those who had paid, had receipts, from which the balances could be ascertained.

4. Q. Did you ever give him a written list of those who had deeds for the land and if so when and where was this list made? Was it before the deed was executed or afterwards?

Ans. At the time of the sale to Mr Fanny I told him a number of negroes on the road had deeds for the land bought by them, which had been made to them by E. H. Low & I had nothing whatever to do with those lots. Sometime afterwards & after Mr Fanny had secured his Deed, he applied to me to go with him to the Clerk's office to hunt up these Deeds, which I did, and gave him a written list of them in the Clerk's office

taken from the Records.

5 Q. Did you ever intimate to him that the parties who had deeds owed any balances on the land for which they had deeds?

Ans. I did not. I knew nothing about any balances due by them.

6 Q. Was it expressly understood between you and Fanny that the negroes who paid the balances due were to have deeds from him?

Ans. It certainly was so understood by me, and I do not understand how Mr Fanny could have understood otherwise, as I endeavored to make that fact perfectly plain, and was more particular than I should otherwise have been, owing to the fact that I knew Mr Fanny could not read or write.

I should have added in answer to 2^d question that the sale to Mr Fanny included the rent due by Mr Jos White, who lived on the farm, for the year 1882. Nothing was said about any other rent, as I knew of no other tenant on the place.

7 Q. At the time the list of those who had deeds was made out in the Clerk's Office was anything said about those who

did not have deeds?

Ans. I think there was something said at that time, and to the same effect as when the sale was made, though I can not say positively that it was on that day. Mr. Fanny has spoken to me several times on the subject and each time I have tried to impress this upon him. At one time he applied to me to represent him as counsel in this cause, which I declined and urged that as one of my reasons for doing so.

8.Q. Did he ~~even~~ express his willingness to give them deeds and request you to notify them, if so, state all that occurred between you on that occasion?

Ans. He called at my office some time in December or January last, and seemed considerably disturbed about this suit. After talking over the matter he said he had concluded to drop the suits and get rid of the Expense, if the negroes still there would pay the balances due. As I was not his counsel, I did not undertake to urge any action, but when he asked me what was necessary in order to give the negroes proper notice, I suggested a simple written notice to come up & pay the balances.

due, and at his request I wrote a form of notice which I read to him & which he said he would have copied & send a copy to Harrison Smith & each of the other parties. I recognize form (1) filed in this testimony as a copy of the form written by me at his request.

Cross. Examined:

1. Q. You sold this farm to Mr. Tanny with the understanding that Harrison Smith, Isaac Higgins, Ben Council and Joshua Hicks and others had equitable ^{rights} as claimed in this Bill, which Mr. Tanny was to recognize?

A. I did.

2 Q. State first ~~what~~ what was the equitable right of Harrison Smith and then what was the equitable right of the others separately?

A. I cannot undertake to state the several amounts due by each of the parties, as all the money paid had not passed

through my hands but they had receipts for all payments made from which the balances could be ascertained. They had an equitable right to pay those balances and receive their deeds as I understood it, and sought to explain it. -

3Q. From whom did Harrison Smith and the other named parties, derive these equitable rights?

Ans. ~~Some of them~~ Harrison Smith, I think, purchased a part that had been bargained for by Wm A Bond. I think that Bond made the contract with myself, while the land was owned by Mr Carter. - I have been acting as agent for these lands ever since they were sold under E. H. Lord's deed of trust. - I think that the Auburn Cigar Co. became the purchasers at Lord's trust sale. They sold to Carter, Carter sold to Marsh, and Marsh sold to Robert Tanny. - I don't recollect who was the owner when these several contracts were made.

4 Q. State how much Harrison Smith and the other parties named were to pay each respectively for the lands they now claim and how much land was each to have?

A The lands were sold at \$25. per acre with interest from date of sale. Harrison Smith and probably one or two of the others purchased two acres each. I don't recollect their names though. The others purchased one acre each. There may have been one or two with whom ^{agreements} ~~there~~ were written, most of them were verbal. I do not recall any written agreement.

5 Q. Were the payments made to you for this land, and if not to you, to whom?

A Some were made to me. Some were made to Mr. Lord before it went out of his hands. I do not recollect what amounts the receipts will show. I gave receipts for all that was paid to me. Some of them had receipts given by Lord which had become so indis-

time that they wished new receipts given in place of them. My impression is that I gave one or two receipts for those that were nearly worn out which were signed by Lord. -

Q.

