

1895-021
Nansemond Co. (Suffolk)

Chancery Causes: Lizzie Smith et al vs H.P. Pinner et al

Eley, Minga, Marshall

Folder 1 of 2

This indenture, made this the 1st: day of June 1882 between A. C. Withers of the one part and H. P. Pinner of the other part. Whereas a certain Robert Eley and Emma his wife by a certain deed bearing date on the 6th: day of April 1880 & recorded in the Clerk's office of the County Court of the County of Newsumond did grant & convey unto the said A. C. Withers his heirs or assigns all of a certain tract or parcel of land situated lying in Newsumond County Chuchateuck District together with the appurtenances & privileges thereto belonging or in any wise appertaining in trust to secure a certain debt to be paid by the said parties of the second part to one Millard F. Pinner; and whereas by the said deed the party of the first part his heirs & assigns were empowered, on failure of the said parties of the first part or their assigns to pay the said debt to the said M. F. Pinner or his assigns to sell the said tract or parcel of land with its appurtenances or as much thereof as should be found necessary to accomplish the purposes of the said trust therein contained And whereas the said Robert Eley and Emma his wife having failed to perform the requirements contained in said deed The said A. C. Withers in execution of said trusts therein contained did on the 1st: day of May in the year 1882 after giving thirty days notice of the time & place of

sale both by advertisement in a newspaper
called the Christian Sun printed in Suffolk
and by hand bills posted at three or more
places in the County, exposed to sale
the tract or parcel of land aforesaid
with its appurtenances aforesaid at
public auction to the highest bidder
for cash, at which sale the said
H. P. Pinney became the purchaser
thereof being the highest bidder.
Now this indenture witnesseth that
the said A. C. Withers Trustee aforesaid
in the said deed of trust for and
in consideration of the premises &
for the further consideration of
Two (200) Hundred Dollars to him in
hand paid by the said H. P. Pinney at &
before the sealing of these presents the
receipt whereof is hereby acknowledged,
which said sum is to be appropriated
and applied as by the said deed of trust
is directed, doth grant, bargain, sell
& convey, release & confirm unto
the said H. P. Pinney his heirs and assigns
forever, all the tract or parcel of land
aforesaid with the privileges and
appurtenances thereto belonging or
in anywise appertaining situate &
lying in the County of Henric in
the State of Virginia, containing by
estimation Two Hundred Acres more
or less, bounded on the North by Capt. H.

Crumps Mill Pond, on the South by the
lands of Joseph Pruden & on the East &
West by the lands of Mills Minton it
being the same land which was con-
veyed to the said Robert Eley by H. L. Tyner
Sr. by deed duly recorded in the Clerk's
Office of the County Court of Hansewood,
with all the appurtenances thereunto
belonging, it being the same tract or
parcel of land conveyed by the deed first
above mentioned to the said A. Clowithers
by the said Robert Eley and Emma his
wife in Trust as aforesaid, to have & to
hold the said tract or parcel of land with
its appurtenances aforesaid to the said
H. P. Pinner & his heirs and assigns
forever. And the said A. Clowithers for him-
self & his heirs, doth covenant & agree
with the said H. P. Pinner & his heirs & assigns,
that the said A. Clowithers & his heirs, the
title to the said tract or parcel of land
with its appurtenances aforesaid unto the
said H. P. Pinner his heirs & assigns
will warrant and forever defend against the
claims of the said A. Clowithers & his heirs & of all
persons claiming by through or under him or them,
witness the hands and seals of the said
parties, the day and year first above written.

A. Clowithers Trustee (S.)

H. P. Pinner (S.B.)

State of Virginia
Nansemond County } To wit

I Robert R Prentiss a Commissioner in
Chancery for the Circuit Court of said County
do hereby certify that A. C. Withers Trustee,
and H. P. Pinner whose names are
signed to the writing above bearing date on
the 1st day of June 1882, have acknowledged the
same before me in my County aforesaid.

Given under my hand this the 10th day
of June 1882.

Robt R Prentiss.
Comm in Chancery.

In the Clerk's Office of Nansemond County Court. the 12th
day of January, 1884.

This deed was presented with the certificate
annexed, and admitted to record.

Teste:

Peter B. Prentiss Clerk

a copy

Teste:

Peter B. Prentiss. Clerk.

A Copy
A. C. Withers, Trustee
Is} deed

H. P. Pinner

"b"

Ely &c

vs

Pinner &c vs

Exhibit

This Deed, made the 16th day of April
in the year eighteen and Eighty between
Robert Eley and Emma Eley his wife of the
County of Nausemond in the state of Virginia
of the one part, and A. C. Withers Trustee of
the other part Witnesseth, that the said
Robert Eley and Emma his wife do grant unto
the said A. C. Withers Trustee the following
property, to wit a certain tract piece or
parcel of land situate, lying and being
in the County of Nausemond, in the state of
of Virginia containing by estimation, two
hundred acres more or less, bounded on
the North by Capt G. McCrump's Mill pond, on
the south by the lands of Joseph Hudson and
on the East and west by the lands of Mills
Minton; it being the same land that
was conveyed to the said Robert Eley by
H. L. Lyness Jr by deed duly recorded in the
Clerk's Office of the County Court of Nause-
mond with all the appurtenances
thereto belonging or in any wise apper-
taining. In Trust to secure to Willard
J. Pinner, of the County of Nausemond, the
payment of the sum of Two Hundred
Dollars, with lawful interest thereon
from the date hereof till paid and
upon the further trust that the said
Robert Eley and wife shall remain in quiet
and peaceable possession of the above granted
and described premises, and take the
profits thereof to their own use, until

3/275

July 24 - 72
Aug 16 - 72

This is the date
of deed and of
the recording
of same

N.B.H.

defaultt be made in the payment of the debt aforesaid, in whole or in part, and upon such default being made, the said A. C. Withers Trustee shall, as soon thereafter as he shall be requested by the said Millard J. Pinney so to do, sell the above granted property at public auction, at such time and place, and upon such terms and conditions, as he may deem expedient having first given notice of such time and place of sale for at least thirty days, by advertisements in one or more newspapers published in the Town of Suffolk, and out of the proceeds of such sale, after paying all expenses attending the execution of this trust, including 5 per cent commissions on said proceeds, of sale to the said A. C. Withers Trustee shall pay to the said Millard J. Pinney or his assigns, the debt aforesaid with interest thereon, or so much thereof as may then remain unpaid, and the balance if any, to the said Robert Eley or his assigns.

The said Robert Eley & wife covenant that they will warrant generally the property hereby conveyed, and will pay all taxes, levies and assessments upon said property so long as they or their assigns shall hold the same and the said grantors hereby waive the benefit of their Homestead exemption as to the aforesaid debt and obligation, and to this contract.

Withup the following signatures and seals,

Robert ^{his} X Eley (Seal)
mark

Emma ^{her} X Eley (Seal)
mark

State of Virginia }
County of Hansemond } to wit:

I Robt R Prentiss a Commissioner in chancery for the Circuit Court of Hansemond County do certify that Robert Eley whose name is signed to the foregoing deed bearing date the 6th day of April 1880 has acknowledged the same before me in the County aforesaid. And I do further certify that Emma Eley wife of Robert Eley whose name is signed to the foregoing deed bearing date the 6th day of April 1880 personally appeared before me in the County aforesaid and being examined by me privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said Emma Eley acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it

Given under my hand this 6 day of
April 1880

Robt R Prentiss.
Comm. in Chancery

In the Clerks Office of Hansemond
County Court, the 6th day of April 1880.

XXXX.

A. copy
Robt Eley et ux.
vs } Deeds of Trust.

Alb. Withers, Trustee

^{two}
M. J. Sumner

"B"

Eley vs. B
vs
Sum. et. ux. 16
Exhibit

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

Teste;
Peter B. Pentis Clerk

a copy
Teste:

Peter B. Pentis. Clerk

At a Monthly Court held for Nassau and County Court, the 10th day of December, 1883.

On the motion of Robert Eley, an heir at law of Robert Eley deceased, it is ordered, that Henry L. Tynes, Robert E. Melius, Euclid O. Mills, Mills Rogers, Jr. and Mordecai Jones, or any three of them, do lay off and assign to Melvina Eley, her dower, in the lands of her late husband, Robert Eley, deceased, in this County, and make report to Court.

A Copy
Teste:

Peter B. Prentiss, Clerk.

At a Monthly Court held for Nassau and County, the 14th day of April, 1884.

Henry L. Tynes, Mordecai Jones and Mills Rogers, three of the Commissioners appointed, at the December Term, 1883, in this Court to lay off and assign to Melvina Eley, her dower, in the lands of her late husband, Robert Eley, deceased, in this County, this day returned their report: which, being examined, is ordered to be filed, and continued for exceptions.

A Copy
Teste:

Peter B. Prentiss, Clerk.

At a Monthly Court, held for Hanssman County, the 12th day
of May, 1884.

JO L. Tynes, Mordecai Townes and Mills Rogers
Three of the Commissioners, appointed at the last December Term
of this Court to app. to Melvina Eley, her dower, in the lands
of which, her late husband, Robert Eley, died seized and possessed,
having returned their report, at the last term of this Court, which
report was ordered to be filed and continued for exceptions, and
which is in the following words and figures, to wit: "We, The un-
designated, Commissioners, appointed by the Court of Hanssman
County to lay off the dower of Melvina Eley, widow of Robert
Eley, deceased, in a certain piece or parcel of land in Hanssman
County, near the Village of Chuckatuck, known as the Robt. Eley
farm, do set apart as the dower of ~~the~~ said Melvina Eley, all
that portion of open land on the right side of the house, down
to a certain stob drawn by said Commissioners: We also
set apart for said Melvina Eley, wood-land, as follows: Beginning
at the lower gate, running in a Northerly direction to a corner
tree, thence in an Easterly direction to a corner tree: thence
South to main field.

H. L. Tynes

Mordecai ^{his} Townes

Mills Rogers.

Whereupon, the said report having remained in the Clerk's Office
of this Court, one month, and no exceptions having been filed
thereto, the same is established as the Dower of the said Melvina
Eley, in the lands of her late husband, Robert Eley, deceased; and
it is ordered, that the said Melvina Eley, hold the said land,
to her, assigned as aforesaid, as and for her Dower.

A Copy:

Teste:

Peter B. Pender's. Clerk

ely &c ,

vs Σ

Pinner et al.

