

1899-020
Nansemond Co (Suffolk) Chancery Causes: W. N. Camp et al vs Benjamin M Bruce

Cowland, Holland, Vanderslice, Rogers

See 1900-004 for related case & for bill, final decree etc

Sam'l's Book

Prince & M. Lemore & E. E. Holland. 1899

W. N. & P. D. Lamp

vs. In Chancery

B. M. Price.

1899

January 24th

Final Decree

costs
clrk 9.70
"Co. 1.25
Shff 1.00
Tax 1.50
city 15.00
chap. 22.84
\$ 51.29
30
81.29

Camp vs Bruce

Costs		Prot-ah	4 83
Summs.	25	Amr	15
Copy	13	affid	15
Rect	18	Ord Apl	15
Acty	10	Jury Prm	75
Dock	18	Recen	25
1st Rule	50	2 Sup Prm	100
Return	35	Cart	15
fil brie	15	Ord Ch Ap	36
2nd Rule	50	Jay Cust &c	65
Exhbs	30	placing on	
Rep	15	Dock Stms	90
fil Dep	30	Judge Dec	36
3 Dees	108	clerk	<u>9.70</u>
Copy Dec	36		
Notices	30		
	<u>483</u>		

clerk of ct

Co "

Sheriff

Writ Jay

Attorney

Count of appeals

9 70
1.25
1.00
1.50
15.00
<u>28.45</u>
<u>22.84</u>
<u>51.29</u>
30.00
<u>81.29</u>

Camp

Bruce

Costs

~~\$51.29~~

442

1896

April 30th

W. M. Camp & others

To R. R. SMITH, Clerk of Nansemond County Court, Dr.

Tax and Recording Fee *Lis Pendens* \$ 1.25

vs B M Bruce

Clerk.

The Clerk of the Circuit Court of Nansemond County, will please issue
process in the following case:

W. N. Camp and P. D. Camp, Versus, B.M. Bruce,

Summon in Chancery to Second May Rules, Circuit Court 1896.

Writ tax \$1.50 enclosed.

Pay 1.50 paid

Prinice A. L. Lemoore, Holland E. E. P. Q.

To, B.M. Bruce,

Notice is hereby given you of our intention to apply
to the Clerk of the Circuit Court of Nansemond County, on the 23rd. day
of February 1897, for a transcript of the record in the Chancery cause
of W.N. Camp and P.D. Camp versus B.M. Bruce, now pending in the said Court.
February 18, 1897.

Respectfully,
W.N. Camp, } by
P.D. Camp } Counsel.

Legal service of this notice
is hereby acknowledged.

R. H. Rawles
att. for B. M. Bruce

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON

B M Bruce

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 *Third* Monday in *May 1896*, to answer

a Bill in Chancery, exhibited against *him* in the said Court by *W N Leamp and P D Leamp*

and have then and there this summons.

Witness, A. P. GOMER, Clerk of our said Court, at his office, this *30th* day of *April*, 189*6*, in the 12*0*th year of the Commonwealth.

A copy—Teste:

CLERK.

Teste:

A P Gomer

CLERK.

Executed this the 30th day of April 1896 by
delivering a true Copy of the within process
to B M Bruce in person

R E Noylet Deput
For Asst Baker Shff

Prince & McLenore & Holland S & P. q.

vs. Leamp & Shank

vs.

In Chancery.

B M Bruce

18⁹⁶

May Rules.

Third Monday.

Nansemond Circuit Court.

Process Book No. 21

Page 134

The Commonwealth of Virginia,

To the Sheriff of the County of Nansemond Greeting:

WE COMMAND YOU, that from all further proceedings on a decree pronounced by the circuit Court of the county of Nansemond on the 11th day of December 1896, in a suit in which W. N. Camp and Paul J. Camp were

Plaintiffs, and

B. M. Bruce was

Defendant

you altogether supersede, which decree before the judges of our Supreme Court of Appeals, in City of Richmond, for cause of error in the same to be corrected, on the petition of the said plaintiffs

we have caused to come. We also command you, that you give notice to the said defendant

that he be before the Judges of our said Supreme Court of Appeals, at the City aforesaid, on the first Monday in May next, then and there to have a rehearing of the whole matter in the decree aforesaid contained. And have then there this writ.

WITNESS.—GEORGE K. TAYLOR, Clerk of our said Supreme Court of Appeals, at Richmond, this 5th day of April 1897, and in the 12th year of the Commonwealth.

Geo. K. Taylor

MEMO.—The above writ of supersedeas is not to be effectual, until the petitioner, or one of them or some one for them shall enter into bond, with sufficient security in the Clerk's office of the said circuit Court, in the penalty of two hundred dollars, conditioned as the law directs, and a certificate of the execution thereof, together with the name or names of the security or securities, shall be endorsed hereon by the Clerk of the said Court.

Teste:

Geo. K. Taylor

Clerk Court.

A Copy—Teste:

Clerk Court.

I Azra P. Homer Clerk of the Circuit Court of Hanseman
County, Virginia do certify that the bond required under the
decree of the Supreme Court of Appeals of Virginia in the
chancery cause pending in said Supreme Court of Appeals
between W W Camp and Paul D Camp complainants and
B M Bruce defendant has been executed by Paul D Camp
principal and James L M Lemore security and recorded.
Given under my hand this 12th day of April 1897

A P Homer Clerk

Executed this the 12th day of April¹⁸⁹⁷ by delivering a
true copy of the within notice with a copy of the Certificate
thereto attached to B M Bruce in person.

R E Norrish Deput
For A H Batorr Siff

Camp &c

Supret First Monday
in May, 1897.

Bruce

Jackson Guy for petitioners

Know All Men by These Presents, That we, Paul D Leamp
and James L Leamp

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

And we waive the benefit of our exemption as to this obligation, and also waive any claim or right to discharge any liability to the said Commonwealth arising under this bond, or by virtue of the office, post or trust herein mentioned, with coupons detached from bonds of said Commonwealth.

Sealed with our seals, and dated this 2nd day of March in the year of our Lord one thousand eight hundred and ninety Seven, and in the 121st year of the Commonwealth.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas W N
Leamp and P D Leamp upon their petition to obtain from one of the judges of the Supreme Court of Appeals of Virginia an appeal from a writ of Supersedeas to a decree pronounced by the Circuit Court of the County of Nansmond on the 11th day of December 1896 in a suit in Chancery in which W N Leamp and P D Leamp are Complainants and B M Bruce is defendant; for cause of error in the same appearing and to be corrected as it is said Now if the said W N Leamp and P D Leamp shall well and truly perform and satisfy the said decree in case the same shall be affirmed or the said appeal and writ of Supersedeas shall be dismissed and also to pay all damages Costs and fees which may be awarded against or incurred by said appellant or petitioners in said Supreme Court of Appeals and actual damages incurred in consequence of the said appeal and Supersedeas then the above obligation is to be void or else to remain in full force and virtue.

Paul D Leamp
James L Leamp



In the office of the Clerk of the Circuit Court of Nansmond County, on the 2nd day of March 1897.

The above bond was executed and acknowledged by the obligors (the surety justifying on oath as to his sufficiency) and recorded.

Teste:

Copy

Teste: A P Gomey Clerk

A P Gomey

CLERK.

Paul D. Leary
To { Subscribed as Bond
The Commonwealth.

1897
March 2nd

A Copy
Recorded in Official
Bond Book
No 1 Page 124.

Know All Men by These Presents,

That we,

Paul D Camp
and *James L M Lemore*

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

And we waive the benefit of our exemption as to this obligation, and also waive any claim or right to discharge any liability to the said Commonwealth arising under this bond, or by virtue of the office, post or trust herein mentioned, with coupons detached from bonds of said Commonwealth.

Sealed with our seals, and dated this *12th* day of *April* in the year of our Lord one thousand eight hundred and *Ninety Seven*, and in the *121st* year of the Commonwealth.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas *a*

Supersedeas has been awarded by the Judges of the Supreme Court of Appeals of Virginia in Richmond in the Chancery cause of W N Camp and Paul D Camp against B M Bruce before the said Court by appeal from the Circuit Court of Nansemond County.

Now if the said Paul D Camp shall perform and satisfy the decree aforesaid, proceedings on which are stayed, in case the said decree be affirmed and the Supersedeas be dismissed and shall also pay all damages and costs and fees which may be awarded against or incurred by the appellants or petitioners in the Appellate Court and all actual damages incurred in consequence of the Supersedeas aforesaid then this obligation is to be void, or else to remain in full force and virtue.

Paul D Camp

James L M Lemore

SEAL

SEAL

SEAL

SEAL

SEAL

In the office of the Clerk of the *Circuit* Court of Nansemond County, on the

12th day of *April* 189*7*

The above bond was executed and acknowledged by the obligors (the surety justifying on oath as to *his* sufficiency) and recorded.

Teste:

A G Gomer

CLERK.

Paul D. Camp
To Supersedeas Bond
The Commonwealth.

1897
April 12th

Recorded in Bond
Book No 1 Page 125

Copy

- SPECIFIC PERFORMANCE-

"When an agreement, such as the doctrine of specific execution applies to, is entered into by competent parties, and is in its nature and circumstances unobjectionable, it is as much, of course, in a Court of Equity to decree specific performance, as it is for a Court of law, to give damages for its breach".

2 Min. 784; Story's Equity, sec. 751; 21 Grat. 30 & 80; 31 Grat. 388, and 4th. Peters (U.S.) 311 & 328.

"As soon as a valid contract is made for the sale of an estate, equity considers the buyer as the owner of the land and the seller as the Trustee for him, and on the other hand, it considers the seller as the owner of the money, and the buyer as the trustee for him. And when a contract has been made and either party refuses to perform the agreement, Equity enforces the performance of the contract specifically, by compelling the refractory party, to fulfill his engagement according to its terms. Thus if the vendor refuses to convey Equity will decree a conveyance, and attach him until he makes it."

All applications to the Court, to compel specific performance, however, are addressed to the discretion of the Court, a sound judicial discretion regulated by the established principles of the Court."

Dunsmore Vs. Lyle, 87 Va392.