State the amount due to you as agent of Marsh by these four parties, Harrison Smith, Ben Conneill, Joshua Ricks and Isaac Hudgins, at the time you sold to Fanny, in other words how much were they to pay to Fanny before he was bound to give them deeds?

A.

At the time of the sale to Mr. Fanny there were a number of negroes who had bargained for lots on this land. I told him I thought they all together owed between \$200 - & \$300 - that each of them had receipts from which the amount owing could be accurately ascertained. - As to the amount owing by the four parties here named I don't recollect that I ever gave a statement, and if so it would have been only an estimate, but I thought it was near \$100. ± jointly for these four. -

7. Q. Were these four negroes besides paying the amounts due on their lands, together with interest, also to pay the expenses attending the conveyance of the land to them by the agreement with Fanny?

A. They were to pay for the execution of the deeds and the expense of any surveys necessary in laying off their several lots. Only one of the number Ben Council, I think, ever had his land laid off by survey.

8. Q. Now with your contract with these negroes at the time they bargained for the land, was not ~~all~~ ^{the whole} of the money due for the land, due long before the sale to Fanny from every one of them?

A. I do not recollect whether any specified time was named with the several parties. So long as the debts were not permitted to increase above the original transaction I rather think I gave them the right to

25

expect notice of a foreclosure. - I remember distinctly telling them that if the property should be sold I would make a reservation of their equitable rights - I do not know that I said "equitable rights" because they would not have understood me. - I remember that they asked me ~~about it~~ what would be the effect if the land was sold, and I told them that they should be protected. -

Q. At or before the time of the sale, to Fanny had you not in fact notified them that they must come up and pay the amounts due by them on the said land?

A. I don't recollect ever giving such notice though I was constantly asking for the balances due - There were some who had never paid anything, and I notified them that they must pay or get off the land. - I did notify them of the sale made to Mr. Kimmey and that they must make the balance of their payments to him

and that he would probably notify them in a short time to pay up the balance due or surrender the premises. -

10 Q At the time of the sale to Fanny was it your understanding ^{with the negroes} that they ~~negroes~~ were still to have an indefinite time in which to pay up the amounts due by them?

A. No it was not - I told them they could not expect the same indulgence which I had given them, and they had better make ready to pay the balances due when notified by Mr. Fanny. -

11 Q. When you held the land for Marsh did you have the right, just previous to the sale to Fanny, to foreclose the contracts with these negroes for this land?

A. I suppose I had by giving reasonable notice. -

12 Q Did Marsh transfer this right to

Fanny?

A. I so understood it. -

13Q. Then Fanny had a right to foreclose by giving legal notice?

A. I think so.

14Q. Then he had a right to serve this notice in the form of a action of ejectment, - they having failed to pay the amounts due for said land?

A. I don't consider an action of ejectment the proper notice in this case, nor such notice as was contemplated in the agreement. -

15Q. What kind of notice was contemplated?

A. The notice which I had in contemplation, was similar to that of Exhibit No. 1. with Fanny's deposition

16Q. Supposing such notice to have been given by Mr. Fanny, and they

still failing to appear and settle the amounts due, did he not then have a right to proceed against them, to recover the said land?

A. He either had a right in my opinion to institute action to recover the land or the money due.

Further this deponent saith not.
Geo H. Wright

Harrison Smith being first duly sworn in answer to questions deposes and says on behalf of plaintiff

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

A. I am 30 years old, live in Nausemond County and am plaintiff in this suit.

2. Q. Did you ever agree to buy the land described in the bill ~~described~~ if so state under what circumstances and how much you have paid.

A. I agreed to buy it from Cap. Geo. H.

Wright. It was two acres formerly owned by Wm A. Bond, and with the understanding that I was to pay Bond what he had already paid on it, and then pay the balance to Capt Wright.

After paying Wm A. Bond, I afterwards paid to Mr. R. H. Rawles, who was Capt Wright's law partner, ^(Five dollars \$5.00) Mr. Rawles said it would be all right. Some time after that I paid Capt Wright Ten dollars more and told him about the \$5. paid to Mr. Rawles, and he and Mr. Rawles made it all right between them. Then Mr. Gay cut seven dollars and some cents worth of timber from off my lot, with my consent, and Mr. Gay paid Mr. Wright that amount, and Mr. Gay gave me a receipt showing the amount of lumber cut off. This was done by consent of all parties, with the understanding that it was to be credited on the purchase money.