Abstracts

Exhibit marked

"A"

To the Hon. C. W. Hill Judge of the Circuit
Court of Hansemond County, Virginia:

Lizzie Smith who was Lizzie Ely
and Robert Smith her husband humbly com-
plaining respectfully represent:

that said Lizzie is the child and
lawful heir of Robert Ely deceased, that said
Lizzie was born some time between the year 1850
and 1860 in the days of slavery, that her
said father Robert Ely decd. was a colored per-
son and at the time of the birth and conception
of said Lizzie was cohabiting with a colored
woman name Julia who was the mother
of said Lizzie, that at the time of the birth
and conception of your complainant Lizzie
as aforesaid her said mother and father were
cohabiting together and had undertaken and
agreed to occupy the relation to each other
of husband and wife, that said Robert Ely
deceased recognized your complainant Lizzie
as his child up to his death, that sometime
after the birth of said Lizzie her father for
some cause left said Julia and began to co-
habit with one Melvina with whom he lived
till his death in the year 1879 or about
that time, that by said Melvina said
Robert Ely had a son name Robert now

living, that said Robert Ely Jr. and your com-
plainant Lizzie are the only heirs at
law of said Robert Ely decedent;

That said Robert Ely Sr. died
seized and possessed in fee of very little per-
sonal estate and of considerable real estate
consisting of a very valuable tract of land lying
and being in said County of Staunton in the
State of Virginia near the town of Phunda-
tuck said to contain two hundred acres
more or less adjacent the lands of Mills
Minton and others and of which tract of
land said Melvina Ely has been allotted a
dower as will more fully appear by an
abstract from the records of the County and
of Staunton herewith filed as an exhib-
it marked "A" and asked to be read as
a part of this bill.

That on the 6th day of April 1880 the
said Robert Ely Jr. & wife executed a deed to
A. B. Withers trustee to secure a debt of two
hundred dollars to M. F. Finney conveying a certain
tract of land therein named, a certified copy
of which deed of trust is herewith filed as
an exhibit marked "B" and asked to be read
as a part of this bill, that from the records
it appears by another deed marked "C" and
herewith filed as an exhibit and pages

to read as a part of this bill that said A.C. Withers trustee sold said tract of land in exhibit "B" named and described at which sale H.P. Pinner became the purchaser for two hundred dollars, and that said H.P. Pinner thereupon took possession of the tract of land of which said Robert Ely Sr. died seised and possessed and that he and those who claim under him have had possession of said tract of land since the 1st day of June 1882 and used the same, have cut off and carried away a great portion of the timber on said land worth one thousand dollars; you complainants charge and allege that they are unlearned and ignorant people and that until recently they supposed that said trustee had sold or attempted to sell the land of said Robert Ely Sr. but upon investigation they are informed and charge that the land conveyed in exhibit "B" is a tract of land which said Robert Ely Jr. bought of one H.L. Lynes, of which they know nothing, and they here charge and allege that the grantors named either of them in exhibit "B" even purchased the land from which H.P. Pinner dispossessed you complainants from H.L. Lynes, that all the interest in the land claimed by H.P. Pinner herein before described of said Robert Ely Jr.,

one of the grantees in said deed of trust worked
B, was his interest as one of the heirs at law
of Robert Ely decd, which interest he does
not attempt to convey in said deed.

And your complainants say that
by the records it does not appear that said
H. F. Pinner ever conveyed the land he bought or
attempted to buy at said trustee's sale to any
one and yet they are informed and so charge
that James H. Pinner or his wife Rosa Pinner
now claims the land of which said Robert Ely Sr.
died seized and possessed under a pocket
deed or some agreement by and with said
H. F. Pinner, that such sale or conveyance if ever
made is secret deed or agreement to prevent
the creditors of James H. Pinner from subject-
ing the same to their debts, at all events
your complainants here charge that they are
entitled to one moiety in the lands of which
Robert Ely Sr. died seized and possessed and
they have made no conveyance to any body,
and that they have made no agreement with
any body for sale of their interest in said
land and they have never parted with their
share in any way, but are now legally entitled
to one moiety in the said lands of which
said Robert Ely died seized and possessed and
to compensation and damages for the trouble

Taken from said land, to compensation for
use and occupation thereof and to damages
and compensation for any and all injury
done to the said land:

And whereas of an complainant
one without remedy in the premises save in
this honorable Court of Chancery where such
matters are alone and properly cognizable
they pray that H. P. Pinner, James H. Pinner
and Rosa Pinner wife of said James H. Pinner,
Mr. F. Pinner and Robert Eley ^{and Melvina Eley} Jr. may be made
parties defendants to this bill and request
to answer the same, an answer on oath
is hereby waived pursuant to the Statute
in such case made and provided, that
one moiety in the said tract of land
may be decreed to said complainant
Lizzie, that compensation for use and
occupation and damages for timber
and for all other injuries may be
allowed the complainants, that com-
missioners may be appointed to divide
said tract of land into two equal shares
that said decree may be ratified and
confirmed, that all other, further, and
general relief may be afforded said
complainants as the nature of their case
may require and to equity and good

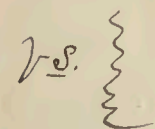
Conscience may keen meet. And you can
plain and will ever try. Let a subpoena
go.

W. S. Hallen, Jr.

July 13th, 1888.

W.S. Hallam p. 2.
~~Smith~~ Lizzie & Co. et al.

V.S.



Pinner H. P. et al.

- Bill of Complaint -

Nelson and Co. Co.

Lizzie Smith, who was Eley, and Robert Eley, her husband. Plaintiff.

vs Eley. Notes

H. P. Pinner, James H. Pinner, Rosa Pinner, wife of
James H. Pinner, M. F. Pinner, Robert Eley, Jr. and
Melvina Eley. Defendants.

1888. Feb: 13th Sum. in Eley. issued to March Rules, 1888.

" March 5th: Bill de filed - Decree nisi vs defendants

" April 2nd: Decree nisi confirmed, and cause set for
hearing, on motion of Plaintiff's Counsel.

Chap. Notes

The joint and several answer of
Rosa V. Piener and James H. Piener,
her husband, M. F. Piener, and
H. F. Piener, to a bill of complaint
exhibited against them and others
by Lizzie Smith who was Lizzie Eley
and Robert Smith her husband
(which suit has been joined in the names of the heirs at law of Lizzie Smith)
~~but~~ in the Circuit Court of
Hansemond County:

These respondents, reserving to themselves
the benefit of all just exceptions to
the said bill, for answer thereto,
or to so much thereof as they
are advised it is material that
they should answer, answer and
say:

That it is true that Robert Eley Sr.,
did seized and possessed of the
tract of land in the bill described
which was conveyed to him by
Henry L. Tyner, by deed dated 29.
July 1872, and recorded in the
Clerk's Office of Hansemond County
Court on 16th. August 1872. -

That after the death of the said
Robert Eley Sr. his only son
and heir at law took possession
of the said land, and claimed
to be the sole simple owner thereof
as his father's sole heir at law

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(subject to the right of Dower therein of his mother Malvina Eley). That while thus in possession he cut a large quantity of wood and timber therefrom for his own use and benefit, and with the full knowledge of the complainant, who made no protest whatever and ~~acknowledged that~~ claimed no interest whatever in the said land, or any part thereof. That afterwards the said Robert Eley Jr. and wife conveyed the said land by deed of trust to A. C. Wither Trust to secure to M. J. Pierson a debt of Two Hundred Dollars.

That on the 1st day of May 1882 the said land was sold at public auction under the said deed of trust, after due advertisement, as the property of Robert Eley Jr. to H. P. Pierson. It is true that both of these deeds refer to the land as having been sold to Robert Eley by Henry L. Sykes, whereas in fact it was sold to Robert Eley Sr. by said Sykes, and the said Robert Eley Jr. never owned or claimed to own any other tract of land except the land in the bill described, which he claimed as the sole

heir at law of his father Robert Eley Jr. -
~~heir at law of his father Robert Eley~~
 Eley, he being the only child of the
 said Robert Eley and Melvina Eley,
 his recognized and lawful wife. -

That the said M. F. Pinner ~~also~~
 claimed the said land by virtue of
 a deed from A. C. Withers, Trustee,
 (Exhibit C. with the bill) and the
 complainants admitted his title and
 made no claim whatever upon him
 for the said land, or its profits or any
 part thereof. - Afterwards, by deed
 dated the 10th day of December 1883 he
 sold and conveyed it to M. F.
 Pinner, who afterwards on the
 day of 1885 sold it

to Rosa V. Pinner, but because
 of differences between them with
 reference to the purchase money
 which could only be settled by a suit in chancery,
 it was not conveyed to the
 said Rosa V. Pinner until the
 12th day of October 1887. -

The said deeds are herewith filed
 marked "Exhibit No. 1" and "Exhibit
 No. 2" respectively, and respondents
 pray that they may be read as
 parts of this answer. -

During all these years the com-
 plainants have had full knowl-
 edge that Robert Eley Jr. and these
 respondents claimed title to
 the whole of the said land

and these respondents are innocent purchasers for value, without any notice whatever of the claim set up for the first time now, by the complainants. Indeed the complainants have not only stood silently by and seen these respondents spend their money in purchasing the said land and in erecting permanent valuable improvements thereon, but they have expressly and unequivocally ~~admitted~~ ~~acknowledged~~ acknowledged respondents title and have admitted that they have ~~no~~ title or claim to it whatever by becoming the tenants of the respondents. - For the past three years they have ~~possessed occupied the~~ occupied a part of said land as the tenants of respondent Rosa V. Piñero and have paid her rent for the same without making any protest or claim whatever. - Respondents therefore claim that the complainants are estopped by their own laches from asserting any right or title whatever adverse to the title of Rosa V. Piñero. To permit them to do so would be to permit them to take advantage of their own wrong, and would be manifestly inequitable and unjust to these

* Answering over these respondents over that if the complainants were had any cause of action against them or any of them for or on account of the land in the bill described which respondents deny, such cause of action or suit did not accrue within fifteen years before the filing of the said bill or before suing out or serving process against these defendants to appear and answer the said bill; therefore the statute of limitations is a complete and effectual bar to the said supposed cause of action, and respondents claim the benefit of the same.

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who are complete purchasers for value, having paid all of the purchase money and taken a conveyance of the said real estate before receiving any notice of the complainants' claim and respondents, who have been deceived and deluded by the complainants as aforesaid. *

These respondents answering further deny that the complainant Lizzie Smith is the child and lawful heir of Robert Eley deceased, or that at the time of the birth and conception of the said Lizzie he was cohabiting with a colored woman named Julia, who was the mother of the said Lizzie. They utterly deny that at the time of said birth and conception the said Robert Eley and Julia were cohabiting together and had undertaken and agreed to occupy the relation to each other of husband and wife, ~~as~~ as the complainants have alleged; on the contrary thereof respondents aver that the said Robert Eley never at any time agreed to occupy the marital relation with any other woman save with a woman named Mary, who never bore him any children, and and except with Melvina, who was during his lifetime recognized as his wife, and since his death has been allotted down in his real estate, and the only issue of this marriage is Robert Eley Jr. the sole heir at law of Robert Eley Sr. under whom respondents claim. - And respondents deny that H. P. Pinner

and those who claim under him have cut off and carried away a great portion of the timber on said land worth one thousand dollars.

Respondents deny that there has been any secret transaction whatever with reference to the said land, on the contrary thereof, all their transactions with reference to the same have been open and notorious, and the delay in recording the deed ~~which was~~ under which respondent Rosa V. Pinner claimed was caused by ~~reason of~~ the pendency of a suit in equity in this Court heretofore in this answer alluded to.

And having fully answered respondents pray to be hence dismissed with their reasonable costs in this behalf expended. And they will ever pray &c.