In Hale V. Wilkinson, 21 Grat. 80, the Court says: Land always has in the eye of the law, a peculiar value, and a contract for the sale and purchase of it, if unobjectionable, will therefore be specifically executed, in no other way can the parties receive the full benefit of their contract and no Court having jurisdiction of the subject, and being properly applied to for such relief, can withhold it, but by an act of arbitrary power.

Opinion by Moncure, J.

unthorke
Cane or Bruce

Mr. Gomer :-

I have just had the
papers handed me by Mr. Millemore
and we both failed to find in them
the original document granting the
injunction, of which this paper purports
to be a copy. Millemore says he has
not seen it. Please see if you
can find it and send it to me.

Very truly
R. H. Knobel

1896 - report to Court of the same day

day of

* received by the special Commissioner - to said B.M. Bruce on the

Confidential

The following are facts, agreed ^{to be given as evidence in the}
that on the 11 day of December 1893, E. E. Holland filed
Quir in Chy cause of Rautias vs Rautias pending in
the Circuit Court of Beaumont Co, exposed the farm known
as the "Borough" land, ^{containing 129 or more acres & being the same land referred to in this cause -} to public sale at Suffolk Va at which
sale Wesley Miller became the purchaser for \$1000. That on
April 2. 1894 B.M. Bruce filed his upset bid of \$1200 for said
property with proper security, and the said property was
resold ^{on 11th day of June 1894} by virtue of decree entered therein in on the 13th
day of April 1894, at which resale B.M. Bruce
became the purchaser at the sum of \$2000 - This
sale was duly reported to the Court on Sept 29th 1894.
and is as follows: - Copy report -

That on October 1894. B.P. Sale filed his upset
bid which is in the following words: Copy bid.
Pursuant to this bid, a resale was ordered and
the property resold on the 10th day of December
1894, for the sum of \$2000. and purchased by B.M.
Bruce, which sale was reported to the Court on
March 28th 1895 and is as follows: - Copy report -

In this sale, Paul D. Camp filed an upset bid offering
\$2400. on April 3. 1895, with approved security, in pur-
suance of which, a ~~decree~~ ^{decree} was entered re-sale was ordered
and was had on the 13th day of May 1895 at which
sale the Camp Mfg Co. became the purchaser
at the sum of \$2400. - This sale ~~was~~ ^{was} duly
reported to Court on June 1. 1895. ~~The upset bid~~
was filed by B.M. Bruce of \$4800. on
the 9th day of July 1895 with satisfactory security.

On the 9th day of July 1895 an upset bid of \$4800. was filed
by B.M. Bruce with satisfactory security, and in pursuance
thereof, a ~~decree~~ ^{decree} was entered approving the
said bid recommending the sale at the price of \$4800. and a deed was *

The following are to be copied from
the Library case of Rancitrod vs Rancitrod.

Purchasers at Judicial Sales. have rights and the Courts are rather inclined to discourage up-set bids, than to allow the sale to be reopened, especially is this the case when the party virtually making the bid was present at the first sale, 32 Grat 454, 31 Grat 434

Upset bids do not come under the policy of the law, making contracts not to bid at a sale objectionable, see 1 A. & C. Enc. of Law p 997 + cases cited - The leaning of the Court is on the side of the original purchaser, and does not favor opening the sale for a 10% advance unless there was some fraud in the first sale. See Grato as above cited.

In this case, there was no suppression of, or attempt to suppress bidders, but the sale was in all respects fair -

—THE FIRST—

National Fire Insurance Co.

OF FREDERICKSBURG, VA.

CAPITAL STOCK \$300,000.

The National Fire Insurance Co. of
Fredericksburg, Va. has been
organized for the purpose of
insuring property against fire
losses. The capital stock is
\$300,000, and the company
has a surplus of \$100,000.

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Fredericksburg, Va. has been
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losses. The capital stock is
\$300,000, and the company
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losses. The capital stock is
\$300,000, and the company
has a surplus of \$100,000.

LAW OFFICE OF
JAS. L. McLEMORE,
COURTLAND, VA.

April 29th. 1896.

Clerk of Circuit Court.

Suffolk, Va.,

Dear sir:-

You will find enclosed memorandum for suit and also Lis Pendens which we wish you to record at once. Have the lis pendens recorded in the County Court, of course. Send bill for recording same as we do not know what it is, and we will remit.

Yours very truly,

Prince & McQuinn

MEMORANDUM. For Lis pendens.

A suit has been instituted in the Circuit Court of Nansemond County by W.N.Camp and P.D. Camp, against B.M.Bruce on the Chancery side of the said Court, the object of which is to compel the specific performance of a contract entered into on the 26th, day of September 1894, between the said B.M.Bruce and W.N.Camp and P.D.Camp, wherein the said B.M.Bruce for a good and valuable consideration agreed to assign, transfer and convey unto the said P.D.Camp and W.N. Camp, all of his right title and interest in the sale and purchase of a certain tract of land, situated in Nansemond County, containing 2900 acres more or less, known as the Burroughs land, sold by E.E.Holland, Special Commissioner, in the Chancery cause of Ramstead Vs. Ramstead et als. under a decree in the said cause entered in the Circuit Court of said County, on the 11th. day of June 1894 and purchased at said sale by said B.M.Bruce. The party whose estate is intended to be affected by the said suit is B.M.Bruce.

April 29th. 1896.

Prince & McLemore, and
E.E.Holland,

P.Q.

*In the Clerk's Office of Nansemond County Court-
on the 30th day of April 1896;
This Memorandum of Lis pendens was this day received
by me the Deputy Clerk of Nansemond County Court- to be
recorded and indexed as is provided by law.*

*Teste: A. G. Gorney Deputy
for R. R. Smith Clerk*

34
Wm Camp & others
vs J. L. Pendens
B M Bruce

Admitted to re-
cord the 30th day
of April 1896

Recorded in
DB 36 Page 693.

Jan 6th 1896

Examined & verified

R R Smith Clerk

Fee \$1.25

To be filed as a part of the record in the Chancery
Cause of W.N. and P.D. Camp against B.M. Bruce .

It is a fact agreed, that before the institution of this
suit for Specific Performance, ^{to wit: on the 17th day of September 1895.} W.N. and P.D. Camp instituted an action
of Covenant broken against B.M. Bruce, alleging a breach of the
same contract which is the basis of this suit for Specific Per-
formance, and that before trial, and before any of the pleadings
were filed or issues made up, the same was dismissed on the motion
of the Plaintiffs. The same having been dismissed on May 6th. 1896.

W.N. & P.D. Camp by
Prince & W. Lewis
Attys.

The first requisite of a contract to entitle one to its specific performance in equity, is definiteness and certainty in its terms. 80 Va. 604

A application for specific performance is addressed to the sound discretion of the court, and will not be granted unless the applicant shows that he has been ready, prompt, and eager to perform the contract on his part. If he has been in default a court of equity will leave him to to such remedy as he may have at law. 91 Va. 564
-----o

+ A covenantor is excused from performing his part of an agreement when the
+ other party hinders the performance. And when so hindered the covenantee
4 will be estopped from setting up the default of the covenantor.
91 Va. 297

The contract must be certain and definite in its terms and in all its parts, and must be clearly proved. 76 Va. 833

A man who calls for specific performance must show that his conduct has been clear, honorable and fair. 31 Grat. 389

Bills for specific performance must show that there were concluded between the parties written and signed contracts that are reasonable and clear, and definite both as to terms and subject matter, and mutual in obligation and remedy; and the same must be proved as alleged. 87 Va. 641-

Concurrent jurisdiction) Law for damages-Equity for Specific Performance.
I Barton 61-75

Suit for performance where damages inadequate. This ground is deemed always to exist in contracts for lands 2 Minor. 784-

The agreement must be certain and definite, equal and fair, founded on adequate consideration, between competent parties-II Minor 786

240
1

Equity assumes jurisdiction over all manner of rights and interests connected with real estate-fee-simple interests, leasehold interests, expectancies and indeed any interest or estate, legal or equitable, which arises out of real property. 22 Amet. & Eng. Ency. of Law 941

✓ Duty of complainant-He who seeks to compel another to perform must show upon his own part either a substantial performance, or a tender thereof, or that, by reason of his adversary's conduct, both performance and tender have been rendered unavailing. Same authority 1035
All necessity for a tender of performance disappears where the defendant repudiates the contract. Same authority 1041

✓ In the discretion of the court it is not necessary to prove a demand or that a demand would have been vain. Same 1042

The plaintiff must not have done any act incompatible with his claim for performance. Same 1048

✓ Laches is no defense to one who, by his own acts has occasioned the plaintiff's delay or failure to perform. Same 1050

The bill ought to show; 1st-That the contract is one that can be performed that the plaintiff has performed or offered to perform the contract on his part; that the defendant has failed to perform; that a money compensation in damages would be inadequate; and that a specific performance ought in equity to be granted. Same 1070

It is not irrelevant to observe just here that, after in an action at law, the vendee has recovered for the vendor's breach of contract, or, indeed it seems after the vendee has instituted such action, a bill in equity for specific performance will not lie-2 Minor. 808-1112u 110

Specific performance rests in the discretion of the court. Same 805

Plaintiffs Notes

$$\begin{array}{r}
 756 \\
 757 \\
 \hline
 1513 \\
 757 \\
 \hline
 2270
 \end{array}$$

$$\begin{array}{r}
 2270 \\
 757 \\
 \hline
 3027
 \end{array}$$

11

Wanda bush n. Miller 32 Grat. 45x

Inadequacy of Prices
Guzzler v. Sutherland 58 Va 5-59
— v. Scheffer 21 Gratt. 495-497
Boolen v. Scheffer

ROBERT R. PRENTIS.

Mrs.

SUFFOLK, VA.,

Bona Case

After suit at Common Law
for damages has been instituted
suit for specific performance
will not lie;

2 Minor page 808
2 Lomax digest 77

X

Laches as to time

2 Minor page 808

2 Lomax 69

22 Am & E. E. Law 1043-1044

1047-1048

5-Call 514

86 Va. 75-

12 Ligh 69

Hardship

22 Am & E. E. L page 1023

1028

86 Va. 75-

Inequality between price
& value

22 Am & E. 1024

Must have offered to
comply

22 Am & Law 1047

Equity may enforce but
will prevent creation of a
contract

22 Am & L. 932

Executed contracts will not
be enforced
Am & Law 940

Party asking specific per-
formance must have done
no act inconsistent

22 Am. & Law 1048

Rawls Notes
Bma Case

POSTAL CARD - ONE CENT.