Then after Mr. Tanny got the land he sent written notices and I wasn't at home to receive mine, but the messenger told my wife that Mr. Tanny said we all had to pay rent or come up to see him to make arrangements.

to see him - Then Higgins & myself
went to see him and I saw his son
Joe - I asked him where was Mr.
Tanny ~~and he~~ Mr. Tanny did not
come for some time - I started away
and met him on his premises in
his field - Then I told him what
I had heard and that I came to
see him ~~to be~~ about the land - And
he said yes he had bought every
bit of it except the Lou Hartell
place - Then I asked him what
kind of arrangements we could
make, that I wanted the place and
then commenced telling him how
much I had paid for it -

His reply was ~~all that he wanted~~
~~to buy a first designating~~ that
he would make me a deed when
he got his deed provided I would
pay the balance of the money -

He told me to go home and make myself
satisfied that he did not want to
disturb any of us. Higgins and he
and myself were together - Then
he stated to me that Capt. Wright
promised to let him know how
all the lots stood how much

land and how much was due seed
who had any claim. -

Mr. Tanny sent for us to dull fodder
afterwards but I did not go. Then
when the time came to get peanuts
up he sent again. Then I saw him
right at the fork of the road and
talked to him about this land then
he told us again I havn't got my
deed yet. I commenced to work then.
Then Thursday of that week he came
to Suffolk after his deed. He came
back and said the deed hadn't come.
Then he told us that ~~I~~ we were picking
up a fuss and we didn't know
what would happen to us yet that
he didn't have his deed yet. Then
I kept on working just the same.
Then the next time he went up
he said the deed had come but
that there was some mistake about
it. He had Mr. Peter Prentiss to
inspect and it was not exactly
right. That he was going to have
it sent back. Then after that
he came back and said it had
come. Then we asked him again
how about our deeds. Then he

comes out and says that he didn't
buy the land to sell. Then I told
him, you said to me and Hudgeim
that you were going to let us
have ours. Then he said I aint
meaning to sell, and if you dont
choose to pay rent you can
just move right off. Then he called
his son Joe up and told him to
write us receipts for what we
had paid. - When he come to mine
I told him it wasnt worth while
to write any for me, because he
had promised to give me a deed.
Then I come away and said I would
not work any more because there
was a misunderstanding. His son
Joe told me that my work come
to \$8.+. Then I stopped and some
time afterwards he sent Mr. Tom
Beamon Constable around to collect
rent. And I stated to Mr. Beamon
that I did not expect to pay any
rent till the law made me pay
it. That \$8.+ is where Mr. Fanny
claims I have paid him rent.

B. L.

Did you work for Mr. Fanny with the

understanding that your wages were to go towards paying for the land?

A. That was my understanding from my conversation with him in his field on the hill. -

4 Q. How much balance was due by Beard when you took the land off his hands?

A. Thirty-one dollars Mr. Wright said. -

5 Q. Did you ever pay Mr. Fanny any rent for this land?

A. No more than what I have told you I worked there as I have before stated. -

6 Q. Did Mr. Fanny know before he got his deed that you claimed the land, on payment of balance due?

A. I reckon he did. He sawed I was there. - I would not say that he knew it. -

7 Q. Did ~~you~~ not promise you that you

should have your deed as soon as he got his?

A. That is what he told me some time in August when I met him in his field. -

8. Q. Did you ever offer to pay the balance due?

A. I told him I would. I told him so that day I gave him the letter -

9. Q. How often have you told him you were ready to pay the balance if he would give you a deed?

A. I don't know that I told him so but just that one time. -

10. Q. Did he ever notify you in writing since the institution of this suit to come and pay the balance and receive your deed. if so state whether you accepted the proposition?

A. He did send me a notice by Mr. Mansfield - I accepted the proposition

I agreed to pay according to what the notice said -

11 Q. Did he accept ~~it~~ or refuse the balance due?

A. I can say he did not accept it in my presence -

12 Q. Did you see Mr. Tanny at his house after receiving the written notice, if so, did he object to the form of the notice sent?