Robt. R. Prentiss,
Counsel.

Rosa V. Pinner
James V. Pinner
M. J. Pinner
N. O. Pinner

State of Virginia,
County of Hansemond, to wit,
I Robt. R. Prentiss, a Commissioner in Chancery of the Circuit Court of Hansemond County do certify that James V. Pinner personally

appeared before me and made oath that the
statements contained in the foregoing answer
are true. -

Given under my hand this 17th day of October
1889. -

Robt. D. Prentiss
Commissioner in Chancery. -

Answer of
Rosa V. Turner to
Bill of
George D. Smith

1889 Oct 17th filed

This Deed, made the 10th - day
of December in the year of our Lord one thousand eight
hundred and eighty-three between H. P. Primer
and Eva L. - - - - - his wife of the
County of Hanseman in the State of Virginia,
of the one part, and Melancton F. Primer

of the same place
of the other part, **Witnesseth:** That in
consideration of the sum of three hundred and
seventy-five dollars
H. P. Primer - - - - - the said
- - - - - and Eva L.

his wife do grant with general warranty, unto the said Melancton
F. Primer - - - - - and to his heirs and assigns, forever, the
following real estate, to-wit: a certain tract, piece
or parcel of land situate, lying and
being in the County of Hanseman, in
the State of Virginia, containing by esti-
mation, two hundred acres, more or less,
bounded on the North by Grump's Mill-
pond, on the South by the lands of Joseph
Parson, and on the East and West
by the lands of Mills Minton; and is
the same land sold by H. L. Lyner Esq. to
Robert Eley, who died leaving a son named
Robert, and a widow named Lavinia - the
said Robert conveyed his interest to A. L. Minton
for the benefit of M. F. Primer on the 6th
day of April, 1880 - and was sold under said trust
deed on the day of May 1882 - when H. P. Primer
became the purchaser - the said land however
is now sold subject to the dower interest of the
aforesaid Lavinia Eley, the widow of Robert Eley -
together with all and singular the appurtenances belonging to
the same.

And the said H. P. Pinner covenants
that he has the right to convey the said land to the said gran-
tee; that the said grantee shall have quiet possession of the said
land; that he has done no act to encumber the said land, and
that he will execute such further assurances of the said land as
may be requisite.

Witness the following signatures and seals.

Witnesses:

H. P. Pinner
Eva L. Pinner,

[SEAL.]

[SEAL.]

State of Virginia,
County of Hanseman

To wit:

J. C. H. Causey, a Notary Public
in and for the county aforesaid
in the State of Virginia, do certify that ~~Eva~~ L. the
wife of H. P. Pinner whose names are
signed to the writing above, bearing date the 10th day of December
1883, personally appeared before me in the county aforesaid, and
being duly examined by me privily and apart from her hus-
band, and having the writing aforesaid fully explained to her,
she, the said Eva L. — acknowledged the said writing
to be her act, and declared that she had willingly executed the
same, and does not wish to retract it.

Given under my hand this 10th day of December
eighteen hundred and eighty-three

J. C. H. Causey
Notary Public

Virginia,

Co wit:

County of Hanseman

I, Le. H. Leaven, a Notary Public in and for the said county, in the State of Virginia, do certify that Mr. P. Pinner - - whose name is signed to the writing above bearing date the 10th day of December 1883, has acknowledged the same before me in the county aforesaid.

Given under my hand this 10th day of December 1883

Chas. H. Leaven
Notary Public

In the Clerk's Office of Hanseman County Court, the 16th day of February, 1888,

This Deed was presented and with the Certificates annexed, admitted to record

Teste, *Wm. H. Leaven, J. C.*

Deed of Bargain and Sale.

^P
H. Pinner & wife

TO

M. F. Pinner

and over

1
I, H. Pinner, do hereby certify that the
above copy is a true and correct copy of the
original as the same is now in my possession.

Recorded Sept 19

by H. Pinner
Say & made for H. Pinner \$9.25
C. H.

304
"Exhibit No. 1"

with Andrew &
Rosa V. Pinner &c

This Deed, MADE this, the *twelfth* day of *October* in the year

eighteen hundred and eighty-*seven* between

Willard J. Pinner and Mary Mackae
Pinner his wife
of the County of *Sansemond* in the State of *Virginia* parties of the first part, and

Rosa V. Pinner, the wife of James
H. Pinner, part of the second part.

Witnesseth, THAT IN CONSIDERATION OF THE SUM OF

Four hundred and fifty dollars, the said
parties of the first part do grant, with general warranty, unto the said part of the second part,

the following property, to-wit:

All that certain tract or
parcel of land lying in Chuckatuck
Magisterial District Sansemond
County known as the Robert Eley
place containing about Two hundred
(200) acres, adjoining Grunds Mill pond,
Bradley's Mill pond, and the lands of
Joseph Pruden and Rose Darden
(subjet to the dower of Lavinia Eley
the widow of Robert Eley Sr. deceased)
together with all the appurtenances
thereunto belonging, or in any wise
appertaining. - It being the same land
which was conveyed to the said Willard
J. Pinner by H. J. Pinner and wife by
deed dated 10. December 1883.

Millard F. Pinner
The said grantor ^{covenants} that he has the right to convey the said land to the grantee, that the grantee shall have quiet possession of the said land, free from all incumbrances; that *they*, the said parties of the first part, will execute such further assurances of the said land as may be requisite; that *they* have done no act to encumber the said land.

WITNESS the following signatures and seals

Millard F. Pinner [SEAL.]
Mary Mac Rae Pinner [SEAL.]

[SEAL.]

[SEAL.]

State of Virginia, } To- Wit:

COUNTY OF NANSEMOND.

I, *Robt. R. Prentiss* a Commissioner in *Chancery of the Circuit Court* a Notary Public for the County aforesaid,

in the State of Virginia, do certify that

Millard J. Pinner

whose name *is* signed to the writing above, bearing date on the

12th day of *October* in the year eighteen hundred and eighty- *seven* la *5*

acknowledged the same before me, in my County aforesaid.

Given under my hand, this *12th* day of *October* in the year 188*7*.

Robt. R. Prentiss
Commissioner in Chancery Notary Public.

State of Virginia, } To- Wit:

COUNTY OF NANSEMOND.

I, *Robt. R. Prentiss* a Commissioner in *Chancery of the Circuit Court* a Notary Public for the County of

Nansemond, in the State of Virginia, do certify that

the wife of

Millard J. Pinner

whose names are signed

to the writing above, bearing date on the *12th* day of *October* , in the year eighteen

hundred and eighty- *seven* , personally appeared before me, in the County aforesaid, and being

examined by me privily and apart from her husband, and having the writing aforesaid fully explained

to her, she, the said *Mary MacRae Pinner* acknowledged the said writing

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

Given under my hand this *12th* day of *October* in the year 188*7*.

Robt. R. Prentiss
Commissioner in Chancery Notary Public.

In the Clerk's Office of Nansemond County Court
the 16th day of February, 1888.

This Deed was presented and with the certificate annexed, admitted to record

Teste,

Charles H. Brown, J. C.

"Exhibit No. 2" with
Answer of Rosa V.
Primer & others.

W. F. Primer & wife

To } Deed of Bargain and Sale.

Rosa V. Primer

(and others)

ADMITTED TO RECORD.

Dec 22 188

Book No. _____

Page _____

Clerk.

Tax \$ 1.00

Fee 1.25

Total, \$ 2.25

Paid P.B.P. csh

No. _____ .

Smith per J. D. v. c.

25.

Pinner N. P. et al.

1 1/2 pages Argument of

Counsel for plain Tiffs

Smith per. friend.

vs.

H.P.Pinner et.als.

That Robert Eley Sr. departed this life seized and possessed in fea of the tract of land in the bill and proceedings mentioned does not seem to be contraverted.

If the plaintiff Lizzie Smith was the child and heir at law of Robert Eley Sr. then she must recover in this suit. Said plaintiff was born in time of slavery and her parents were slaves, hence we call attention to law bearing on legitimacy of negros conceived and born in slavery: See Code 1873 page 84I Sec. 4; also Code 1887 Sec. 2227, See ~~Code~~ also Smith vs. Perry's admr. et.als. ^{80 Va. 1563} In this case it is expressly decided "that where the father recognizes the child legitimacy is presumed &c." Again, legitimacy under the statute is presumed whether any sort of marriage ceremony is performed or not. An examination of this case and authorities therein cited is specially requested. The statute is considered and construed.

Applying these principles to the case at bar we submit on behalf of the plaintiffs that they must recover. The evidence proves beyond all doubt that the said Robert Eley Sr. recognized the said Lizzie as his child, reared the child, kept it in his house till he died, introduced it as his child. The evidence of Julia Minga the mother proves that at the time said Lizzie was ^{as born} conceived that she and said Robert Eley Sr. were living together in the relations of man and wife and were then cohabiting as such.

2 sheet.

The evidence introduced by defendants on this point simply tends to prove infidelity on the part of said Robert Eley toward his wife if it proves anything. Such testimony cannot successfully contradict a positive witness who occupied a peculiar opportunity for knowing what she says. Such evidence will not remove the presumption of legitimacy. These witnesses admit on cross examination that they know nothing of the undertaking, and promises on the part of said Lizzie and Robert as to their living together in the relation of man and wife.

The evidence of Mrs. Pinner is clearly inadmissible. See ~~ex~~ception in the record.

We do not deem it necessary or proper to anticipate any defence. There are several technical points raised, but we have no idea which one is to be urged in argument. When urged we will reply.

Respectfully
W. S. Hall and
Counsel for Plffs.

BRIEF OF COUNSEL FOR DEFENDANTS.

-----o-----

Pinner and others.

ads.

Smith, per friend.

1. The "marriage" has not been proved.

The very basis of this suit is not, as complainants assume, whether or not Lizzie Smith was the child of Robert Eley Sr., and as such recognised by him. This must of course be satisfactorily proved, but it is idle and useless to establish this, unless the "marriage" of Robert Eley and Julia Minga be first proved. For a colored person may admit the paternity of an illegitimate child, but such admission and recognition will not legitimate the child. There must be a marriage, or some thing which the law pronounces as equivalent to marriage. Now it is admitted that the law does not require a ceremony, or the consent of owners, in order to legitimate the marriage of colored persons prior to February 27. 1866, but in the language of the law, it does require this, that the parties "agreed to occupy the relation to each other of husband and wife".

Code 1867, Section 2227.

We therefore contend that the first and the necessary step in the complainants case is to prove by satisfactory evidence that Robert Eley and Julia Minga agreed together to occupy the marital relation. If the complainants fail at this vital point the foundation gives way, and their case for lack of support fails.