United States ^{OF} America.

THIS SIDE IS FOR THE ADDRESS ONLY.



Mr. A. J. Gomet. Clerk.
Suffolk,
Va.

Suffolk Va.
11/6/97

Dear Sir:-

Copy of decree in Camp v.
Bruce received. We also need copy of
W. Ct. Camp's evidence, that given in by
him, can you let us have it by
Thursday afternoon? Thanking you in
advance.

We are,

Yours truly,

Prince & W. Lemoine

POSTAL CARD - ONE CENT.

United States of America

THIS SIDE IS FOR THE ADDRESS ONLY.



Mr. A. P. Gomer Clerk.
Suffolk Ma

Suffolk Co.
11/5/97.

Dear Sir:-

Will you kindly make
copy of the decree in case Camp vs.
Bruce for us and charge to
Plaintiffs? Yours Truly,

Primer & Llewellyn

Barules & Briggs,

Attorneys at Law and Notaries Public.

Suffolk, Va., ... 189.....

Barules finally run it up to \$4400.

Not a contract to convey, but convey
in itself.

did not promise to give a deed -
only to ask Bolcott to give deed
& he & wife would convey.

Barules has not assumed the notes
nor paid any money.

It cannot be inferred that Saly had
not measuring the cause of the defect
of this contract because other parties
that had, and Chapman other parties
might have put in an uper bill

Judges of the Supreme
A Supersedeas has been awarded by the Court of
Appeals of Virginia in Richmond in the Chauncy
Cause of W. N. & R. D. Camp vs. B. M. Briel before
the said Court by Appeal from the Circuit Court
of Chancery County, showing the said W. N. & R. D. Camp
shall perform & satisfy the decree
aforesaid, proceedings on which are stayed in
case the said decree be affirmed & the supersedeas
be dismissed and shall also pay all damages &
costs & fees which may be awarded against or
incurred by the appellants or petitioners in the Ap-
pellate Court & all actual damages incurred
in consequence of the supersedeas aforesaid, then
this obligation to be void &c.

Wm & P D Camp
vs Injunction
Order

B M Bruce

Entered May 26th 1897
in Chancery Order
Book No 3 Page 88
filed in Review Case
of B M Bruce
vs

Wm & P D Camp
as Exhibit "B"

Wm & P L Camp
Jury Jurisdiction
Bond

The Commonwealth

1897

May 29th

A Copy

Recorded in Official
Bond Book No 1 Page 127
filed in Review Case
of B M Bruce
Vol 1

Wm N Campforth
as Exhibit "C"

Decree of Dec 11th
1896 Entered in
Chancery Order
Book No 3 Page 67
filed in Review case
of B M Bruce
vs

Wm N Leampothus
as Exhibit "E"

Camp 4:
v } copy decree
Bruce

Entered in Chancery
Order Book No 3
Page 189.

VIRGINIA:

In the Supreme Court of Appeals, held at the State Library
Building, in the City of Richmond, on Wednesday
the 7th day of December 1898

W. N. Camp and Paul D. Camp Appellants }
against } Upon an ap=
B. M. Bance Appellee } peal from a
decree pronounced by the circuit court of the county
of Nansemond on the 15th of December, 1896.

This day came again the parties by counsel and the court
having maturely considered the transcript of the record of the
decree aforesaid and arguments of counsel, is of opinion, for
reasons stated in writing and filed with the record that there is
no error in the said decree; it is therefore decreed and or=
dered that the same be affirmed and that the appellants
pay to the appellee thirty dollars damages and also
his costs by him about his defence herein expended.

Which is ordered to be certified to the said circuit court.

Appellee's costs in the } \$22.84 } Attest
Supreme Court of Appeals } } Teste, Geo. H. Taylor, C. C.

of returning a true copy of the within process
 to Mr Bruce not per se. *Applying*
to the

Virginia:

In the Clerk's office of New-
march Circuit Court on Wednesday
the 26th day of May 1897 the
following decree pronounced on
the 21st day of May 1897 hastened
by the Hon Robert. A. Prentiss ordered
to be entered of record.

W W and P. D Camp
against } In Chancery
B M Bruce

Complainants

Defendant.

This day came the complaints and filed the affidavit of John P. Corliss and the defendant filed the affidavit of B M Buell and thereupon on motion of the plaintiffs, and for reasons appearing satisfactory to the Court, an Injunction is awarded them in accordance with the prayers of the bill, enjoining and restraining B M Buell his agents employees and those claiming by, through or under him, their agents employees or other persons from cutting or removing the standing timber on the tract of land described in the Plaintiffs bill known as the Burroughs land containing about 2900 acres, and located in the said County of

Nausemound till the further order of this Court. But before the said plaintiffs shall have the benefit of this order they or one of them or someone for them shall enter into bond before the Clerk of the Circuit Court of said County (in the Circuit Court of said County) in the penalty of \$6000[±] conditioned to pay all such cost and damages as may be awarded the defendant by reason of the suing out of the said injunction, should the same be dissolved, and with security to be approved by the said Clerk: and when the said bond shall have been executed a copy of this order shall be served on the defendant.

To the Clerk of the Circuit Court of Nausemound County.

Attest:

Robert R. Purdie

A. P. Gomez Clerk

A copy

Teste: A. P. Gomez Clerk

I A. P. Gomez Clerk of the Circuit Court of the County of Nausemound do hereby Certify that the bond required by the above order has been given with security deemed sufficient by me this the 29th day of May 1897

Teste: A. P. Gomez Clerk

Wm P. D. Leamy

Wm Leancy

J. M. Bruce

W. N. & R. D. Camp

B. M. ^WBruce

Deere

Entered Oct. 21, 1896

W. H. R. Huntis

Entered in

Chenney

DR 3 Page 60

W. N. & P. D. Camp

B. M. Bruce

On the motion of the ^{com}
~~this cause come on this~~
~~plaintiff~~ ^{may be} heard and by
consent of Counsel for both
plaintiff and defendant
it is ordered that ~~the same~~
~~be made a vacation case~~
this cause be submitted
to the judge of this Court
for such decision or
decree in vacation as
might be made in term.

I, John^p_^ Cowling a citizen of Suffolk, Va., do certify that I am well acquainted with the Burrough's tract of land now in litigation in the Chancery cause of W.N.& P.D.Camp versus, B.M.Bruce, and here state that the timber on the said land is now being cut and removed therefrom by B.M.Bruce, or those acting by virtue of authority received from him.

Given under my hand this 11th. day of May 1897.

John P. Cowling

J. U. Burgess

This day personally appeared before me, ~~Geo. Pratt~~, a notary Public for the County of Nansemond in the State of Virginia, John^p_^ Cowling and made oath to the correctness of the statements as made above.

Given under my hand this 11th. day of May 1897.

J. U. Burgess
Notary Public

John M. Cowling,
Addisvix

^{Question}
You will notice that #15 was skipped
in numbering the Questions in Mr.
Cowlands deposition.

W. H. G. den
Steno.

Final Decree

Entered January

24th 1899 in

Chancery Order

Book No 3 Page 191

by Consent of

Attorneys

J. L. M. Lemore for Camp

R. N. Rawles for Bruce

filed in Review case

of B. M. Bruce

vs

Wm. Leampothus
as Exhibit "D".

B. P. SALE, Proprietor.

WM. LINN, Manager.

* MANSION HOUSE *

AMERICAN and
EUROPEAN PLANS

UNION STREET —

Norfolk, Va. *Feb* 16th 1895

G. H. Rogers Esq
Winton N.H
My dear Sir

Since seeing
you I have been quite sick. Am
in receipt of a letter from my friend,
He is desirous of knowing what
figure you will offer. He declines
naming price he will take. I
think if you will offer a fair
price he will sell. If so set me
know your offer I will try and
induce him to business. Please excuse
my delay in not writing you earlier but
was caused by sickness.

Respectfully

Yours Truly,
B. P. Sale

"Exhibit B"

The Deposition of W. N. Camp taken by consent of the counsel on this the 14th day of September 1896, to be read as evidence in the case of Camp and others against B. M. Bruce, in the presence of E. E. Holland, J. B. Prince attorneys for the plaintiff, and Judge R. H. Rawles, attorney for the defendant.

Witness:-- W. N. Camp being duly sworn deposes and says:--

Question:-- State your name, age, residence and occupation, and whether you know the parties to this suit ?

Answer:-- Age 48 years; Residence Albion, Fla.; Occupation Mining; I know the parties to the suit.

Question:-- State what you know in regard to the resale of the Burrough's tract of land outside of the contract for the purchase of same had between P. D. Camp, B. M. Bruce and yourself.

Answer:-- Sometime after the resale of the Burrough's land I saw Judge Rawles, and he told me that Bruce had approached him and asked him to draw up an upset bid, and that he refused to do so stating ~~xxxx~~ that he drew up the contract between P. D. Camp, myself and B. M. Bruce, and that he referred him to Mr. Vanderslice. I saw Mr. Vanderslice, and he showed me a letter from Mr. Sales of Norfolk, asking him to draw up an upset bid and present the Bill to B. M. Bruce and he will settle.

Question:-- Was that before ~~the~~ or after the contract was made between yourself, P. D. Camp and B. M. Bruce ?

Answer:-- After.

Crossed-examined by Judge Rawles.

Question:-- When you entered into this agreement with B. M. Bruce for the purchase of his interest---whatever the same might be, in the said tract of land, was there not a distinct understanding between you, that the said agreement was to be good only upon the

condition that the court confirmed that specific sale referred to in the agreement as having been made by E. E. Holland's ^{commissioner} special ~~permission~~? (This question objected to by plaintiff's counsel because it seeks to vary the contemporaneous written agreement, which must speak for itself.)

Answer:-- I do not remember any agreement that was not mentioned in the contract.

Question:-- Do you know whether the sale referred to in the contract was ever confirmed by the court? (This question objected to by plaintiff's counsel.)