A. I went to his house and he just asked me had I got it - I told him yes sir. - He told me to meet at Judge Rawles office and it would be settled there -

13 Q. Have you made any improvements on the land? if so, what?

A. Yes sir I have made right smart - There wasn't a half a square cleared when I went there - I have paid for five squares to be grubbed and grubbed two myself - I have marked

mils. four or five hundred. - Mr. A. Bond
put the house there. ~~and~~

14 Q. Was it before or after Mr. Tenny got
his deed all straight, that he told
you ~~you~~ ~~that~~ to he did not buy to
sell?

A. It was after he got his deed.

15 Q. How do you know?

A. I went by what he told me.

16 Q. What did he tell you about it before
he got his deed straight?

A. He told me not to be uneasy that
when he got his deed we should
have ours on the understanding
that we were to pay the balance
of the money.

17 Q. State how many parties have left
the land since Mr. Tenny took possession,
giving their names and the number
of acres each one had bargained
for?

A. Henry Lawrence had bargained for two acres, Willis Wright for one acre Tom Jones for four acres, Ben Johnson for four acres, John Wilson two acres, Henry Powell one acre and Charity Scott two acres. All these have left the land since Mr. Fanny took possession -

18Q. How many are still occupying the land and refusing to leave, who have no deeds?

A. Tom - Myself I am claiming two acres, Isaac Hudgins two acres Ben Councill two acres and Joshua Ricks one -

19Q. Had those parties who vacated the land to Mr. Fanny made any improvements?

A. Yes they all had built -

20Q. Did they leave the houses on the land?

A. Yes sir. -

2 Q Did you pay Wm A. Bond in full for his interest in the land and improvements at the time you took it off his hands?

A Yes sir. -

Cross Examined

1 State exactly what your contract in reference to the purchase of this land was with Mr. Wright.

A My agreement was to take the land purchased by Bond and pay him the balance due on it. He told me Bond owed thirty one dollars. There was no specified time in which I should pay for land.

2 Then you mean to say that your understanding was that you should pay thirty one dollars and receive a deed for this land

A Yes sir.

3 How much did you pay Mr Wright

A Twenty two dollars & some cents

4
Then I understood you to say in your examination in chief that you paid Mr Fanny eight dollars on place, according to your understanding of this matter. How much do you now owe Mr Fanny

A About ten dollars. I thought that would put me through -

Q Did you not tell me that you would willingly pay Mr Fanny \$50 dollars if he would make you a deed

A I said rather than be troubled out more off the place I would pay it. I told you this when you were my counsel.

Q Did you not tell me that you would pay Mr Fanny \$50 if he would give you a deed during the past four months

A I don't remember -

Q How long after Mr Fanny purchased this land was it before he claimed it

A I know it was not a month afterwards

Q Did you have any conversation with Fanny about this land until he sent you the notice alluded to claiming that you must pay rent on her land?

A Yes Sir, I had some conversation with him that time I went to see him.

Q State when you went to see him and also state as near as you can the conversation alluded to.

A. I cant tell date but know it was some time after I received the notice. I asked him about the land & he told me he had bought it, all except the son Harrell place. I stated to him I wanted to come to some agreement with him, I stated what I had told Capt Wright & he about it. I asked him if I got up the balance of the money if he would make me a right to my piece. He said yes right immediately, with the understanding that he had not got the deed yet. so him & make yourself easy, I sent

want to disturb any of you, then he instructed us where he did not want us to go. ~~I told him I should not~~ He told us not to cut down his trees or take his straw, beyond a certain line designating a ditch.

10 you have testified that certain parties who had made considerable improvements on the Capps or Long farm had afterwards moved off leaving the said improvements on land. State the value & character of the improvements alluded to

A I did not have anything to do with them & don't know the value - I helped Mrs. Wilson to build a shanty not a house - Ben Johnson's house was built of slabs Tom Jones. " was " " logs what is called a log house. Henry Powell's was a log house. Charity Scott's was a slab house. Henry Lawrence's was a slab house. Willis Wright's was a weather boarded house, covered with slabs.

11 you have stated in answer to Question 3. that your understanding with Mr. Fanny was that your work was to

be credited as a payment on land. Did
Mr Fanny ever tell you this?

A He told me so that day. The day I went
to see him after I recd my notice

12 Was any one present during this
conversation

A No one but Mr. Fanny, Hudgins & myself

Further this deponent saith not.

Harrison B Smith

Isaac Hudgins another witness for
the complainants being 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. Forty eight years old, live in House-
mond County. I am a laborer by
occupation and know the parties

to this suit?