Let us then consider the testimony on this point, giving

it the weight to which it is legally entitled. This agreement to occupy the marital relation is alleged in the bill, and is denied by the answer. The burden of proving it is then on the complainants. They have introduced a single witness, the woman Julia Minga, the mother of Lizzie Smith. She betrays her ignorance by her inability to count her own children, stating in her answer to Question 2. on Cross examination that she had twelve children in all and in answer to Question 3. stating that she had thirteen in all. There is not a single circumstance in the case that goes to support her statement that she and Robert Eley agreed to be husband and wife. Not that there seems to be much doubt about the allegation that Robert Eley was the father of Lizzie Smith, but there is no satisfactory proof that her father and mother ever agreed to occupy the relation to each other of husband and wife. On the contrary the defendants prove by Mr. Thomas J. Marshall, who knew ^{Robert and Julia} ~~them~~ both well, that Robert Eley never had but two wives, one named Mary, who either died or moved away, and the other named Melvina, his present widow, who became his wife between 1850 and 1860. It must have been as early as 1854 because it appears from the testimony that their child, Robert Eley Jr. was born early in 1855 (see Robert Eley's answer to 1st. Question stating his age to be 34 at that time, March 6. 1889).

The other witness Mr. Stephen Eley, who was younger than Mr. Marshall--too young to remember Robert Eley's first wife Mary--, but old enough to remember Julia Minga if she was Robert Eley's wife between 1850 and 1860, --says that Robert Eley only had one wife, to his knowledge, and her name was

Viney--that is Melvina, his acknowledged widow, and the mother of Robert Eley Jr. And these two witnesses were sons of Robert Eley's owner, had control of him, and were well acquainted with his personal history.

We conclude therefore that if Robert Eley had occupied this relation to Julia Minga for three years, and had visited her every Sunday and sometimes during the week for three years, as she testifies, that these gentlemen would have known it, or at least have heard of it; or if perchance the fact had been studiously concealed from them, that some of the negroes with whom Robert and Julia associated would have known it, or heard of it, and would have been produced as witnesses.

We insist therefore that as to this the vital point in the complainants case the preponderance of the testimony and the circumstances are against ~~them~~, and that therefore their bill should be dismissed.

In the case of Smith v. Perry's Admr. 80 Virginia 563, which is referred to by the counsel for the complainants it is admitted that the father and mother agreed to occupy the marital relation. If that had been proved in this case at bar, the ruling in the case referred to might very probably be quoted, but in view of the evidence in this case ought to have no weight whatever.

2. The defendant Rosa V. Pinner is an innocent purchaser, for value.

The laches of the defendants, and the great lapse of time fourteen years and ten months from the time the right, if any, accrued, and the institution of this suit, are to be considered as throwing doubt and suspicion over this claim.

During that long time Lizzie Smith and her husband, stood silently by and saw Robert Eley cut the timber from the land, and he executed at least two deeds of trust upon it. And by reason of their laches the defendant, Rosa V. Pinner and those under whom she claims were led to buy and pay for the land, and are therefore innocent purchasers for value and without notice.

The notice which Robert Eley Jr. claims that he gave M. F. Pinner to the effect that Lizzie Smith claimed four or five acres which had been chopped off, cannot be imputed to H. P. Pinner, nor can it be imputed to the present owner, Rosa V. Pinner.

2 Minors Institutes (876) 976.

Rosa V. Pinner swears that she never had any notice of any claim whatever (see answer to Question 1. deposition). Certainly then, she is an innocent purchaser for value, and if the complainants ever had any rights in this land they have been lost by their own gross laches and neglect. There are no circumstances in the case which would justify the Court in holding Rosa V. Pinner responsible therefor.

3. Estoppel by reason of the tenancy.

The complainants are estopped from claiming a title adverse to the title of the defendants, because they were the tenants of the defendants, and thus admitted their title. They cannot deny it.

2 Minors Institutes (687) 764.

The proof that they held as tenants may be found in the depositions of Robert Eley, a witness introduced by complainants, (Answers to Question 10 Cross-examination, and to Question 1. Re-cross-examination). And also in the deposition

of Rosa V. Pinner.

From the death of Robert Eley Sr., in 1873, to 1888, when this suit was instituted, nothing was heard of this claim. Robert Eley Jr. (witness for complainants) claimed the land, used it, cut the timber from it, and aliened it; Lizzie Smith and her husband, admitted his title by their silence, and admitted the title of his alienees by their acquiescence and by paying rent to the defendant, Rosa V. Pinner. After all these admissions and this lapse of time, to permit the plaintiffs to come in and recover any part of the land in question, upon such testimony, would seem to violate well established rules of law and every principle of equity. Such a ruling would be to unsettle many a title now naturally, by the parties, believed to be good.

We ask that the complainants bill be dismissed.

Respectfully,
Robert R. Prentiss,
for the Defendants.

Smith per friend

W. Note filed
by Defendants
Counsel.

Primer v.

A Reply.

Smith per.f'd. &c.

vs.

Pinner et.als.

If counsel by using the word "marriage" intends to refer to a legal marriage the very statute cited by us both will expose the point, if, on the other hand, he uses it to denote a compliance with Sec. 2227 Code 1887 then it is, I submit, inappropriate. The use of this word in this connection I do not think will mislead the Court and I dismiss it. It is incumbent on plaintiff to prove by a preponderance of testimony (1) that Julia and Robert were the mother and father of Lizzie Smith, and (2) that said Robert and Julia "agreed to occupy the relation to each other of husband and wife". This is a strict compliance with the statute. The first proposition is admitted, the second is denied in argument. This is now practically the only point in the case. I say it is proved: Julia Minga who of all people living had the best opportunity to know, says emphatically they did so "agree". But is is said Julia is an ignorant woman; so are exslaves generally. My friend is mistaken in counting Julia's children. She does not contradict herself on that point. Counsel has refered to questions 2 & 3 of cross examination of said Julia. I have read and reread these answers and can see no such inconsistency. I did not so understand her at the time or I should have given her an opportunity to correct herself on a re-direct examination. She may be ignorant but she is creditable. Her veracity has not been impeached. She is uncontradicted by any one. On cross examination Mr.

Marshall a witness for defendants so much relied on in answer to question No. 19 of his said cross examination uses the following emphatic language.

"No Sir, I cannot say they did not agree to it, I don't know anything about what they agreed to". No other witness pretends to contradict Julia as to this agreement.

In the next place Robert Smith acknowledges Lizzie as his child. This is a strong circumstance tending to corroborate Julia. Mr. Marshall says that Robert had a reputation for going around after women and that he had several children laid to him. He never acknowledged any of them as his children except Lizzie and Robert Jr. These two he took to his home in times of plenty, cared for them, educated them, reared them. If he and Julia had not agreed to live together at the time of Lizzie's conception why was she any nearer to him than his other bastard children?

In Smith vs. Perry's admr. &c. 80 Va.p.563 the Court in summing up uses the following language:

"It is abundantly proved and not denied, that Allen Smith and Mary Bell were colored persons, living together as husband and wife when the act of February 1866, was passed; that Edmond Smith was the child of the woman, at least, born before that time, and living with the parties as their child, claimed to be their child by both parents, taking the father's name, and growing up in the household as their child, educated as such, recognized as such, living and dying as such, being called son by the father, and calling the husband of his mother father."

In the case at bar the parties were not living together at the time of the passage of the act but the recognition of Lizzie

Smith by her father Robert Eley is by the very terms of the statute equivalent to such a living together. Here it is admitted that Lizzie was the child of both the man and the woman, claimed by both as their child, reared by the father, growing up in his household. Then I respectfully and earnestly submit that the two cases are parallel, perfectly so. The only answer made to such an authority is that it does not apply.

We are asked why we did not have "other negroes" on the stand who heard Robert Eley say that they agreed to live together? How many people ever repeat the marriage ceremony to people after they are married? Again, I might ask why did not the defendants bring "negroes" or some other witness on the stand to disprove Julia Minga's statements? This leads me to discuss briefly the evidence for the defendants:

Mr. S.A.Eleys evidence amounts to nothing and is not material to anybody's side of the case. Mr. T.J.Marshall is much relied on. I submit that Mr. Marshall as well as old Julia displays a degree of ignorance very noticeable. He does not know and will not undertake to say who Robert Eley lived with as his wife from 1850 to 1860. See cross examination of T.J.Marshall ques. and ans. No.11, 12, 13 and 14. Mr. Marshall knows all about Robert and Julia, was the son of an owner, knew Roberts propensities well, knew his reputation - in fact knew anything but could not state within twenty years of the time between the death of his first wife and the beginning of that relation with the second wife. If, as he admits, there was a time, possibly twenty years, when he does not even know that Robert Eley had a wife, is it not more than probable that Julia was his wife a portion of that time?

Again, Mr. Marshall will insist upon a peculiar definition of a negro marriage, namely, the consent of the owner to the cohabita-

tion. The statutes does not require or in any way include the consent of the owner. The requirements of the statute only require an "agreement" by and between the slaves. This consent of the owner could not always be obtained. The owner of a man slave would not permit him to live with a woman of another owner unless the two owners were friends. The owner of the women often paid negro men to cohabit with their women. The owner of a woman would encourage her cohabitation with any negro man provided only he was a well developed man likely to beget valuable children. Then again, a negro slave was a human being I guess and had a choice of their own and when the man knew his choice would not please his master he carefully kept his cohabitation from the knowledge of his master. With all his bias, prejudice and ignorance concerning the material questions in this case Mr. Marshall does not contradict July Minga when she swears she agreed to live with Robert Eley as husband and wife.

The third witness is Rosa V. Pinner. She is the substantial defendant. Lizzie Smith the original complainant is dead. She is an incompetent witness. Her evidence is objected to as inadmissible - all of her evidence is objected to. See Code 1887 Sec. 3346. This disposes of all said about Rosa Pinner's being an ~~innocent~~ innocent purchaser. The laches of the plaintiff's intestate is relied on, a plea of the statute of limitation is filed by Mr. Prentis but is not alluded to in his note, but his admission and the evidence show that the suit was instituted in time. There are no laches in this case. In Massie's admr. vs. Heiskell's trustee et. als. 80 Va. p. 805 the Court says ;

" It is well settled that laches cannot be predicated of those who

are ignorant of their rights. *Rowe v. Bentley*, 29 Gratt. 763. Such defence is, in equity, only permitted to defeat an acknowledged right on the ground of it affording evidence that the right has been abandoned. *Nelson v. Carrington*, 4 Munf. 332-343." But for the argument suppose laches had been proved in this case, they could not bar this suit under the space of 15 years, the statutory limitation. The Court in the case of *Coles admr. vs. Ballard et. als.* 78 Va. p. 149, says:

"No principle is better established, or more uniformly acted on in courts of equity, than that in respect to the statute of limitations -equity follows the law- that is to say, if a legal demand be asserted in equity, which at law is barred by statute, it is equally barred in a court of equity; and if not barred by statute at law, neither is it barred in equity. *Rowe v. Bentley, &c.* 29 Gratt. 756-759."

") Judge Moncure says, in *Foster's Curator v. Rison, &c.* 17 Gra 321-335, "What I meant to say is, that if the cause of action be one to which the statute applies, but the lapse of time since it accrued be not such as to bring the case within the statute, laches and lapse of time cannot, in them selves, constitute a bar to the suit".