Answer:-- I suppose not, or there would ^{not} have been another sale.

Question:-- As a matter of fact was there not another sale of the said land ?? (Objected to by plaintiff's counsel.)

Answer:-- I think so---I was not at the ~~same~~ sale.

Question:-- Were you and Mr. P. D. Camp jointly interested in this matter?

Answer:-- We understood so.

Question:-- Did not P. D. Camp representing yourself and himself attend another public sale of this land under the order of the court and make bids for the same?

Answer:-- I don't know.

Signature waived by consent of counsel.

THE FURTHER TAKING OF DEPOSITIONS FOR THE PLAINTIFFS
IN THE SUIT OF CAMP AND OTHERS AGAINST B. M. BRUCE
TAKEN ON THE 25TH DAY OF SEPTEMBER, 1896, PURSUANT TO
ADJOURNMENT ON THE 16TH DAY OF SEPTEMBER 1896.

PRESENT:-- E. E. Holland & J. B. Prince, attorneys for
the Plaintiff, and R. H. Rawles, *Muritt* Briggs, and A. B.
Seldner for the Defendant.

The counsel for the Defendant appeared and objected to the
answer of the 2nd question in the deposition of W. N. Camp
taken by consent of counsel on the 14th day of September 1896
on the ground of said answer being hear-say testimony; a simi-
lar objection being entered as to the answer of question # 3
in the said deposition.

P. D. Camp being duly sworn deposes and says:--

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

A. 1. 47 years old; Lumber Business; Franklin, Va.; Yes.

Q. 2. Were you present in Suffolk at the resale of the Burrough's
tract of land on Monday, Dec. 10th, 1894, sold in the Chancery
suit of Ranstead against Ranstead, sold by E. E. Holland's
special commissioner in said suit ?

A. 2. Yes, Sir.

Q. 3. State who bid at that sale and all the circumstances con-
nected with it so far as you know.

A. 3. The upset bid was \$2600.00, and then I bid on the property
and run it up to somewhere about \$3000.00, then I quit bidding.
Mr. Sales and Mr. Bruce were standing together; I dont know
that anybody called out the bid, but the crier cried the bid
from where Mr. Sales and Mr. Bruce ^{were standing} ~~was~~ ---from that direction. I
dont know that it called out who made the bid. Then Mr. Nelms
commenced bidding. Mr. Sales and Mr. Bruce were standing to-
gether and consulting, and they were the only bidders up to

\$4000.00---Mr. A. L. Nelms and Mr. Sales. Mr. Bruce and Mr. Sales were consulting together all the time during the bidding---standing together and talking with each other,---and I remarked to Mr. Bruce that it looked like that they were bidding together---working together that day. Mr. Sales ^{bid} \$4000.00 and the property was knocked off to him. Mr. Sales and Mr. Bruce appeared so friendly I suspicioned in my mind that they were interested in each other in the sale in some way, and then afterwards I ^{made some} ~~asked~~ inquiries around, and I understood that Mr. Bruce had made a contract to deliver the timber off the Burrough's tract of land, and afterwards he told the party that he could not deliver this timber because the Camps had interfered in the bidding. At Nansemond Court House Mr. Sales and Mr. Bruce came there together, and as I stated above they were conversing together all the time during the sale, and after the sale they took the street car together and returned up town.

(So much of the above answer objected to by Defendant's counsel as hear-say as purports to convey to the witness any information obtained from sources, which may make his answer hear-say.)

Q. 4. Do you know who put in the ~~the~~ upset bid for \$2600.00 ?

A. 4. The record shows that P. B. Sales did.

Q. 5. Do you know who drew up the form of the upset bid?

A. 5. I only know from hear-say---Mr. Vanderslice.

Q. 6. If there are any other facts in connection with this matter that you want to state, state them.

A. 6. I was in Norfolk and was talking to a friend, and he said that Mr. Bruce, Mr. Sales and his attorney were there in consultation. That was before this upset bid was put in. I was informed by several parties that Mr. Bruce was the purchaser of the Burrough's tract of land sold on December 10th 1894, and that is why I looked into it to find out and made inquiries,

(next sheet)

and on the day of the sale, December 10th, 1894, before I went to the Court House I went into Mr. Bruce's store and spoke to him about this upset bid. He did not seem concerned or bothered in any way about the property going to be sold, and under our contract we were to give him \$500.00 profit on his bid, and I thought it looked rather strange that he seemed to feel such a little interest in the property going to be sold.

(So much of the above answer, as purports to convey information which he receives in reference to the sale of the land in question from friends and others as stated in his answer, is objected to by Defendant's counsel as being hear-say; also all opinions of the witness objected to.)

CROSSED-EXAMINED by DEFENDANT'S COUNSEL.

- Q. 1. Are you one of the Plaintiffs in this suit ?
- A. 1. Yes, Sir.
- Q. 2. Were you one of the Plaintiffs in a common law action instituted by W. N. and P. D. Camp against B. M. Bruce in the Circuit Court of Nansemond County to recover damages for a breach of contract, which is filed in this suit and marked "Exhibit A," a copy of which contract I now hand you ?
- A. 2. Yes, Sir.
- Q. 3. What has become of that suit ?
- A. 3. It has been dismissed without prejudice.
- Q. 4. When you entered into the contract that is here filed and marked ~~xxxxx~~ "Exhibit A" with B. M. Bruce, were you not well aware that you were contracting with reference to a subject matter, that was entirely under the control of the Court ?
- A. 4. I knew the Court had a right to say whether they would accept the bid or not.
- Q. 5. Then you knew that the Court had a right to refuse to confirm that sale and to receive upset bids ?
- A. 5. Yes, Sir.

Q. 6. You knew also, did you not, that that contract was not to be carried out unless the Court confirmed that specific sale? (The Plaintiff's counsel object to the several questions above asked, because the contract is the best explanation of what it purports to contain.)

A. 6. The contract shows the agreement.

Q. 7. You have stated in answer to questions ^{on examination} in chief that at the sale of December ~~1894~~ 10th 1894 you run the property up to about \$3000.00, ^{then} and that one, A. L. Nelms, began to bid. Is it not a fact that Mr. A. L. Nelms was bidding for you as your agent?

A. 7. After the property was run up to somewhere in the neighborhood of \$3000.00, Mr. Nelms was not bidding as our agent.

Q. 8. Was ~~he~~ he bidding before it reached \$3000.00 or thereabouts as your agent?

A. 8. I am not positive whether I bid up to \$3000.00 or whether Mr. Nelms bid.

Q. 9. Was he authorized on that day to make any bids for you for the said property?

A. 9. I am not positive, but I think he was. I think he did the bidding up to a certain amount.

Q. 10. Did you not see him before the sale began and ask him to bid on that property for you?

A. 10. I think that he was authorized by me to bid to about \$3000., but he was not authorized to run the property up to \$4000.00 by me.

Q. 11. Have you not already stated that A. L. Nelms did not begin ~~xxx~~ bidding until after the property reached about \$3000.00?

A. 11. If I said that, I am not positive whether Mr. Nelms did the bidding for us up to about \$3000.00, or whether I bid myself.

Q. 12. What was the highest bid Nelms made for the property that day?

A. 12. I dont recollect .

Q. 13. Then, you do not know that he exceeded your authority in bidding ?

A. 13. Yes, Sir, on his own accord he bid.

Q. 14. Did he make any bid of his own accord that day ?

A. 14. He made bids that I did not authorize him to make for us.

Q. 15. How much did you authorize him to bid that day.?

A. 15. I am not positive; it was somewhere in the neighborhood of \$3000.00.

Q. 16. After Nelms had bid about \$3000.00 on the said property for you, can you say whether or not he bid a further sum on said property for either W. N. or P. D. Camp ?

A. 16. He was not representing either one of us; I was there to represent W. N. Camp and myself.

Q. 17. In answer to the 3rd question you state that during the sale you remarked to Mr. Bruce that it looked as if he and Mr. Sales were bidding together. Did not Mr. Bruce in replying to that remark of yours deny that he had anything to do with Mr. Sales bidding ?

A. 17. I dont recollect that he did.

Q. 18. Did Mr. Sales deny that Mr. Bruce had anything to do with it ?

A. 18. If he did I do not recollect.

Q. 19. Then you do not recollect the answer of either Mr. Sales or Mr. Bruce to your remarks?

A. 19. No, Sir, I do not recollect the answer.

Q. 20. What was the character of this land in question ? Is it not wood-land ?

A. 20. I have heard it was; from my own knowledge I do not know.

Q. 21. What did you desire it for ? Why were you anxious to get the land ?

A. 21. I have stated that from my own knowledge I do not know.

Q. 22. Have you ever sent any representative of yours to examine it ?

A. 22. I started to have it examined, and Mr. Bruce got out an injunction preventing me from having the land examined.

Q. 23. What I desire to ascertain is, whether your representative reported to you whether it was cleared or wood-land ?

A. 23. He did not get through, so he could not make a report of all the land.

Q. 24. Then, you dont know whether this land is wood-land or cleared land?

A. 24. I stated above of my own knowledge I did not.

Q. 25. Do you know from the knowledge obtained from others whether it is wood-land or cleared land ?

A. 25. I understand it is all wood-land land.

Q. 26. What is your business ?

A. 26. Saw-Mill business and farming.

Q. 27. Did you not desire this land in order to get the timber from it to be used in your business ?

A. 27. Well, at the time I bought it from Mr. Bruce I was just buying because I thought it was cheap.

Q. 28. Isn't its chief value the wood upon the land ?

A. 28. I dont understand your question.

Q. 29. Well, I mean to say, is not the principal value of the land the wood and timber upon it ?

A. 29. From my information it is not.

Q. 30. Then, what is the principal value of the land ?

A. 30. The timber and the wood is a part of the value, but I consider the land as valuable as the other for farming or other purposes.