2 Q. Were you ever present at any conversation between Harrison Smith and Robt. Fanny with reference to the land described in the bill; if so state with particularity the said conversation?

A. I went to see Mr. Fanny after he bought the place. I asked him ~~then~~ what must I do and he told me when he got his deed he would make me a deed if I would pay the balance of the money. He told not to go over the ditch but on the swamp side I could burn everything I wanted to except the big timber.

~~I~~ was present at a conversation between Smith and Robt. Fanny. ^(Fanny) He was coming from Sleepy Hole - there in his field. He promised him that when he ^(Fanny) got his deed he would give Harrison Smith his deed on his paying the balance of the purchase money.

3 Q. Were you ever present at any other conversation between the said parties

No sir -

4 Q Did you ever know Harrison Smith to offer to the balance due to Mr Fanny.

A. He told him that day if he would give him a deed he would pay him the balance. -

5 Q Did Mr. Fanny after he got his deed refuse to give Harrison Smith and yourself deeds?

A. Yes sir -

6 Q ~~Did you~~ state what parties have moved off the Lord or Capps Farm since Mr. Fanny bought it, giving their names and the quantity of land occupied by them if you can?

A. Ben Johnson, ^{don't know how much -} Sarah Scott she had two acres, Tom Jones either three or four acres I don't know which, Willis Wright, one acre Henry Powell I don't know what he had Henry Lawrence two acres John Wilson was there I don't know what he had.

7 Q Had they all made some improvements?

A. Yes sir. Ben Johnson built a board house. Charles Scott a board house. Henry Lawrence a board house. Will Wright one half plank and one half boards. Henry Powell's I believe was a log house. Tom Jones I believe was a log house. I don't know what sort of a house John Wilson's was. They left the houses there.

Further this deponent saith not.

Witness Isaac ^{his} Phillips
 Robt. Prentiss mark

Notary Fee \$ 5- One Minnie Briggs

State of Virginia

County of Hanover and Town:

I Minnie Briggs a Notary Public for the County aforesaid, in the State of Virginia do hereby certify that the foregoing depositions were duly taken, sworn to and subscribed before me at the times

and place mentioned therein

GIVEN under my hand this 10th Day
of April 1884

Minna Briggs
H. P.

Harrison Smith

VS

Robert Fanny

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

Harrison Smith

As
Robert Farmy

Dismissed under
the 5 Years Rule

April 13th 1894

When entered

CMB

Entered in Chancery

Order Book

No. 2. Page 559.

The answer of Robert Fanning to a bill
of complaint filed against him in the
circuit court of the county of Stansford
by Harrison Smith complainant. This
respondent reserving to himself the benefit
of all such exceptions to the said bill, for
answer thereto, or to so much thereof as he
is advised that it is material he should
answer, answers and says that true
it is that he instituted an action of
ejectment in the circuit court of Stansford
county on the day of July 1883 against
said Harrison Smith the complainant by which
he sues to recover possession of about
two acres of land situated on the main
road from Pringles to Drivins store in Stan-
ford county, bounded on the north by the
land now occupied by Isaac Hudgins, south
by the land of Harvey Wiggins, east by the main
road leading to Drivins store and west by
the capps or Loo Farm. ~~He also states that~~
~~he has expended money in building a fence~~
~~around the same land for several years past~~
~~and it appears from the evidence that~~
~~he has been in possession of the same~~
~~for the whole time of his contract~~
~~agreement, that he paid for the~~
~~same land at a very low price.~~

~~with the said land and the said land~~
~~being the said agent for this land that~~
Dexter H. Marsh sold the Capps or Lord
farm year before last to your respondent
and conveyed said farm to him by deed
dated 17 July 1882 and admitted to record
4 August 1882 and that said land in
controversy was a portion of said Capps
or Lord farm that this purchase was
made through Geo. H. Wright agent for Dexter
H. Marsh and that the said agent at the
time declared that the Complainant Harison
Smith had not complied with the terms
of his agreement and that the money
said Harison Smith the Complainant had
paid was for the rent of the land as per
agreement that is to say that he should
forfeit what he had paid or that it should
be taken as rent if he failed to pay the
full amount of the purchase price by
a specified time which he failed to do.
But this respondent denies that said
Marsh sold said land to him with the
understanding that he should convey
this land to the Complainant. He also
denies that he has had either constructive
or actual notice or that he has any