As to the last point made in the defendants note that of a "Estoppel by reason of Tenancy," I wish to quote from same page of Mr. Minor cited by defendant, namely, 11 Minor, p. ⁶⁸⁷~~686~~, "Nor does the doctrine so apply as to prevent the lessee from himself afterwards acquiring or asserting an adverse title against the lessor, provided it is not to the prejudice of the latter in recovering rent, or regaining the possession from the lessee, x x x x. The title and not the possession is the question in

this case nor is it disputed that any supposed tenancy has long ago ceased. The truth is, that Lizzie Smith's husband, and not Lizzie Smith, rented a part of this land years ago and that too when Lizzie Smith was a minor.

There are many other points but this note is already too long and I confidently submit the matter upon the record and ask for the decree for accounts &c. herewith filed.

Respectfully,

W. S. Hallard J. G.

No.

Smith per Ld.

RS.

Pim nev et al.

Reply of Plet's atto.
to note by defen

ants atto

W.S. Halsey per

Smith per friend r.

v. -
Primer and others

This ^{cause} came on to be heard upon the Bill and exhibits therewith filed, the answers of the defendants with general replication ^{on the depositions of witnesses} thereto and in the ~~several~~ ^{several} ~~parties~~ ^{parties} ~~of the~~ ^{of the} complainants to ~~revert~~ ^{revert} this suit against Alexander H. Baker Sheriff and Administrator of H. F. Primer deceased and Alexander H. Baker Sheriff and Administrator of James H. Primer deceased and was argued by counsel. On consideration whereof the Court doth adjudge, order and decree that this suit be ~~reverted~~ ^{reverted} and proceeded with against the said Alexander H. Baker Sheriff Administrator of H. F. Primer deceased, and Alexander H. Baker Sheriff Administrator of James H. Primer deceased, and bring of the opinion that the complainants have

Smith per firma

J. W. Smith

N. W. Smith

Primer &c

Enter Oct 31, 1895

Ben J. Hunter

Recorded in

Chancery order

Book No 3 Page 12

failed to sustain the allegation
of the bill, doth adjudge
order and decree that the
said bill be dismissed
and that the defendants
recover of the complainants
their costs about their
suit in this behalf
expended. -

This Deed Made the 27th day of February
one thousand eight hundred and
seventy nine. Between Robert Eley and
Emma Eley his wife, of the County
of Hanseman and State of Virginia
of the one part, and John R. Copeland
chosen as trustee for the purposes here-
in named, of the other part, Witnesseth;
That the said Robert Eley and Emma
Eley his wife, do grant, with general
warranty, unto the said John R. Copeland
trustee as aforesaid, the following
property, to wit:

All that tract, piece or parcels of land
situate, lying and being in the
County of Hanseman, in the
State of Virginia, and bounded
and described as follows on the North
by East G. H. Crump's Mill Pond;
on the South by the lands of Joseph
Cruden, East by the lands of Mills
Minton, West by Mills Minton it
being the same land that was con-
veyed to the said Robert Eley by
H. L. Tynes Sr. by deed duly
recorded in the Clerk's Office of Hanse-
man County Court containing
two hundred acres more or less
together with all and singular the appur-
tenances

belonging to the same,
In trust, to secure to Farmers
Bank of Nausemmond, of the County
of Nausemmond in the State of Virgin-
ia, the payment of the sum of
seventy dollars, evidenced by a
negotiable note of even date with
this Deed and payable to the said
Bank sixty - after date, and it is
covenanted and agreed between
the parties aforesaid, that in case
of a sale, the same shall be made
after first advertising the time,
place and terms thereof for ten
days, and upon such terms
as the said Trustee shall direct, and
after paying the expenses of executing
this trust, if then unpaid, includ-
ing a commission of five percent
to the said Trustee, then to discharge
the amount of money principal and
interest, then due and unpaid of the
said debt and the residue, if any,
pay as the law directs. It is also
covenanted and agreed this Deed
of Trust shall secure any note given
in renewal or curtail of the afore-
mentioned note. In all other respects
this Deed shall be executed according

to the law governing trust sales, and sale shall be made whenever there is default in the payment of the above mentioned note or of any note given in renewal thereof.

Witness the following signatures and seals:

Witness

L. W. Wright

witness

Nathl. G. Norfleet

Robert ^{hus} Eley Seal
 Emma ^{mark} Eley Seal

State of Virginia)
 County of Hanover) To wit:
 J. R. H. Rawls, a Notary Public in and for the County aforesaid, in the State of Virginia, do certify that Emma Eley, the wife of Robert Eley, whose names are signed to the writing above bearing date the 27th day of February, 1879, personally appeared before me in the County aforesaid, and being duly examined by me privily and apart from her husband and having the writing aforesaid fully explained to her, she the said Emma Eley acknowledged the said writing to be her act, and declared that she had willingly executed the same.

and does not wish to retract it.
 Given under my hand this
 5th day of March eighteen hundred
 and seventy nine.

R. H. Rawles, N. O.

Virginia;
 County of Nansemond } To wit:
 I, R. H. Rawles, a Notary Public in
 and for the said County, in the
 State of Virginia, do certify that
 Robert Eley, whose name is signed
 to the writing above, bearing date
 the 27th day of February 1879, has
 acknowledged the same before me
 in the County aforesaid.

Given under my hand this 27th
 day of February 1879.

R. H. Rawles
 Notary Public

In the Clerk's Office of Nansemond
 County, lewint, the 6th day of March
 1879

This Deed of Trust was received,
 duly certified, and thereupon
 admitted to record Teste

Peter B. Prentiss Clerk

A copy

Teste:

R. B. Smith Clerk

Ro. Eley et ux
Dy D of D

for Leopeland Insure
for Farmers Bank

" Paper. X. "

It is mutually agreed
that this deed is evidence
introduced by the defendants
in the chancery case
of Smith per friend v.
Pinner v.

Dec 1.25

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON *H. P. Pinner, James*
A. Pinner, Rosa Pinner wife of James
A. Pinner, M. J. Pinner, Robert Eley Jr.
and Melvina Eley.

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 *October 1890*, to answer

a Bill in Chancery, exhibited against
them in the said Court by *Mary Smith,*
Ella Smith, George Smith, Eddie Smith,
Surviving children and heirs at law
of Lizzie Smith deceased, by their father
and next friend Robert Smith.

and have then and there this summons.

Witness, A. P. GOMER, Clerk of our said Court, at his office, this *17th* day of
September 1890, in the 110th year of the Commonwealth.

Teste:

A. P. Gomer

Clerk.

Executed this the 2nd day of October by delivering
a true copy of this process to the within named
Robert Eley (jr) Melvin Eley H P Pinner -
James H Pinner Rosa Pinner of Jas H Pinner
And M H Pinner each in person.

Wm H. H. H. H.
Shiff

W S A Hollaway

Mary Smith taken

W J Semmens

H P Pinner & others

Process Book no 2

Page 39.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON *H. P. Pinuer James H
Pinuer, Rosa Pinuer wife of James H. Pinuer; M. F. Pinuer, Robert
Eley, Jr; and Melvina Eley,*

to appear at the Clerk's Office of the Circuit Court of Nansemond County, at the Rules to be held for
the said Court, on the first Monday in *March* next, to answer a

Bill in Chancery, exhibited against Them,
in the said Court by *Lizzie Smith, who was Eley, and
Robert Eley, her husband,*

and have then and there this summons.

Witness, PETER B. PRENTIS, Clerk of our said Court, at his office, this *13th* day of
February 188*8*, in the 112th year of the Commonwealth.

Teste:

Peter B. Prentis Clerk.

1888. February 29th I have served ~~the~~ copy of
this process in person upon the within named
H. P. Pinner Jas. H. Pinner Rosa Pinner wife
of James H. Pinner, M. F. Pinner, Robert Ely, Jr.
and Melvany Ely ~~and~~ Wm. H. Howell
Shiff

Lizzie, my wife and Mary
and Robert's boy, her husband.

Sim. 5. in Day 2

H. J. Pinner

Jo. Munk Fides, 1888

1000. 26. 11. 5. 3. 9

Pro B. M. 1
circo

CIRCUIT COURT OF NANSEMOND COUNTY.

Smith, per friend,

vs.

Pinner and others.

This cause came on this day to be further heard ^{upon} ~~on~~ the papers formerly read, on the depositions of witnesses and the paper marked "X", admitted as testimony in this cause and was argued by counsel.

On consideration whereof the Court doth adjudge, order and decree that the bill of the complainants be dismissed, and that the defendants recover of the complainants their costs about their defence in this behalf expended. And the cause is ordered to be stricken from the docket.

Smith per friend,

vs. Final Decree

Pinner and others.

x

At a Circuit Court continued and held for
Harrison County, the 11th day of April AD 1888
Lizzie Smith who was Eley and
Robert Smith her husband. Complainants

Against In Chancery
H. P. Primor, James St. Primor and Primor
wife of James St. Primor, M. J. Primor.
Robert Eley Jr. and Melvina Eley Defendants

This cause came on this day on the Bill of
Complainants, to answer which the defendants
have been duly summoned, and it being
suggested that Lizzie Smith who was Eley her
deceased this life since the institution of this
suit, and on the motion of Robert Smith
one of the Plaintiffs who was the husband of
said Lizzie, the court doth adjudge, order and
decree that said suit be revived and continued
in the name of Mary Smith, Ella Smith
George Smith, and Eddie Smith surviving
children and heirs at law of said Lizzie
Smith ^{decd} by their father and next friend - the
said Robert Smith, and it is ordered that the
defendants be summoned, to answer.

Teste

Wm. B. Bausey Clerk

Executed this the 4th day of October 1889
by delivering a true copy of this paper
in writing to the within named
A P Pinner, James H Pinner, Roso Pinner
The wife of J H Pinner, M H Pinner
Robert Ely and Melvina Ely each -
Wm H Howell Supt -

Smith per. fr.

Vs.

Pinner et. als.

This cause came on this day to be again heard on the papers formerly read, and on the answer of the defendants this day filed by leave of court with general replication thereto and on the depositions of witnesses and was argued by counsel; on consideration whereof the court being of opinion that Lizzie Smith the mother of the plaintiffs was one of the heirs at law of Robert Eley dec'd. and that her children the said plaintiffs are entitled to one moiety in the tract of land in the bill mentioned, doth adjudge order and decree that the plaintiffs are the owners in fee of one equal moiety in the tract of land in the bill mentioned of which Robert Eley died seized and possessed and that the defendants pay to the plaintiffs one half of all rents and profits (including all wood and timber removed from said tract of land) received or had from said land by them or any one of them less one half the value of permanent improvements now on said land made thereon by said defendants or any one of them:

And to the end that full and complete justice be done the court doth further adjudge order and decree that one of the commissioners of this court enquire and report to court (1) The fair value of all rents and profits including wood and timber had or received by the defendants from said tract of land in the bill and proceedings mentioned since the death of Robert Eley;

Smith per. friend

Vs.

Pinner et. als.

D E C R E E .

To be entered.

At a Circuit Court continued and held
for Nassau and County the 11th day of
April 1888

Lizzie Smith, who was Eley,
and Robert Eley, her husband, Complainants
against J. In Chancery
H. P. Pinner, James H. Pinner, Rosa
Pinner, wife of James H. Pinner, M. F.
Pinner, Robert Eley J. and Melvina
Eley. Defendants.