Q. 31. Do you know whether it is mostly swamp land or low land ?

A. 31. I understand it is fine grazing land.

- Q. 32. When did you first learn that you were not to get the land under your contract with Mr. B. M. Bruce filed as "Exhibit A" with the papers in this cause ? Was it not when Mr. Sales put in his upset bid ?
(This question objected to by the Plaintiff's counsel as being purely legal.)
- A. 32. I learned through Mr. E. E. Holland that there was an upset bid put in by Mr. Sales.
- Q. 33. Then, that was the first time that you learned ^{that} you were not to get the property under this contract, was it not ?
(This question objected to by Plaintiff's counsel.)
- A. 33. I answered that that was the first intimation that there was an upset bid.
- Q. 34. Was not this the first knowledge that you had that you were not to get the property under your contract with Mr. Bruce because of this upset bid ?
(This question objected to by Plaintiff's counsel as being purely legal.)
- A. 34. We have always expected to get the property under that contract.
- Q. 35. When did you first learn of any difficulty in the way of your getting title to this property under the contract marked "Exhibit A" and filed with the papers in this suit ?
(This question objected to on same ground as that above.)
- A. 35. The first intimation that we had that there would be any trouble was when we were notified that there was an upset bid put in.
- Q. 36. Now, when did you learn of this upset bid ?
- A. 36. I could not tell you; I do not recollect.
- Q. 37. Did you know it between the dates, between which Mr. Sales put in his upset bid, on the 6th day of October 1894, and the 10th day of December 1894, the time at which the property was sold ?

A. 37.

Yes, Sir.

Q. 38.

But, you don't know how soon after the 6th day of October ?

A. 38.

No, Sir.

Signature waived by consent of counsel.

By consent of counsel any papers in the suit of Ranstead ~~vs~~ against Ranstead pending in the Circuit Court of Nansemond Co. may be read as evidence in this case, and also any papers in the common law suit of W. N. and P. D. Camp Vs. B. M. Bruce lately pending in the said court.

G. H. Rogers being duly sworn deposes and says:-

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

A. 1. 52 years old; Lumberman; Winton, Hertford County, N. C.; I know the Plaintiff.

Q. 2. Did you have any consultation with Mr. P. B. Sales, the alleged purchaser of the Burrough's tract of land which is the subject of this suit, after he had bought it December 10th, 1894, and, if so, state what that conversation was, where it was and all about it.

(This question objected to by Defendant's counsel because calling for an answer which would be hear-say testimony, unless there was proof that Mr. Bruce, the Defendant, was present at the time of the alleged conversation.)

A. 2. I did after the 10th of December---sometime in January '95. I went to the city of Norfolk, and I asked Mr. Sales if this timber was for sale, and he said it was. I asked him if he would name a figure on it, and he said he could not without seeing his partner or his friend---I do not know which he called him---and I remarked to him that it was inconvenient and expensive ^{for} me to go to Norfolk, and could we not see his partner while we were in the city at that time and have some understanding about it. He told me his partner did not live in Norfolk, but lived in Suffolk---or his friend I dont recollect which, and after seeing his partner that he would correspond ~~with~~ with me and let me know what price they would take; and he corresponded with me after that. I think that is about all the conversation.

(This answer objected to by Defendant's counsel as being hear-say testimony.)

Q. 3. Where did he say his partner or friend lived ?

(This question objected to by Def. counsel as ^{calling for} ~~being~~ hear-say testimony.)

A. 3.

In Suffolk.

(This answer objected by Def. counsel as being hear-say testimony.)

Q. 4.

Did you receive any letter from Mr. Sales on that subject ?

(This question objected on same ground as above)

A. 4.

Yes, Sir.

(This answer also objected to on the same ground as above.)

(The counsel for the Plaintiff here hands the witness a letter)

Q. 5.

Look at this letter and see if you identify this as the letter from Mr. Sales, dated Febry. 16th, 1895, and filed as "Exhibit B".

(This question objected to by Def. counsel as calling for hear-say testimony, and "Exhibit B" objected to because of being hear-say.)

A. 5.

This is the letter.

(The letter is here filed and marked "Exhibit B".)

(The Def. Counsel object to the filing of this letter on the ground of its being irrelevant and hear-say.)

Signature waived by consent of counsel.

Mr. John Cowland being duly sworn deposes and says:--

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

A. 1. 48 years old; occupation, surveyer and contractor, and I have been getting lumber a good deal. ~~xxxxxxx~~ I live in Suffolk now. ; Yes, Sir.

Q. 2. State whether you had any conversation with Mr. B. M. Bruce before the sale of the Burrough's tract of land, or on the day of the sale of the Burrough's tract of land on Dec. 10th, 1894, in regard to the survey of this land, and what that conversation was.

A. 2. I did have a conversation with him. The day of the sale that the tract of land was bid off for \$2100.00 by Mr. B. M. Bruce I was on the Court House yard in Suffolk, and the price was so very low for that valuable tract of land that it set me to looking for a bidder---for somebody to buy it to give more than that for it; and in my remarks about the value of the land and what was on it Mr. Bruce approached me, and asked me to say nothing about it, that it was his bid, and if he bought the land he would give me all the surveying to do, and there would be a good deal of work for me to do. Upon that promise I ceased from talking then about the value of the land and what was on it. A short time after that Mr. John A. Gum offered Mr. B. M. Bruce \$100.00 advance on his bid. Mr. Bruce appeared as though he would sell it, but wanted the cash. Mr. Gum refused, i. e. did not tender him the cash, and he wanted to wait until the sale was confirmed. Upon that condition Mr. Bruce would not agree to wait. Then, I expected Mr. Bruce to give me the work to do, but the sale was not confirmed, and along from time to time probably a month or sometime to 2 mos. when I would see Mr. Bruce I would speak to him about the surveying or something about the land, and he would put me off, and finally he told me that he was on a deal with Camp, and that the sale had not been confirmed. It went on at that some

time until after a while he told me that he was out of it; that the Camps had bought it; and I think the next conversation I had with him was, that the land was going to be sold again. I went down to the sale of it and he told me this time that he had a man at his back with plenty of money; he went going to fool with the Camps any longer. I asked him who the man was, and he told me it was Mr. P. B. Sale of Norfolk---a man that owed ⁿ 17 bar-rooms. I went to Mr. Sales to secure the job of surveying from him before the sale. He told me it would be all right if he bought it, but Mr. Bruce would attend to it; and after the sale was over I went to him again after it was knocked off to Mr. Sales; I then went to Mr. Sales and him and Mr. Bruce were together, and he (Bruce) told me it would be all right, that he would give me the work to do. Then a month or more sometime after Mr. Bruce said he expected that the Camps would put in another upset bid; and after a while probably a month or two more he told me that they had put in another upset bid, and that he was going to raise it again. He seemed to intimate from his conversation that Mr. Holland was aiding Mr. Camp or wanted Mr. Camp to buy it, and said he was going to Mr. Prentiss to see about it. Mr. Holland went off to the springs and while ~~Mr.~~ Holland was gone to the springs he said he was going to Judge Prentiss and get Judge Prentiss to confirm the sale; and a short time after that---I dont know whether it was before Mr. Holland come back or not, but Mr. Bruce told me that the sale had been confirmed for \$4800.00 and some dollars; I wont be positive about the odd dollars; I think it was \$4850.00; and that he wanted me to look into the survey, notes or boundaries and examine the record about the boundaries---if there were any---to prepare to go and survey it. I went to the clerk's office to examine the records, and I went to Judge Kilby's and got an old map and survey, or rather I applied to Judge Kilby for it---Wm. B. Whitehead's old map of it---and I began to survey on the 24th day of September 1895, but I never completed the survey, be-

cause Mr. Bruce failed to furnish me the help to complete the same. (So much of the above answer as purports to relate conversations of the witness not had in the presence of defendant is objected to as hearsay.)

Q. 3.

Did Mr. Bruce or on about the sale on December 10th 1894 ask you not to say anything about the value of this land ?
(This question objected to by Def. counsel as being leading.)

A. 3.

He did.

CROSSED-EXAMINED by DEFENDANT'S COUNSEL.

Q. 1.

Are you and Mr. Bruce now on good terms ?

A. 1.

Well, I dont love him, fear him, or hate him, so far as that goes.

Q. 2.

Is it not a fact that you are not now on good terms ?

A. 2.

I dont think we are.

Q. 3.

How long have you been out with each other ?

A. 3.

Ever since he failed to comply with his contract.

Q. 4.

To what contract do you allude ?

A. 4.

The survey contract with me about the same land.

Q. 5.

What was the true cause of your not finishing the survey of that land ?

A. 5.

I have already stated that he failed to furnish me the necessary ~~xxxxxxxx~~ assistance and help to complete the work.

Q. 6.

How long did you work after you began the survey ?

A. 6.

I dont recollect exactly---about 10 or 11 days including my work on the map; and in looking up the notes and all I ^{supposed} lost probably some 12 or 14 days including the whole time.

Q. 7.

Is it not a fact that Mr. Bruce discharged you from further work in surveying that land ?

A. 7.

Well, he failed to furnish the hands to help me, and said he was going to get somebody else to do the work. Part of the time I was at work I had one hand, sometimes two or three.

Q. 8. Is it not a fact that during the time you were engaged in making that survey that you ~~xxx~~ were in a state of intoxication to that extent that you could not make a proper survey ?

A. 8. No, Sir.

Q. 9. Mr. Cowland, I have to caution you. Were you not intoxicated at any time during the 10 or 14 days that you were engaged in making that survey ?

A. 9. No, Sir.

Q. 10) Did you not go to Mr. Bruce's store during that time in a state of beastly intoxication ?

A. 10. No, Sir, I did not, and I can prove it by the axemen and chain bearers, that I did not drink a drop of liquor while I was on that survey, and the man or men, who, says I did, lies.

Q. 11. Did not Mr. Bruce tell you that if you kept in the state of intoxication that he could not allow you to make that survey ?
(All of these questions objected ^{to} by the counsel for the plaintiff as being totally irrelevant to the point at issue.)

A. 11. No, Sir.

Q. 12. Did he not discharge you on account of your being intoxicated ? (This question objected to by plaintiff's counsel on same ground as above.)

A. 12. No, sir.

Q. 13. It is a fact, is it not, that Mr. Bruce wanted that land surveyed ?

A. 13. Yes, I suppose he did; he wanted it surveyed.

Q. 14. Then, why did he discharge you if you were prosecuting your work in a creditable manner ? (This question objected to by the plaintiff's counsel on the same ground as above.)