notice that this land was claimed by
said complainant until long after he
had purchased it, on the contrary
the said complainant Harrison Smith
paid your respondent rent for said
land for a long space of time and never
claimed that he had any right or
title thereto for more than 12 months after
your respondent came in possession
of said land. Having now fully
answered the complainant's bill this
respondent prays your Honor to
to fully dissolve the injunctive heretofore
granted by your Honor restraining him
from proceeding with his suit of judgment
at common law against said Harrison
Smith. That the said Harrison Smith
be ordered and directed to surrender
the said land in controversy to your
respondent and that your respondent
may be hereunto dismissed with his
reasonable costs in this behalf expended
And your respondent will ever pray.

State of Virginia
County of Hanover
This day personally appeared before me
Merrill Wright a Notary Public

for the county & State aforesaid Robert
Fanny Whinn Answer is above written
and made oath that the statements
contained in the said answer, so
far as made of his own knowledge
are true, and so far as made
from the knowledge or information
derived from others, they are believed
to be true

Given under my hand this 28th day
of February 1884

Meindt Briggs
J. P.

Harrison Smith

^{vs.}
Robert Fanny -

To the Honorable George Blow
Judge of the Circuit Court of
Hansemond County.

Humblly complaining your orator
Harrison Smith of Hansemond County Vir-
ginia, respectfully represents to the Court
that Robert Fanny on the day of July
1883 instituted an action of ejectment in
the Circuit Court of Hansemond County a-
gainst your orator by which he seeks to
recover possession of about two acres of
land situated on the Main road from Drivis
to Drivis store in Hansemond County,
bounded on the North by the land now occu-
pied by Isaac Hudgins, South by the land of
Harvey Wiggins, East by the Main road leading
to Drivis store, and West by the "Capps" or
"Lord" farm. -

Your orator alleges that he purchased the said
land, which was formerly a part of the "Capps"
or "Lord" farm from the former owner thereof,
several years ago - ^{by verbal contract for the sum of \$50. -} that he has paid ~~every~~ all
the purchase money due therefor, ~~and is ready to~~
~~pay the balance~~, that he has built a house on
the said land, cleared a good deal of it, and

expended time, labor and money in making valuable improvements thereon.

That sometime last year Dexter N. Marsh sold out his interest in the said "Capps" or "Lord" farm to Robert Tanny, and conveyed the said interest to him by deed dated 17. July 1882, and admitted to record 4. August 1882. But the said Marsh always recognised your orator's rights, and sold to the said Tanny with the express understanding and agreement that all the legal and equitable rights of your orator in the said land should be respected and protected - that he the said Tanny ~~should receive the~~ ~~balance of the purchase money then due~~ ~~to your orator, and that he~~ should thereupon convey the said land to your orator.

Your orator further alleges that before and at the time of the said purchase made as aforesaid by Robert Tanny, he had actual and constructive notice, that your orator had an equitable title to the said land, that he had made valuable improvements thereon and had ~~ready~~ finished paying for it. - That before the said deed to him was executed, the said Tanny in person assured your orator that he should not be disturbed in his possession of the said land, and that all his rights should be

respected. - ~~That your orator has offered to pay~~
~~the said Tanny the balance due for the said~~
~~land on the execution of a proper deed for the~~
~~same, But the said Tanny now refuses to ac-~~
~~ceive the said balance, and claims the right to~~
eject your orator from the said land with-
standing the clear and indisputable, equita-
ble rights which your orator has therein. -

Forasmuch therefore as your orator
is without remedy save in a Court of
equity where such matters are properly cog-
nizable and relievable, he prays that the
said Robert Tanny may be made a party
defendant to this bill and required to
answer the same ^{on oath} as fully and particularly
as if each allegation hereinbefore made
were repeated and he interrogated with
reference thereto; that the said Tanny his agents,
attorneys, and all other persons may be for-
ever enjoined from prosecuting further the said
action of ejectment against your orator; that
~~on the payment of the balance due by your~~
~~orator, the said Tanny may be required to con-~~
vey the said land to your orator by proper deed;
that all necessary accounts may be taken; and
for such other, further and general relief as
the nature of his case may require and
the principles of equity justify. -

Let a Subpoena go &c
And your orator will ever pray &c -

Robt. P. P. -

State of Virginia,
County of Nausemond to wit,

This day Harrison Smith, made oath
before me that the statements contained in the
forgoing bill, so far as made of his own
knowledge are true and so far as made from
information derived from others, he believes them
to be true. - Given under my hand this 9.
day of October 1883.