This cause came on this day on the
Bill of Complaint to answer which the
Defendants have been duly summoned,
and it being suggested that that Lizzie
Smith who was Eley has departed this life
since the institution of this suit and on the
motion of Robert Smith, ^{one} of the Plaintiffs
who was the husband of said Lizzie, the Court
doth adjudge, order and decree that this
suit be revived and continued in the
name of Mary Smith, Ella Smith, George Smith,
and Edlie Smith, surviving children and heirs
at law of said Lizzie Smith decd. By their
father and next friend the said Robert Smith,
and it is ordered that the Defendants be sum-
moned to answer.

Teste

Wm B. Laury Clerk

Lizzie Smith &c

vs

H. P. Pinner et, als.

This cause was called this day and on motion of the complainants by counsel it is ordered that the clerk of this court issue a *subpoena* against the personal representatives of H. P. Pinner and James H. Pinner in accordance with section 3308 Code of Virginia (1887); and it is further ordered that said personal representatives be required to appear at the next term of this court and show cause, if any they can, why this suit should not be revived and proceeded in to a final decree, and that a copy of this decree be served on each said personal representatives

Leiggin Smith & C.

21

H. P. Pinney & Co.

Deceit

To be entered

Enter this decree
April 18th 1895
B. A. H.

Entered in Chancery
order Book No. 2.
Page 637.

Smith per fund &c.

75.

Pinner et. al.

This cause come on this day to be again heard on the papers formerly read, on the evidence of witnesses, exhibits and other evidence filed with the papers and by consent of parties entered of record in open Court it is ordered that this cause be heard in vacation on written notes and on oral argument should the Court so require.

X 1891

Smith per fund & c.

7s. $\frac{1}{2}$ Decree

Pinner et. als.

Clerk will enter
this order.

To be entered
Clerk

Oct 10, 1890

Entered Chancery
order book No 2 Page 348

we consent to the
entering this order
W.S. Hallen 1890
Robert R. Pinner
pd

Smith and others, per friend,
v.

Pinner and others. -

On the motion of the defendants
leave is given them to file their
answer to the complainants' bill,
and the same is accordingly
filed. - At the same time the
plaintiffs by their counsel ^{requested} ~~asked~~
~~the court~~ for a hearing of the case
which it declined to do
stating that the case was
not docketed in the docket.

Smith per friend

N. Order

Primer P.

Enter Oct. 17. 1889

C. M. S.

Entered Chaucer
Order Book
No: 2 p. 301

Smiths heirs per fund

vs.

H. P. Pinney et, als.,

This cause
come on this day to be again heard
on the papers formerly read the defend-
ants still failing to plead answer
or demur and was argued by
counsel on consideration whereof
the court doth order, adjudge and
decree that one of the Commis-
sioners in chancery of this court
take and report to court the
following accounts:

An account of the rents and
profits received by the defendants
or any one or more of them ^{arising} from
the lands in the bill and proceedings
mentioned including any cord
wood or other timber taken from
the premises;

Also

Whether said land can
be partitioned in kind ~~therein~~
into two ~~parts~~ parts and if so
whether the one moiety can be
partitioned in kind amongst the
plaintiffs the heirs at law of
Lizzy Smith.

Sevenths runs for hours
in front

75

H. P. Primer et al,

Apr. 11th 1889

Check please enter
this also —

Not entered

SMITH ET. ALS.

VS.

9
7
2

IN CHANCERY

PINNER ET. ALS.

THIS CAUSE CAME ON THIS DAY ON THE BILL
OF COMPLAINT TO ANSWER WHICH THE DEFENDANTS HAVE BEEN DULY SUMMONED,
AND IT BEING SUGGESTED THAT LIZZIE SMITH WHO WAS ELEY HAS DEPARTED THIS
LIFE SINCE THE INSTITUTION OF THIS SUIT AND ON THE MOTION OF ROBERT
SMITH ONE OF THE PLAINTIFFS WHO WAS THE HUSBAND OF SAID LIZZIE, THE
COURT DOETH ADJUDGE, ORDER, AND DECREE THAT THIS SUIT BE REVIVED AND CON-
TINUED IN THE NAME OF MARY SMITH, ELLA SMITH, GEORGE SMITH, AND
EDDIE SMITH SURVIVING CHILDREN AND HEIRS AT LAW OF SAID LIZZIE SMITH
DE, CO. BY THEIR FATHER AND NEXT FRIEND THE SAID ROBERT SMITH, AND IT IS
ORDERED THAT THE DEFENDANTS BE SUMMONED TO ANSWER, ~~AND ON THEIR MOTION~~
~~THE SAID DEFENDANTS ARE ALLOWED FORTY DAYS AFTER SERVICE OF PROCESS,~~
~~TO FILE THEIR ANSWERS TO A BILL~~

M

SMITH ET. AL'S.

VS. IN CHANCERY

PINNER ET. AL'S

APRIL TERM 1333. (11th)

DECREE

TO BE ENTERED

C. M. Stie
Judge

Entered Chy Order Book
No 2 P 174

The Commonwealth of Virginia

To the Sheriff of Wandermound

County - Greeting:

Whereas, Mary Smith, Ella Smith, George Smith and Eddie Smith surviving children and heirs at law of Lizzie Smith deceased by their father and next friend Robert Smith heretofore exhibited to our Circuit Court of the County of Wandermound their bill of complaint against N. P. Primer, James N. Primer Rosa Primer wife of James N. Primer M. F. Primer, Robert Eley Jr. and Melvina Eley whereupon sundry proceedings have been had as appears from records and files of said Court; but before a final decree in the said suit could be pronounced the said defendants N. P. Primer and James N. Primer departed this life and the estates of the said N. P. Primer and James N. Primer have been committed to Alexander H. Baker Sheriff of Wandermound

mond County to be administered according to law, We therefore command you that you make known to the said Alexander H. Baker Sheriff and Administrator of S. P. Pinner and Alexander H. Baker Sheriff and Administrator of James H. Pinner that he be before the judge of our Circuit Court at the Courthouse of said Harsemond County on the first day of the next Regular October Term to show cause if anything he has or knows to say why said suit should not be proceeded unto a final decree against him in his character aforesaid and be in all things in the same plight and condition as it was at the time of the deceased of the said S. P. Pinner and the said James H. Pinner; and further to do and receive what our said Court shall in that part consider. And have then and there this writ.

Witness A. P. Gomer Clerk of
our said Court this 19th day
of June 1895 in the 119th year
of independence.

Teste:

A. P. Gomer Clerk

Thereby accept service of the
within process this 20th. day
of June 1895.

A. H. Baker Sheriff
and administrator of the
Estate of N. P. Primer dec'd.
and James N. Primer dec'd.

Legue Smith & Son
of Seie & Francis
N. P. Primer & Son

The depositions of Rosa V. Pinner
taken before the undersigned Merritt
Briggs, a Notary Public, by consent
of parties notice being waived,
to be read as evidence in behalf
of the defendants, in the chancery
cause of Smith vs. Rosa V. Pinner
others now pending in the Circuit
Court of Hanover County.
Taken at the office of J. B.
R. Prentiss in Suffolk on Friday
Jan'y. 10. 1890. -

Present: W. S. Holland Atty. for Complainants
R. A. Prentiss, Atty. for Defendants.

- 1 Rosa V. Pinner being first duly sworn
in answer to questions deposes & says
- 1 State your age, residence, & do you know
the parties to this suit?
- Ans. 27 yrs of age. I live near Chesapeake Hummer
Co. Va. & I know the parties to this suit & I
am the substantial defendant.
- 2 State whether or not you had any notice that
Lorrie Smith had claimed to have any claim
title or interest to the real estate in the bill

described before you have bought and paid
for & taken a deed for the same?

Ans. No - Question & answer excepted to

3 did you ever collect any rent either by
yourself or your husband as your agent
from Lizzie Smith or her husband -

Ans. My husband collected rent from Lizzie Smith
& her husband

4 did you ever have an interview with
Lizzie Smith on the subject of renting the
land, if so state what occurred?

Counsel for Plaintiff object to the foregoing question
& any answer thereto & to any further examination
of this witness because this witness says she
is the substantial defendant and the said
Lizzie Smith being dead, this witness
is incompetent to testify. sec. 364 b. 1 & 502.

Ans. She came to see me, ~~she wanted~~ she wanted
to rent the place, I told her I would hire her
girl to pay the rent if she wanted to pay
it in that way

5 Had she been living on the place & had you
been receiving rent for it, if so from whom?

Ans. She had been living on the place & I received
rent from both her & her husband, I had
received it through my husband my agent.

6 Did she or or before the interview referred
to claim any part of the land -

Ans. No - Question & ans. excepted to.
Course of Complainant without waiver of
Objections cross examines witness

1 you have spoken about your husband
being your agent, please state when, where
& how he became your agent

Ans. He always collects the rents and brings them
in to me & it is satisfactory to both of us.

2 you have said your husband always
collects the rents & brings them in to you,
then please state how you know who pays
these rents, whether Lizzie Smith pays or
whether her husband pays or whether the agent
of one or both of them pays?

I have seen my husband settling with the
husband of Lizzie Smith at the door
and both Lizzie Smith & her husband
would come and pay the rent in that
way. It was the same as money.

3 Have you ever seen Lizzie Smith settling with
your husband

yes, very often

4 do you know of your own knowledge, independent
of your husband that Lizzie Smith has
rented a room of you

Ans. yes.

5. Tell when & when you rented a house to Lizzie Smith & how much she was to pay for same.

Ans. She was to pay \$25- a year, At the time the contract was made she was in my dining room. It was the year before Lizzie died.

6. Will you say on oath that Lizzie Smith & not her husband rented the house the year before Lizzie died

Ans. She rented it.

7. Did you not get out a distress warrant against Lizzie Smith's husband for the rent that year & if so did not you or your husband solemnly affirm before a Magistrate in Hammond County, that Bob. Smith rented the house

Ans. There was a warrant gotten out against Bob Smith. That is what I know of it. My husband got the warrant out.

8. If Lizzie Smith rented the house why get out a warrant against Bob Smith.

Ans. I suppose he wanted to make the money. That is the reason.

9. You have said Lizzie Smith rented the house the year before she died, who rented the house the year she died?

Ans. Of course her husband had to rent it.

10 you have said Lizzie Smith rented the house this year before she died & her husband rented it the year she died, prior to those two years who rented the house or the place?

Here the husband of the witness said "That was before she bought it" & counsel for complainant asked that it be put upon the record which is accordingly done.

Ans. I have forgotten whether the place belonged to us before that time or not.

11 How long did you know Lizzie Smith before she died?

Ans. Four or Five years.

12 Did you know Lizzie Smith before she was married?

Ans. No.

13 who was said to be Lizzie Smith's father?

Ans. I never heard who her father was.

14 In your examination in Chief you were asked something about notice, did you have any notice of any kind or reference to the ownership of the land at this time or before you bought it. or of so what notice?