Q. 14. I dont know; he seemed to be dissatisfied with the progress we were making. As I said before some days we had one man, and some days two, and some three, and with only one man a

surveyer could make very slow progress cutting through reeds 10 and 12 ft. high---too thick for a man to walk through without cutting his way. Mr. Bruce did complain about getting along very slow, but one man stuck a reed in his hand and he had to leave, and one man give as excuse that he had a sick wife and had to knock off, and with but one man left my progress was so slow that I come out on Friday night and never went back any more, and next day was Saturday and I applied to Bruce for some money and he put me off and disputed the time that the men had worked in the swamp, and on Saturday evening he paid me a part of what he owed me. I went to him the following Monday a week to complete the work, and he said he was going to get another man.

Q. 16. How often did Mr. Bruce go down to the Burrough's tract while you were making that survey.

A. 16. He went with me the first day to begin at Jones' Corner, and that was the only day that he ever went in the swamp while I was there.

Q. 17. On the Saturday that you have alluded to that you went to the store of Mr. Bruce and asked for money, is it not a fact that Policeman Matthews of this town was sent to that store to arrest you for drunkenness and disorderly conduct.
(All these questions objected to by the Plaintiff's counsel as being irrelevant.)

A. 17. Matthews did come there, but I was not drunk or disorderly either. Bruce refused to pay me my money, and I went with Matthews to the mayor, and I did go back to Bruce's store and got the one-sided settlement that he choose to give, but he broke his contract and aint filled it yet.

Q. 18. And then you became very angry with him, did you not ?
(This question objected to by the Plaintiff's counsel on the same ground as the above.)

A. 18. Yes, I was angry with him.

Q. 19. Have you not been since that time, and are you not now angry with him ?

A. 19. Yes.

Q. 20. How did you come to testify in this case ?

A. 20. I was notified to appear here by Mr. Holland and Mr. Camp.

Q. 21. Do you know what case you are testifying in ?

A. 21. I suppose it is over the sale of the Burrough's tract of land.

Q. 22. Did you approach Mr. Camp in reference to this matter, or did he approach you, or neither ?

A. 22. Mr. Camp approcahed me.

Q. 23. Had you informed Mr. Camp of this knowledge you had about this matter before he approashed you ?

A. 23. I have not.

Q. 24. Do you know how Mr. Camp knew that you knew anything about this matter. (This question objected to by the Plaintiff's counsel as being irrevelant.)

A. 24. Mr. Camp heard me talking to Mr. Wash. Dennis---I think Mr. Camp was at the depot, and heard me talking to Wash. Dennis or Barton, or some one;--I think it was Wash. Dennis, about the Lumber on the Lee farm and about surveying the Lee farm, and adjoining this land that Bruce had bought, and about running a line between this Lee farm and the Burrough's land. Then, Mr. Camp asked me some questions about the swamp, and about the land, and about the timber, and about the sale of it.

Q. 25. When did all this take place ?

A. 25. I think it was sometime before, or about the time, I reached the Lee farm in the survey.

Q. 26. Well, when was that ?

A. 26. Sept. 1895.

- Q. 27. Which Mr. Camp do you refer to ?
- A. 27. This gentleman here, Mr. Paul Camp I think.
- Q. 28. Did you then and there repeat to him all the conversations that you had or claim to have had between Mr. Sales and Mr. Bruce as given in your answer No. 2.
- A. 28. I dont think I did.
- Q. 29. In the lengthy answer to question No. 2 of the direct examination you state a number of different conversations, which you say you have had both with Mr. Sales and Mr. Bruce in reference to the survey of this land. Did you take any written memorandums of any of these conversations, or are you only now speaking from memory ?
- A. 29. I took no writing of it.
- Q. 30. Then, you were only speaking about these conversations from memory ?
- A. 30. Those conversations occurred as often sometimes as once a fortnight about the land and what was on it.
- Q. 31. My meaning is, then you are speaking of these conversations from memory only, are you not ?
- A. 31. Yes.
- Q. 32. Do you recollect the dates of these different conversations the month or time ?
- A. 32. They were going on for nearly a year.
- Q. 33a. Then, you dont recollect the time at which you had these different conversations mentioned in your answer to the 2nd question ?
- A. 33. No.
- Q. 34. Do you pretend to give any exact language used in any of these conversations ?
- A. 34. I did.

Q. 35. Do you mean to say that you did give the exact language in your answer to the 2nd question ?

A. 35. Part of it I did .

Q. 36. What was the exact language that Mr. Sales used when you approached him and asked him to give you the survey of the land ?

A. 36. He referred me to Mr. Bruce---that Mr. Bruce would attend to that part of it---to see Mr. Bruce.

Q. 37. So the language used in your answer just above is the exact language used by Mr. Sales when you approached him in reference to giving you the survey of this land ?

A. 37. I think it is.

Q. 38. How many years ago did this conversation between Mr. Sales and yourself take place ?

A. 38. I dont recollect exactly; it was the day he was up here; you can tell that by the date of the sale. *I did not tax my memory with the date of every sale.*

Q. 39. Do you know what year it was ?

A. 39. 1894.

Q. 40. Was it in the fall or in the spring ?

A. 40. It was in the fall 1894 or the spring of 1895.

Q. 41. That is about as near as you can come to it with your memory ?

A. 41. Yes.

Q. 42. Well, are there any other of the conversations, which you refer to in your answer to the 2nd question in chief between Mr. Sales or Mr. Bruce and yourself, the exact language of which you can give now ?

A. 42. Yes, I told you if you will look in that 2nd ~~question~~ answer to Judge Prince's question you will find each conversation as it is coupled along before and after each sale.

Q. 43. What I am asking you about is the different language in the different conversations. Do you remember the exact language of any of those conversations other than ^{the exact} language, which you state was used in answer to my previous question?

A. 43. I dont think I give half of what was said. I give as near the meaning of what I could recollect as I could.

Q. 44. Then, you dont remember the exact language of any of these conversations other than the one ^{single} ~~little~~ conversation, in which you have given, as you state, the exact language?

A. 44. I had a conversation with Mr. Sales of Norfolk, and he stated that Bruce would attend to it.

Q. 45. I am not asking you the substance, but the exact language used in these conversations. Can you give that?

A. 45. I told you that I had given it as near as I could.

Q. 46. Do you remember what you said a short while ago as appears in your answer to the 2nd question asked you by Judge Prince in the above deposition in reference to the conversations, which you claim to have had with Mr. Sales and Mr/ Bruce in connection with this land?

A. 46. I dont think I can give you the exact words of my language, but I could come pretty near it.

Q. 47. Did you not come up to Mr. E. E. Holland, the attorney for the plaintiff in this case, and volunteer to him the information, which you testify to here today?

A. 47. No, Sir.

Q. 48. Have you not ever told Mr. Holland what you were going to testify in this case? (This question is objected to by the plaintiff's counsel as being irrelevant.)

A. 48. I dont think I have; I have not told him before.

Q. 49. Then, you admit having talked to him on this subject before you testified? (This question is objected to by the plaintiff's counsel as being irrevelant.)

A. 49. When I was in Mr. Holland's office the day set to take the deposition I asked Mr. Holland when it postponed when the case would be called again.

Q. 50. And this is the only conversation that you ever had with Mr. Holland on this subject, is it ? (This question objected to by plaintiff's counsel on the same ground as above.)

A. 50. No, Sir.

Q. 51. Well, state what conversation you had and ~~what~~^{when} it was.
~~That~~ (This question also objected to as being irrelevant.)

A. 51. Mr. Holland saw me on the street and asked me if I saw Mr. Nelms to tell him to come to the office when the case was set before to come here to testify, and I saw Mr. Nelms and told him to come here like Mr. Holland asked me.

Q. 52. You have been on the Burrough's tract of land, have you ?

A. 52. Yes, Sir.

Q. 53. Do you consider it a valuable tract of land ?

A. 53. I do.

Q. 54. Will you state what gives it its value ?
^{chief}

A. 54. Its timber and its rich soil.

Q. 55. Is it mostly wood-land ?

A. 55. Chiefly reed swamp.

Q. 56. Is it not well covered with timber ?

A. 56. Well, there has been a vast quantity cut of it, but still there is good quantity of Gum, ~~P~~Op^olar, Maple, Pine, Oak, and other woods that may become valuable.

Q. 57. Is any of that land under cultivation ?

A. 57. I dont think there is but little of it if any. I believe that old man Harris did cultivate a little field in there.

(Signature waived by consent of counsel)

Mr. E. E. Holland being duly sworn deposes and says:--

(Questioned by Plaintiff's Counsel.)

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

A. 1. 36 years old; attorney at law; Suffolk; and I know the parties to this suit.

Q. 2. You were the Commissioner of Sales for all the sales made of the Burrough's land in the suit of Ranstead Vs. Ranstead, to whom we have referred heretofore ?

A. 2. I was.

Q. 3. At the sale made on the 10th of December 1894 who was the land knocked out to according to your recollection ?

A. 3. My recollection is, that at that sale Mr. P. B. Sales made the highest bid and the land was knocked off to him by the auctioneer.

Q. 4. Who complied with the terms of that sale and executed the bonds for the deferred payments ?

A. 4. Soon after that time, I do not remember the exact date, I asked Mr. B. M. Bruce, whom I saw on the date of the sale in conversation with Mr. Sales, in whose name the sale should be reported, and Mr. Bruce instructed me to report the sale in his name, and a few days afterwards came into the office, made the cash payment and gave his bonds for the deferred payments. I presumed that Mr. Bruce, whom I knew well, had seen Mr. Sales, and that this was the arrangement between them and was satisfactory. I have not since that time heard a word from Mr. Sales with reference to the matter.

CROSSED-EXAMINED by DEFENDANT'S COUNSEL.

Q. 1. The land was knocked out at the public sale to Mr. P. B. Sales ?

A. 1. That is my recollection.

Q. 2. If you had not then heard from Mr. Bruce a few days afterwards, would you not have reported Mr. P. B. Sales as the purchaser?