Robt. P. P.
Comm. in Chancery -

Harrison Smith

Bill.



Robt. P. P.

Amerson Co. Inc
Feb. 1873

My Friend, I take great
-Pleasure to drop you a few lines to let you hear from me
I want to let you know as I told that I would
pay you for the place all that is due to you
I told that I want to leave me some Colles
my Irish relatives and dear me and the time all
of money to pay the freightage to put under them
I expect to put the parcel on the land and you
see at once. You can get you Rent I do not expect
more I you I will let me stay on the land

Is cash all of Mr. Orent and when
I make it fully paid I will pay you
all that is due to you you truly
Yours truly

Wm Robert

James W

Conrad

Thompson

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY - GREETING :
YOU ARE HEREBY COMMANDED TO SUMMON *Robert Fanny,*

to appear at the Clerk's Office of the Circuit Court of Nansemond County, at the Rules to be
held for the said Court, on the first Monday in *February* next to answer a
Bill in Chancery, exhibited against *him.*
in the said Court by *Harrison Smith,*

and have then and there this Summons. Witness, PETER B. PRENTIS, Clerk of our said
Court, at his office, this *30th* day of *January* 188*4*, in the *108th*
year of the Commonwealth.

Teste :

Peter B. Prentis. Clerk.

On the 1st day of February, 1884, I executed this process,
and delivered a copy hereof to Robert Fanny, the
within named Defendant.

J T Cox D. J. for
J L Fulghum shp

Harrison Smith

vs
E. Sumner, Clerk

Robert Fanny

To Shy: March, 1884

1st day

Printed by

Memo.

The within named Robert Fanny, his agents, attorneys and all
others, are hereby enjoined, restrained and prohibited from proceeding
further to prosecute a certain action of Ejectment, now pending in the Circuit
Court of Hanson and County, in the name of the said Robert Fanny against
Harrison Smith, within named, for about two acres of land lying on the
main road from Pringle's to Driver's Store, in Hanson and County, until
the further order of the Circuit Court of Hanson and County.

Teste:

Peter B. Prentiss, Clerk.

Pro: B. H. H. H. H.
C. H. H.

Know all men by these presents that
we Harrison Smith and H. E. Smith
do hereby constitute and appoint J. H.
Rawls, our true and lawful attorney in
fact for us and in our names to exe-
cute and deliver such proper injunction
bond as may be required of the com-
plainant in the chancery suit about
to be instituted in the Circuit Court
of Hansemond County in the name of
Harrison Smith v. ~~the~~ Robert Tammey.
~~And~~ The said bond to contain a
waiver of the homestead exemption.
And we hereby ratify and approve
all that our said attorney may
lawfully do in pursuance of this power.
Witness our hands and seals this
10. day of October 1883.

Witness
Robt. R. Prentiss.

Harrison Smith Jr

(Seal)

H. E. Smith

(Seal)

{ Pow: Att: }

Know all men by these presents that
we Claudius T. Minton and William
J. Sullivan, do hereby constitute and ap=
point Robert H. Prentis of Suffolk,
Virginia, our true and lawful attorney
in fact, for us and in our names to
execute and deliver before the Clerk
of the Circuit Court of Hansemond
County, such proper injunction bond
as may be required of the com=
plainant in a chancery cause about
to be instituted in the Circuit
Court of Hansemond County in the
name of William Johnson against
Charles F. Pierson. -

Said bond not to exceed the
penalty of \$500.± and to contain
a waiver of the homestead exemp=
tion. -

Witness the following signatures
and seals. -

C. T. Minton (seal)

W. J. Sullivan (seal)

State of Virginia,

County of Hansemond, to wit.

I, Robt. H. Prentis, a Commissioner

in Chancery of the Circuit Court of Nause-
mond County do certify that C. J. Minton
and W. J. Sullivan, whose names are signed
to the writing above, have acknowledged
the same before me in the County afore-
said. And the said C. J. Minton and
W. J. Sullivan made oath before me that
after the payment of their just debts and
those for which they are bound as
security their joint estates are worth
the sum of \$500. -

Given under my hand this 3 day of
October 1883. -

Robt. A. Prentiss.
Commr. in Chancery.