Ans. Question excepted to as confusing I don't understand you.

15 At or before the time you bought the land, what notice if any, did you have, in regard to the ownership thereof.

Ans. I never had any notice.

Re. Examiner

1 What time of the year did Lizzie Smith die?

Ans. She died in March.

2 The place & the house where Lizzie Smith then husband resided from you was is a part of the land in controversy or not. Except to become leading & because it seems to explain and define the examination in chief or it is hearsay matter. In either case it is improper question. Open a re-examination.

Ans. Yes. It is.

3 It is what.

It is a part of the land in controversy and further the deposition said not.

Rosa V. Pinner

Sworn to and subscribed before me at the time and place mentioned in the caption. -

Minda Prigg
May Public

Jan'y 10 - 1890.
Fee \$1.00 Pd.
by Drfg.

Primer

ads. $\frac{3}{4}$ Depositions

Smith &c

The depositions of Julia Minga and others taken before ^{H. P. Sykes a Notary Public} Meⁿ at the office of W. S. Hall and at Windsor in Isle of Wight County pursuant to agreement of parties as to time and place to be read as evidence in behalf of the plaintiffs in a certain Chancery cause depending in the circuit court of Hansemond County wherein Mary Smith, Ella Smith, George Smith and Eddie Smith by their next friend and father Robert Smith are plaintiffs and H. P. Pinner, James H. Pinner, Rosa Pinner wife of James H. Pinner, M. F. Pinner Robert Ely and Melvin Ely are defendants. Taken March 6th 1889.

Present:

W. S. Hall and atty for plaintiffs

R. R. Prentiss atty for defendants

The witness Julia Minga being first duly sworn in answer to questions deposes and says:

Q 1st

State your name age and Occupation and residence

Ans

Julia Minga, I could not tell you how old I am save my life I reckon I am 63. Cooking & washing and anything like that. In Isle of Wight about 3 miles from Windsor near

1889 Sept 30th filed
CC

Shiloh Church.

Qus 2 Tell me the names of the mother and father of Lizzie Smith the late wife of Robert Smith?

Ans Julia Mingo is the name of her mother and Robert Eley her father.

Qus 3 State as nearly as you can when said Lizzie was born?

Ans I can't tell what month or what year she was born

Qus 4 Was she born before the war or after the war?

Ans She was born before the war.

Qus 5 Were you a slave or a free woman before the war?

Ans I was a slave woman.

Qus 6 Was Robert Eley a slave or a free man before the war?

Ans A slave man.

Qus 7 At the time of the birth of said Lizzie what relation did you sustain to said Robert Eley?

Ans He was my husband he owned me for his wife.

Qus 8 How long before the birth of said Lizzie were you owned as the wife of said Robert Eley?

Ans. Two years before she was born and twelve months afterwards -

Ques 9 State whether or not Robert Eley recognizes Lizzie as his child?

Ans Yes Sir he always called her his child he took her and took care of her.

Ques 10 You have said that Robert Eley was your husband and that he owned you for his wife for 3 years. How often was he with you in that time?

Ans Come every Sunday and sometimes in the week.

Ques 11 How did you and Robert first get together as husband and wife?

Ans We did not ~~live~~ live so very far apart he came there when Master gave him a right to come there. I was sold and he stopped coming.

Ques 12 When you first met each other did you make any agreement as to how you should live together and if so what did you and he agree to do?

Ans We agreed to get along as man and wife, he treat me as a wife and I treat him as a husband.

Ques 13 What caused you and Robert to cease living and cohabiting together?

Ans I was sold and Robert Eley said he did not want to come when I went to.

Gof. Examined by Counsel for
Defendants

Qus 1 Did you ever have any other children?

Ans Yes Sir had some more but did not have them by him though.

Qus 2 How many before Lizzie Smith and how many after wards?

Ans I had 6 Children before I had her and had 5 afterwards.

Qus 3 What were the names of those you had before and who was their father?

Ans Mary Jane, Caroline Sarah, and Jim Eley was their father. Then I had Jacob and I had some more by Jim Eley that ~~and Emma Eley and Randall Eley~~ did not say my name. ~~was their father.~~ I also had two ~~girls~~ girls by Randall Eley that died. Then I had Lizzie by Robert Eley. Adeline, Jacob & Emma and three more that died there were by Randall Eley.

Qus 4 Why did you leave Jim Eley?

Ans He was sold.

Qus 5 Where did he go?

Ans I could not tell you Master sold him to New Orleans.

Qus 6 When did you go when you were sold and left Robert Eley?

Ans I was sold to a man by the name

of Arthur Whitehead and I went up
on Blackwater in Isles of Wight Co.

Qus 6 How far from the place you had lived
at in Isles of Wight Co.

Ans About two miles

Qus 7 Did Randall Eley and Jim Eley
own you for their wife?

Ans Yes Sir Jim and I both belong to one
man he had me first then they
bought him

Qus 8 Did you ever live with any other man
in the same way as with the three
you have named?

Ans. Not till I got married here since the
summer

Qus 9 How far from you did Robert Eley
live at the time of Lizzie's Conception
and birth?

Ans He lived about four miles.

Qus 10 What was Robert Eley's Occupation?

Ans He was a Sawyer of lumber.

Qus 11 Did he work as a Sawyer go about
from place to place sawing lumber?

Ans Yes Sir.

Qus 12 Are you sure that he came to see you
as often as once a week during the
three years attended to?

Ans Yes Sir he came Sunday and sometimes
in the week

Ques 13 Can you give the names of any person living to whom Robert Eley acknowledged you as his wife?

Ans ✓ Yes Sir. Melvina Eley his last wife.

Ques 14 Did Robert Eley live with any other woman before he lived with you or during the time he lived with you?

Ans He had a wife before he had me and I believe white folks sold her. He had no other wife while he was living when I was.

And further this deponent saith not.
Julia ^{her} Minga _{mark}

Robert Eley being first duly sworn deposes and says.

Ques 1 Name, age, residence and occupation?

Ans Robert Eley, 34 years, Chuckatuck
Hammund Co, journey workman,
Carpentering &c

Ques 2 What relation are you to Lizzie Smith mother of the Plaintiff in this suit?

Ans. Brother.

Ques 3 State your fathers name?

Ans Robert Eley.

Ques 4 State what relation your father Robert Eley claimed to said Lizzie?

Ans Daughter.

Qus 5 Did you ever hear your father say that Lizzie was his daughter?

Ans Yes Sir many a time.

Qus 6 Tell what your father did for Lizzie?

Ans Well he told her to come and live with she could live with him as long as he lived, after that wanted me to give her a piece of land.

Qus 7 It appears from the papers in this cause that Robert Eley and Emma his wife made a deed of trust to A. C. Withers trustee for the benefit of Millard F. Pinner on a tract of land adjoining Grump's Mill pond not far from Chuckatuck. Are you that Robert Eley? or was it your father?

Ans

Ans.

It was me.

Qus 8 State whether or not you bought that land from H. L. Lynes or did Robert Eley your father buy it from H. L. Lynes?

Ans

Excepted to on the ground that this witness is estopped by his own deed from testifying on this point. by Counsel for Defendants.

Ans.

My father.

Qus 9

Did you ever buy any land from any body and if so of whom?

Ans

No one.

Qus 10

At the time you made the deed of trust

state whether or not Mr. Millard F. Pinney knew that Lizzie Smith had or claimed an interest in that land?

Ans

yes Sir he asked me about it I told him that she claimed an interest into it. he told me it made no difference that she could not get anything. There was a piece that my father selected out for her, after he died it was chopped off about four or five acres. That was the interest I told Mr. Pinney she claimed.

Ques 11

Where did Mr. M. F. Pinney live at the time this deed of trust was made?

Ans

He was keeping store in Chuckatuck

Cross Examined by Counsel for defendants

Ques 1

When did your father die?

Ans

He died in 1873 in April

Ques 2

Was the deed from Lyman & wife delivered and recorded before or after your fathers death?

Except to by Counsel for Plaintiffs because the records furnished the best evidence.

Reply by Counsel for Defendants the records so far as Defendants know furnish no evidence as to the date of Robert Elys death.

Ans Befor.

Qus 3 What reason have you for stating this so positively?

Ans I heard him speak about it often times when it was then in the house.

Qus 4 How long was it in the house and how often did you hear him speak of the deed.

Ans I suppose it was in the house ^{one or} two years and I heard him speak of it a good many times.

Qus 5 Did you not cut timber or wood on said land?

Ans Yes Sir. After the death of my father.

Qus 6 Did you get your sister permission to do so?

Ans No Sir. I did not at the time

Qus 7 Did you not claim all the said tract of land at that time?

Ans Yes Sir. Excepting that part she had then the 4 or 5 acres above alluded to.

Qus 8 Did you ever say to any body else except Mr. M. F. Pinner that your sister Lizzie Smith claimed said 4 or 5 acres. before Rosa V. Pinner bought said land?

Excepted to by Counsel for Plaintiff.

Ans Yes Sir I have several times to different ones.

Ques 9
Ans

Name them
I told Mr. Corling. Daniel Hall and
one man Sandy Watkins who lives up
in Isles of Wight.

Ques 10

Did not Lizzie Smith and her husband
pay rent to M. F. Pinner, H. B. Pinner
Jas. H. Pinner Agt for Rosa V. Pinner some
or all of them for said land?

Excepted to by Counsel for Plaintiff
because it relates to nothing elicited in
the examination in chief and is
not relevant under the pleading in
this case.

Ans

I heard them say they did I never saw
them.

Answer Excepted to by Counsel for Plaintiffs

Reexamination by Counsel for defendants

Ques 1

Mr. Pruties asked you a while ago to
name the parties to whom you had said
that Lizzie Smith claimed a part of
the land and you named three or
four. May not there be others not
named by you to whom you made
known that statement?

Ans.

Yes Sir I reckon there is some more but
I can't recollect them at present there
was a good many that knew it.

Qus 2 Did Robert Smith rent the land
or did Robert Smith and his wife
Lizzie both rent or do you know of
your own knowledge that either one
of them ever rented any of the land?

Ans No Sir I do not know more than what they
told me.

Qus 3 Which one did they tell you rented
it?

Ans Smith was living then and he told
that Mr. Pinner charged him rent
said he did not think it was right
for him to pay it and that is all I
heard them say.

Deorps Examined by Council for defendants
Exceptio to

Qus 1 Who was present on the occasion
alluded to?

Ans His wife no one else.

And further this deponent saith that
Robert ^{his} Eley
mark

The further taking of these depositions is
Continued to day of 1889
A. J. Byrd
Notary Public.

Virginia

County of Isles of Wight } Lo Wit

I A. T. Byrd a Notary Public
for the County of Isles of Wight, in the
said State, do hereby certify that the
foregoing depositions of Julia Wingo, and
Robert Eley were duly taken, sworn to,
and subscribed before me, at the time and
place, and for the purpose therein mentioned.