A. 2. I should have done so, and I would not have reported Mr. Bruce as the purchaser thereof, if I had not known him well and if I had not believed ~~him~~, having seen him with Mr. Sales on the date of the sale, that it was satisfactory both to Mr. Sales and Mr. Bruce.

Q. 3. How many days ~~xxxx~~ was it after the sale before Mr. Bruce first approached you?

A. 3. I can't recollect the exact number of days.

Q. 4. Was it as much as 10 days?

A. 4. I could not say. The conversation to which I refer took place in the barber shop.

Q. 5. After the sale did not Mr. Sales himself ask you if he made the arrangement any time within 10 or 12 days if that would answer?

A. 5. It may be true that he did, but not having charged my memory with it I do not recollect *it*.

(Signature waived by consent of counsel.)

1. 1

In your last letter, you stated that you had been thinking of writing me for some time, but had been so busy that you could not find time to do so. I am glad to hear that you are now able to find time to write to me.

2. 1

I should have been glad to hear from you sooner, but I have been so busy that I have not had time to write to you. I am now able to find time to write to you.

Yours very truly,

3. 1

My dear friend, I have been thinking of writing you for some time, but have been so busy that I have not had time to do so. I am now able to find time to write to you.

4. 1

I have been thinking of writing you for some time, but have been so busy that I have not had time to do so. I am now able to find time to write to you.

5. 1

I have been thinking of writing you for some time, but have been so busy that I have not had time to do so. I am now able to find time to write to you.

6. 1

I have been thinking of writing you for some time, but have been so busy that I have not had time to do so. I am now able to find time to write to you.

7. 1

I have been thinking of writing you for some time, but have been so busy that I have not had time to do so. I am now able to find time to write to you.

8. 1

I have been thinking of writing you for some time, but have been so busy that I have not had time to do so. I am now able to find time to write to you.

I have been thinking of writing you for some time, but have been so busy that I have not had time to do so. I am now able to find time to write to you.

9. 1

10. 1

THE FURTHER TAKING OF DEPOSITIONS FOR THE PLAINTIFFS
IN THE SUIT OF CAMP AND OTHERS AGAINST B. M. BRUCE, TAK-
EN ON THIS, THE 9th DAY of OCTOBER 1896, pursuant to ad-
journalment on the 25th day of September, 1896.

PRESENT:-- E. E. Holland and J. B. Prince, attorneys
for the plaintiffs, and R. H. Rawles and A. B. Seldner,
attorneys for the defendant.

Mr. S. P. Vanderslice being duly sworn deposes and says:--

Q. 1. State your ^{name,} age, residence, occupation, and whether you know
the parties to this suit.

A. 1. S. P. Vanderslice; I live in the town of Suffolk; 31 years
of age; attorney at law; I know the parties to this suit.

Q. 2. State whether you drew up ^{an} ~~an~~ upset bid for the resale of
the Burrough's tract of land in the suit of Ranstead Vs. Ran-
stead.

A. 2. I did not draw up the upset bid myself. I was employed
through Judge Rawles to represent Mr. Sales of Norfolk to put
in an upset bid on what was commonly called the Burrough's
tract of land. I think the upset bid was prepared by Judge
Rawles. I submitted it to the court and it was accepted. I
received a letter from Mr. B. P. Sales confirming my employ-
ment by Judge Rawles to represent ~~me~~ him in the matter. My
impression is that the upset bid was sent me in a letter from
Mr. Sales. I received two letters from Mr. Sales, one of
which I cannot find.

(The letter here referred to is made a part of the deposition)

(The witness has examined his papers and states now that he
cannot find either one of the letters here referred to.)

Q. 3. Have you ever been paid for that upset bid, and, if so, who
paid you?

A. 3. Yes, Sir. Well, I never expected the matter to be brought
up. My impression, as well as I can remember, is this:-- I
drew on Mr. Sales for my fee. The draft was returned as well
as I remember. I received a letter from him, in which he said

that I could present my Bill to Mr. Bruce and he would settle. I remember the letter distinctly, but I don't remember the contents, except the post-script; I can recollect that. I had that letter in my hand only a few months ago.

CROSS) EXAMINED BY THE COUNSEL FOR THE DEFENDANT.

Q. 1. Mr. Vanderslice, you are an attorney-at-law ?

A. 1. Yes, Sir.

Q. 2. When Judge Rawles approached you in reference to representing Mr. Sales in the matter of this upset bid, did you agree to being employed by Mr. Sales for this purpose at this time?

A. 2. I did. I told Judge Rawles it would be all right.

Q. 3. Then, from that day you were Mr. Sales' attorney in this matter ?

A. 3. After the confirmation by letter from Mr. Sales.

Q. 4. I suppose you mean the first letter you received from Mr. Sales was the confirmation of your employment ?

A. 4. Yes, Sir.

(Counsel for the Defendant appeared and desired to note an objection to all of the testimony of the witness in reference to or connected with the filing of this upset bid for Mr. B. P. Sales on the ground that all communications between Mr. Sales and himself in reference to this matter are privileged communications between client and attorney, and without waiving objection, counsel for the Defendant here proceed to further cross-examine the witness.) (Counsel for the Plaintiffs insist that it is proper evidence, because neither Mr. Sales nor Mr. Vanderslice claimed the privileges.)

Q. 5. Did not Judge Rawles state to you at the time he had a conversation with you in reference to representing Mr. Sales in the matter referred to, that Mr. Sales had requested him (Judge Rawles) to put in this upset bid, but that he (Judge Rawles)

was not in a position to represent him in this matter, as he represented Mr. Bruce, and that Judge Rawles had given Mr. Sales his (Mr. Vanderslice's) name as an attorney to represent him ?

A. 5. Yes, Sir, I think he did.

Q. 6. Do you remember the day on which you received your first letter from Mr. Sales in reference to the putting in of this upset bid ?

A. 6. September 6th, 1894.

Q. 7. Subsequent to that date did you also receive letters from Mr. Sales in reference to representing him in this matter ?

A. 7. No, Sir. I received one after the matter had been closed up----after the bid had been accepted and the resale ordered by the court.

Q. 8. You said something just now about the payment of your Bill for services rendered Mr. Sales in the matter of ^{said} ~~the~~ bid. Do you recollect whether this was paid by Mr. Sales or not ?

A. 8. I cant say that it was.

Q. 9. Can you say it was not ?

A. 9. I cannot say that it was not.

Q. 10. Then, you are not sure as to who paid the Bill ?

A. 10. No, Sir. I know that my first draft on Mr. Sales was re-
ever
turned----Whether I [^]made another or returned that one for pay-
ment I dont remember. I know acting under the instructions in his letter to me I called on Mr. Bruce for settlement, but cannot say whether Mr. Bruce paid it.

Mr. P. D. Camp recalled by Plaintiffs' Counsel.

(The counsel for the Defendant object to Mr. Camp being recalled to testify, because the witness has already testified in chief, and his testimony cannot be in rebuttal, the Defendant having as yet placed no witness on the stand.)

P. D. Camp being duly sworn deposes and says:--

Q. 1. Mr. Camp, Have you been ready at all times since the execution of the contract between yourself, W. N. Camp and B. M. Bruce in regard to the purchase of this Burrough's tract of land to comply with the terms of that contract, and are you now ready ?

A. 1. Yes, Sir. We have been ready and willing ever since we made the contract to comply with the terms of that contract.

Q. 2. It seems from your testimony heretofore given that you bid upon the property after the upset bid claimed to have been put in by ^{Mr. B. P. Sales} ~~Mr. Bruce~~ was accepted by the court and a resale ordered ?

A. 2. We bid upon the property at the time because we wanted the property and did not know but that it might go into other hands, and we intended at all times to make Mr. Bruce if we could comply with the terms of that contract.

CROSS-EXAMINED BY DEFENDANT'S COUNSEL.

(Without waiving the objection heretofore noted to the witness testifying, the Counsel for the Defendant proceed to cross-examine the witness.)

Q. 1. At the last sale of the property, Mr. Camp, was there anybody bidding on the same except you and Mr. Bruce ?

A. 1. There was no bid except the \$4400.00 bid.

Q. 2. At the final sale were not the only bidders for the property you, your brother, and Mr. B. M. Bruce ?

A. 2. I do not know what sale you refer to.

Q. 3. Was not an opportunity given to you and your brother, W. N.

(5)

Camp and B. M. Bruce, the defendant in this suit, to bid against each other as to who should finally receive the title to the property in question from the special commissioner, Mr. E. E. Holland ?

A. 3. I think it was.

THE TAKING OF DEPOSITIONS, BY CONSENT OF COUNSEL, FOR THE
DEFENDANT IN THE CASE OF CAMP AND OTHERS AGAINST B. M. BRUCE
THIS 9th DAY OF OCTOBER, 1896.

PRESENT:-- E. E. Holland and J. B. Prince, attorneys for the
Plaintiffs, and R. H. Rawles and A. B. Seldner. *for the Defendant.*

Mr. B. M. Bruce being duly sworn deposes and says:--

Q. 1. What is your name, age, residence, occupation, and are you
the Defendant in this case ?

A. 1. My age is 47; will be 48 this December. My occupation is
grocery and liquor business; sometimes I sell a little Lumber;
I live in Suffolk. I am the Defendant in this case and I know
the Plaintiffs.

Q. 2. Mr. Bruce, did you enter into a contract dated the 26th day
of September 1894 with W. N. and P. D. Camp, which contract
is filed and marked "Exhibit A" with the Bill in this cause ?

A. 2. I did. The contract will show for itself.

Q. 3. Have you complied with the terms and conditions of this
contract so far as you have been able to comply with the same?

A. 3. I did.

Q. 4. Was Mr. E. E. Holland, special commissioner in the suit of
Ranstead against Ranstead and others, directed to ask that the
deed for the land mentioned in the said contract under the
sale mentioned in the same be made to W. N. and P. D. Camp,
and was Mr. E. E. Holland ~~conscious of the same~~ aware of the
said contract and the terms of the same ?

A. 4. Mr. E. E. Holland drew the contract, and if I understand it
right the deed was to be made to Mr. Camp and his brother in-
stead of me, provided the court confirmed the sale.