Know All Men by These Presents,

THAT WE, *Harrison Smith and H. E. Smith,*

Robert Fanny
are held and firmly bound unto the ~~COMMONWEALTH OF VIRGINIA~~ in the just and full sum of *Fifty (50)* DOLLARS, to the payment whereof, well and truly to be made to the said ~~Commonwealth~~, we bind ourselves, and each of us, our, and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this *16th* day of *October*, in the year one thousand eight hundred and *eighty-three*, and in the *108th* year of the Commonwealth. And we hereby waive our homestead exemption as to this obligation.

THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above bound

Harrison Smith,

obtained from the judge of
who hath this day qualified before the *Circuit* Court of Nansemond County, an injunction to restrain and prohibit *Robert Fanny*, his agents, attorneys and all other persons from proceeding further to prosecute or continue action of Ejectment now pending in the Circuit Court of Nansemond County, in the name of the said *Robert Fanny* against the said *Harrison Smith*, for about two acres of land lying in the main road from *Pringle's* to *Greaves' Store* in Nansemond County, until the further order of the Circuit Court of Nansemond County.

pay all such costs and damages, in case the said injunction shall be dissolved
shall ~~faithfully discharge the duties of his said trust~~, then the above obligation to be void, or else to remain in full force and virtue.

Executed in presence }
of the Court.

Peter B. Prentiss, Clerk

Harrison Smith (SEAL.)
By *F. H. Rawls* his Attorney in fact. (SEAL.)
H. E. Smith
By *F. H. Rawls* his Attorney in fact. (SEAL.)

(SEAL.)

(SEAL.)

Harison Smith

J. { Inj. Ben.
Robert Tenny

1884

Octo: 16th

Harrison Smith

Robert Tamm

This cause which has been regularly matured and set for hearing at rules according to law came on this day to be heard on the Bill and the Answer of Robert Tamm with general replication to said answer and the depositions of witnesses and was argued by counsel -

On consideration whereof the Court doth ^{therefore} judge, order and decree that the injunction awarded in this cause on the 16 day of October 1883 to restrain and prohibit the defendant Robert Tamm his agents, attorneys and all other persons from proceeding further to prosecute a certain action of ejectment now pending in the Circuit Court of Nansemond County in the name of Robert Tamm against the complainant Harrison Smith for about two acres of land lying on the Main road from Pringles to Driver's store in Nansemond County until the further order of the Circuit Court of Nansemond County ~~to~~ be perpetuated, and that the ~~defendant~~ complainant recover of the defendant his costs by him about his suit in this behalf expended. -

And this cause is referred to one of the

* Being of opinion that the plaintiff is entitled to a conveyance of the land in controversy upon paying the balance if any due therefor, ~~the~~

Commissioners of this Court who is directed to take State and report to the Court an account of balance if any, due by the plaintiff to the defendant, on account of the purchase money of the land in the bill described, - together with any other accounts deemed pertinent by himself or required by any of the parties to be so stated. -

And for the purpose of settling the accounts between the parties the cause is continued. -

Harrison Smith

N. 3 Deer

Robert Tamm

Enter 12 April 1884

Geo. B. Howard

2nd 1884 1/2 - 1884

Copies

Harrison Smith

^{v.}
Robert Fanny -

Injunction is awarded ~~accorded~~ according to the prayer of the bill to restrain and prohibit the defendant Robert Fanny his agents, attorneys and all other persons from proceeding further to prosecute a certain action of ejectment now pending in the Circuit Court of Nausemond County in the name of the said Robert Fanny against the ~~said~~ complainant Harrison Smith for about two acres of land lying on the Main road from Fringles to Drivor's store, in Nausemond County, until the further order of the Circuit Court of Nausemond County. - But the plaintiff is not to have the benefit of this order until he or some one for him shall execute a proper injunction bond ^{with security} before the Clerk of the Circuit Court of Nausemond County ~~for~~ in the penalty of \$50- and conditioned to pay all costs and damages in case this injunction shall be dissolved. -

To the Clerk of the
Circuit Court of Nausemond Co. }

Harrison Smith
27th E Chy.

Robert Fanny

16th
Oct Term 1883.

To be entered

Geo Wilson

Signature

Enter Chy O.B. No 1 page 639