Given under my hand this 6th
day of March in the year 1889

A. T. Byrd
Notary Public

Time Engaged Eight & two thirds ($8\frac{2}{3}$) hours

A. T. Byrd

N. P.

Compt's
Resolutions

The deposition of Thomas J. Marshall and others, taken before me, A. T. Byrd, a Notary Public for the County of Isle of Wight pursuant to notice expressly waived, at the office of W. S. Holland, Windsor Va. on the 3rd day of January 1890 between the hours of 6 A. M. and 6 P. M., to be read as evidence in behalf of Rosa V. Pinner and others in a suit in Equity depending in the Circuit Court of New-
mound County wherein Smith and others are plaintiffs and Pinner and others are defendants

Present W. S. Holland Counsel for Plaintiff
" Robt. R. Prentiss " " Defendants

The witness Thomas J. Marshall being first duly sworn, in answer to questions deposes and says.

Ques 1

State your age, Residence, Occupation and do you know the parties to this suit?

Ans

63 years last July, Isle of Wight County, is my residence, Farmer, No sir I don't know the parties. I met Mr. James H. Pinner

This morning. I also know Mr. H. P. Pinner.

Ques 2 Do you know a Colored woman, known as Julia now Julia Minga, if so state how long you have known her?

Ans. Yes Sir, I have known her ever since about 1840.

Ques 3 How near have you lived to her and what have been your opportunities for becoming familiar with her history?

Ans. Well I have lived within a mile and two miles and don't think farther than five miles up until the war 1860.

She belonged to William Eley whose father Ezzum Eley married my mother. She was sold to Arthur Whitehead either by William Eley or at William Eley's sale at what date I do not remember. She was sold again at Arthur Whitehead's sale to Ishmael Johnson. I think he owned her up to the surrender & she was with his family when I came back from the Army.

Ques 4 Did you know Robert Eley Sr. dead? refused to in these proceedings. If so state how long you knew him and your opportunities for becoming familiar with his history?

Ans. Yes Sir I knew him, and knew him all

my life untill he died, I knew him ever since I knew anything. He was one of my father's ~~negroes~~ negroes.

At the division of my father's estate Robt. Eley fell to my mother's share, at the death of her second husband Exum Eley about 1845 my mother bought him at Exum Eley's sale, from 1845 to 1850 when I was married I lived with my mother and had entire charge of her affairs, from 1850 untill my mother's death about 1886 I had the general management of her business, Robt. Eley continued my mother's property untill he was freed and was at my mother's when I returned from the war and he remained at least twelve months after the war.

Ques 5 Did Robt. Eley ever have any wives or slaves had them during the period of your acquaintance with him. If so state who they were?

Ans His first wife was a negro woman belonged to James Jordan, her name was Mary that is my recollection of it. I don't know whether she died or moved away.

He had another wife named Melvina or called her Vinay, she belonged to W. H. Joyner.

Ques 6 Did Julia Minga ever have any husbands or slaves had them during the period of your acquaintance with her. If so state who they were?

Ans. She has had three husbands that I know of. her first husband was named Jim and belonged to William Eley. He belonged to my father at one time. She had another husband by the name of Randall after the death of Jim. George Minga her present husband she married after the death of Randall.

Ques 7 Were Robt. Eley and the said Julia ever recognized or known as husband and wife as slaves were married during the period of your acquaintance with them?

Ans. No they were were. It was a custom in our neighborhood for the masters to consent to the marriage of their slaves, we did consent when he married Melvina but I never heard that he desired to marry Julia or that it was claimed that she was ever Robert Eley's wife until since this suit was instituted.

Ques 8 Before the war was it not notorious in the neighborhood as to what slaves were occupying the relation of husband and

wife to each other?

Ans

I know in my neighborhood who were considered husband and wife of all the Negroes in the neighborhood.

Case Examined by W. S. Holland Counsel for plaintiffs.

Ques 1

From 1850 to 1860 did not your mother carry on a farm?

Ans

Yes Sir.

Ques 2

was she not an active energetic business woman?

Ans

She was so considered, ~~but in~~

Ques 3

From 1850 to 1860 I understand you did not live with her, and that she carried on a farm and that she had two sons who assisted her in her business and lived with her, Am I correct?

Ans

Steven I don't think lived with her all the time ~~but~~ he did until he got married. I think Solomon stayed all the time, except when he was at school. Now during all this time she consulted me as to all important business matters & we lived about five miles apart.

Ques 4

From 1850 to 1860 you say that Robt. Eley belonged to your mother. Now

Can you say that he did not get permission from your mother or from Solomon her son to have Julia for his wife?

Ans. No Sir I could not say that he did not. I never heard that he did, I never heard that he desired it, but during that time we did consent for him to have Melvina for a wife, I ~~think~~ during that time from 1850 to 1860 ~~we~~ I was Curulla and we gave our consent to his having Melvina for a wife.

Ques 5. From 1850 to 1860 name the years in which Melvina and Robert lived together as man & wife?

Ans. I could not say, I don't recollect the years particularly.

Ques 6. In 1858 who was Bob's wife?

Ans. I think Melvina was his wife I am not positive about that, I know it was before the war.

Ques 7. Julia says that for about a year before the birth of Lizzie and for a short time afterwards she and Bob lived together as man and wife. Can you say that such is not true of your own knowledge?

Ans. Well I think I can, I can say this

much that we have more known or consented to anything of the kind. My reason for that is that when he wanted Melvina he asked and I was consulted and we consented and I don't think they would have given permission to marry Julia or any other person without consulting me.

Ques 8

Have you any other reason?

Ans

No more than this that I never heard that he wanted her or was her husband or desired to be.

Ques 9

You did not hear anything about his being her husband or about his not being her husband from 1850 to 1860 did you?

Ans

I never heard I don't think neither way.

Ques 10

When did you ever hear of Lizzie Smith the daughter of the present Julia Minga?

Ans.

Well I suppose I knew her when she was small, I have a slight recollection of Julia's children, we bought three of them that is my mother bought them I made the bargain for her, I can't say that I have any distinct recollection of Lizzie. I think that I recollect this much that Julia had another child

after Jim died and before she had Randall for a husband but I never heard that it was Bob's child or that she had any husband at that time. But I don't know whether it was Lizzie or not. It might have been Bob's child he was a mighty bad negro running after women. There was another woman at Arthur Whitehead's he was running after or charged with it. She had some children & they were charged in the neighborhood to be Bob's.

Ques 11

In your answer to question to No. 5 in your examination in chief that Bob had two wives, Mary and Viney. How long after Mary ceased to be his wife before Melvina became his wife?

Ans.

I don't recollect I can say how long.

Ques 12

Would you say it was 20 years?

Ans

No Sir I think it was as long as that.

Ques 13

Was it as long as 10 years?

Ans

I don't think I could say whether it was 10 years or not

Ques 14

It may have been as much as 10 years so far as your recollection goes?

Ans

Yes Sir it may have been as much as that I can't say about it.

Ques 15 During this time be it 10 years more or less. Can you say whether or not Bob Eley lived with any other woman as his wife?

Ans I thought I had said that all along, that he had no other wife but these two, if he had any other I don't know any thing about it.

Ques 16 He might have had another might he not?

Ans I think not.

Ques 17 In answering all these questions about Bob's wives and Julia's husbands you speak of thinking and hearing in the neighborhood. Is not your denial of Julia's evidence an opinion based upon what you have stated or is it a fact of your own knowledge that Julia and Bob did not live together as man & wife?

Ans I think that I am positive about this, that Julia and Bob were husband and wife, not of my knowledge

Ques 18 When you say they were not man and wife do you mean that they did not live together as man & wife or do you mean that so far as your knowledge goes and so far as you saw

heard they were got permission from their owners to live together as man and wife?

~~Ques~~

Question excepted to as confusing and misleading.

Ans

I mean that they were had the authority or permission from their owners to be man & wife and according to the custom of Colored peoples marriages they were not recognized as man & wife until they did get their consent, in the neighborhood where I was raised.

Ques 19

Do you mean to say that Julia & Bob did not agree between them - slaves to live together as man & wife?

Ans

No sir I can't say they did not agree to it, I don't know any thing about what they agreed to.

Ques 20

Supposing that they had such an agreement can you say that they did not Cohabit together at ~~any~~ all?

Ans

~~No~~ sir I could not say that.

Ques 21

When did Lizzie Smith the daughter of said Julia live from the end of the war up to her death about 18 months ago?

Ans I dont know that I have this particular Lizzie Smith since the war.

Ques 22 Name who lived with Bob Eley as a part of his family from the time he went down about Chesham until he died?

Ans I dont know Sir. He went there since the war.

Ques 23 How many children did Bob Eley have when he died?

Ans I dont know.

Ques 24 Have you the slightest idea as to whether Bob Eley was the father of Lizzie Smith or not?

Ans I dont know whether he was or not.

Examiné by Counsel for the defendants

Ques 1 Knowing Robert Eley and Julia as well as you did do you believe it possible for them to have agreed between themselves to live together as man & wife and then cohabited together without your having heard it?

Ex cited to for reasons appearing on its face.

Ans Well I think it might have been possible they might have done it for a short time but if it continued for any length of time I think I should have heard it.

Ques 2 Could it have continued for 3 years without your knowing it?

Excepted to.

Ans I don't think he could have visited her in man & wife for that length of time without my knowing it.

Ques 3 Then if there was any such agreement and Cohabitation between Robert and Julia it was secret and not open and notorious like the Cohabitation of Robert with the two wives you have named and Julia with the 3 husbands you have named?

Excepted to because it refers to no new matter brought out on Cross Examination but refers to the gist of the Examination in chief, because it suggests its own answer, because leading in form and for other reasons appearing on its face.

Answer. The question refers to a secret agreement as to whether the witness was Cross examined.

Ans.

No Sir it was not.

Ques 2

Not what?

Ans

Not Publicly known.

And further this deponent saith not
Thos. J. Marshall

Ans 1

Steven A. Eley being first duly sworn deposes and says in answer to questions State your age, Residence and Occupation. And do you know the parties to this suit

Ans

Age 55 years old 56 in May, I live in Isle of Wight County, I am a Farmer. and do not know the parties to this suit.

Ques 2

Did you know Robert Eley Sr referred to in these proceedings. If so how long did you know him, and what were your opportunities for becoming familiar with his history?

Ans.

I knew Robert Eley from 1845 to 1860.

He was my mother's slave, and lived on the same place with him a part of the time, and not exceeding five miles the balance of the time.

Ques 3 Did he have a wife as slaves had wives during the time you knew him. If so state what was her name & when did she live?

Ans. He only had one wife to my knowledge and her name was Viney, and she lived at Mr. William Joyner (W. M.)

And further this deponent saith not.
S. A. Eley

Virginia
County of Isles of Wight } To wit:

I, A. T. Byrd a Notary Public for the County of Isles of Wight, in the said State, do hereby certify that the foregoing deposition of Thomas J. Marshall and Stern A. Eley were duly taken, sworn to, and subscribed before me, at the time and place, for the purpose therein mentioned.

Given under my hand this 3rd day of January in the year 1890.

A. T. Byrd
Notary Public.

Hows Engaged

(8) Eight

A. T. Byrd

Dept's Department

1890

Jan'y 10th Received under
real & filed in cln