Q. 5. Then, Mr. Holland was aware of the terms of this contract ?

A. 5. Yes, Sir.

Q. 6. Did he know the terms of the contract on the day it was
entered into ?

A. 6. Mr. Holland wrote the contract and we signed it.

Q. 7. If the court would have confirmed the sale to you of the property mentioned in said contract, would you and your wife have united in the deed with the commissioner in accordance with the terms of said contract ?

A. 7. We would. Yes, Sir.

Q. 8. It appears from the record in the suit of Ranstead Vs. Ranstead and from the evidence heretofore taken in this cause that after you had entered into this contract of Sept. 26th 1894 that one B. P. Sales put in an upset bid for the Burroughs land. Were you any party to said upset bid, or did you have any interest or agreement with the said Sales with reference to the same at the time ^{said} ~~the~~ bid was made or previous thereto ?

A. 8. There was no agreement; I had no interest.

Q. 9. You are charged in the Bill in this cause with contriving by trickery, scheming and fraud to defeat the contract of the 26th day of September 1894. Did you in any way attempt to defeat said contract ?

A. 9. I did not.

Q. 10. Did you cause the said B. P. Sales to put in the upset bid above referred to ?

(All of these questions objected to by the Plaintiffs' Counsel as being LEADING.)

A. 10. I did not.

Q. 11. When did you first have any conversation with Mr. Sales in reference to this property ?

A. 11. I dont remember the day, but it was sometime after I bought it. He asked me what the property was worth. I told him it had been estimated to be worth about \$5000.00 or \$6000.00, but I did not put any reliance on the estimation that I heard, from the fact that I did not believe they knew much about it.

Q. 12. Was your first conversation with Mr. Sales previous to the

time of your entering into this contract of Sept. 26th 1894 ?

A. 12. Yes, Sir.

Q. 13. Do you know how Mr. Sales knew that you were interested in any way in this property ?

A. 13. He mentioned the matter to me. "I see you have bought a big tract of land," and asked what good it was, and how much I gave for it, and I told him.

Q. 14. Well, do you know how he found out how you were interested in the property?

A. 14. I cant say positively; I rather think he got it from the papers or some one here.

Q. 15a. When did you have any conversation with Mr. Sales about ~~what~~ this property.?

A. 15. I go down to Norfolk about once a week, sometimes once a fortnight. I always get my lunch or dinner at his place. He mentioned this property to me. I told him that I had sold what title I had to it, or had agreed to sell it provided the court confirmed the sale.

Q. 16. Did he at any time ask you to sell him any interest in the property before you had made this contract of Sept. 26th 94 ?

A. 16. Yes, Sir. About the time that Mr. Camp was having the land examined. He asked me to let him in for one-half of it, and I told him No.

Q. 17. Did Mr. Sales ever mention to you anything about putting in an upset bid for this property ?

A. 17. Yes, Sir.

Q. 18. When did he do that ?

A. 18. I dont remember the day or the date.

Q. 19. Previous to this agreement of September 26 or after ?

A. 19. It was previous to that, Sir.

Q. 20. Did he ever say anything to you after Sept. 26th 1894, the date of this agreement, about putting in an upset bid ?

A. 20. He told me that I would never get the \$500.00---that the land would never be sold for that money---that some one else would put in an upset bid---and that he was going to put in one.

Q. 21. What \$500.00 do you refer to, Mr. Bruce ?

A. 21. The \$500.00 that the two Mr. Camps promised me for my bid provided the sale was confirmed.

Q. 22. What did you say to Mr. Sales at the time he threatened to put in this bid ?

A. 22. I told him if he did I would be \$500.00 short.

Q. 23. Were you desirous, or did you prefer Mr. Sales not putting in this bid ?

A. 23. I asked him not to do it.

Q. 24. If he had done it you would lose your \$500.00 ?

A. 24. Yes, Sir.

Q. 25. Were you present at the sale of the property at public auction made after Mr. Sales had put in his upset bid by the special commissioner, Mr. E. E. Holland ?

A. 25. Yes, Sir, I was.

Q. 26. To whom was the property knocked down at that sale ?

A. 26. B. P. Sales.

Q. 27. At the time of the knocking down of the property to Mr. B. P. Sales were you interested in his bid ?

A. 27. No, Sir.

Q. 28. Did you then have any interest in the property ?

A. 28. No, Sir, None in the world.

Q. 29. When did you first have any interest in the property after the sale to Mr. B. P. Sales ?

A. 29. After the property was knocked out to Mr. Sales---I suppose it was a few minutes after he said to me:-- "Join me in this, and I will guarantee you against loss. You are here on the spot and can attend to it."

Q. 30. That was after the property had been knocked down to him ?

A. 30. Yes, Sir.

Q. 31. Previous thereto I understand you to say that you had no interest in any of Mr. Sales' bids for the property ?

A. 31. None at all.

Q. 32. Well, what do you mean by Mr. Sales saying that you could attend to it ?

A. 32. As I said before he told me to join him and he would guarantee me against loss, and to handle it to the best advantage.

Q. 33. What interest did Mr. Sales offer to convey to you in the property at that time ?

A. 33. One-half interest.

Q. 34. Well, will you state please what occurred after this conversation with Mr. Sales with reference to the property.

A. 34. ~~XXXXXXXX~~ Mr. Sales and I left the court house and came up town here and came to Mr. Holland's office here. Mr. Sales asked Mr. Holland if a week or 10 days would make any difference, and that in all probability he could pay the full amount. Mr. Holland I believe told him it would not make any ~~XXXXXXXX~~ difference. During that time Mr. Sales phoned me that the first payment was due---to make the payment, and take the receipt in my name as a guarantee to me for the amount invested.

Q. 25. Well, did you do that ?

A. 35. I did.

Q. 36. You accepted Mr. Sales proposition then in reference to the one-half interest ?

A. 36. I did.

Q. 37. Why did Mr. Sales desire that you should take the whole title in your own name instead of taking the title jointly ?

A. 37. He had some financial trouble and did not have the money at that time to comply with the terms of the ~~xxxxxxx~~ sale.

Q. 38. You are the owner at present of the property, are you not, Mr. Bruce ?

A. 38. I am.

Q. 39. Has Mr. Sales since then been in a financial position to pay his one-half of the property ?

A. 39. He says not, and I judge it is true.

Q. 40. After this property had been knocked down at this public auction to Mr. Sales, did Mess. W. N. and P. D. Camp put in an upset bid ?

A. 40. I heard so; I never saw it.

Q. 41. Mr. Bruce, did you pay Mr. S. P. Vanderslice a Bill for his services for putting in the upset bid of Mr. Sales ?

A. 41. I did not.

Q. 42. Have you ever paid to Mr. Sales or to any one else the Bill of Mr. Vanderslice or any part of it ?

A. 42. Mr. Sales handed me \$7.00 or \$7.50---I dont know which--- and asked me to hand that to Mr. Vanderslice and take his receipt for it. I called at Mr. Vanderslice's office three times. I was in Norfolk the day after the last time I called at his office---Mr. Sales said:-- "You have neglected to pay Mr. Vanderslice his charges. His draft is here. I owe you a little Bill for some Hams you shipped me sometime ago and you can credit my Bill with that.

Q. 43. What do you mean---with the \$7.50 ?

A. 43. Yes, Sir, either with \$7.00 or \$7.50---a little Bill for some Hams I shipped him.

Q. 44. Mr. Bruce, Mr. Camp spoke about an injunction from his going on the land. Was this injunction issued before the 26th day of September 1894, and, if so, state how you came to get the injunction ?

(The Plaintiff's Counsel object to this question on the ground that the record of that case will show all about it and is the best evidence.)

A. 44. I guess that the injunction was gotten out sometime previous to that. Why I got out the injunction was that Mr. Camp's agent was cutting bush tracks through the land for the purpose of examining the timber---I objected to it---That is why I got out the injunction.

~~xxxxx~~. (It is hereby agreed that either party may introduce as ~~xxxx~~ evidence such parts of the records and papers as they desire in the chancery cause of B. M. Bruce Vs. W. N. Camp and others lately pending in the circuit court of Nansemond County.)

Q. 45. Mr. P. D. Camp in his testimony in this cause stated that he remarked to you that it looked as if you and Mr. Sales were bidding together. Do you remember any such remark, and, if so, what was your reply to the same ?

A. 45. ~~I thought you were in this.~~ Mr. Camp remarked to me:-- " I thought you were in this." I said I had nothing in the world to do with it. Mr. Sales remarked to Mr. Camp that if he wanted the property why did he not bid on it.

Q. 46. Then, you denied to Mr. Camp that you and Mr. Sales were bidding together.

A. 46. That is right, Sir.

Q. 47. Were either of the Mr. Camps bidding at the sale ?

A. 47. Yes, Sir.

Q. 48. Did you notice either Mr. P. D. or Mr. W. N. Camp in conversation with any other bidder at that sale during the progress of the sale ?

A. 48. Mr. Camp and Mr. Nelms---I wont be sure---but I think they

were talking together at one time.

Q. 48. ^{1/2}

Was Mr. Nelms also a bidder on that day ?

A. 48. ^{1/2}

Yes, Sir.

Q. 49.

Mr. Cowling in his testimony in this case stated that he went down to the sale of the property and you told him at that time that you had a man at your back with plenty of money and that you were not going to fool with the Camps any longer. Did you make any such remark ?

A. 49.

~~Yes, Sir.~~ I did not.

Q. 50.

Did you make a remark to the effect that the man was Mr. B. P. Sales of Norfolk---a man that owned 17 bar-rooms?

A. 50.

No, Sir. I don't know how many bar-rooms he owns. Mr. Cowling is mistaken.

Q. 51.

Did you require Mr. Sales or any one else to assist you in the purchase of this property?

A. 51.

I never bought a piece in my life I could not pay for.

Q. 52.

You could have paid for this property, could you not ?

A. 52.

Yes, Sir.

Q. 53.

Did you not ^{eventually} ~~was~~ pay for it yourself without the assistance of Mr. Sales or any one else ?

A. 53.

Yes, Sir.

Q. 54.

Mr. Bruce, did either Mr. W. N. Camp or P. D. Camp ever approach you and make an offer to you to comply with their part of their agreement of September 26th 1894 ?

A. 54.

No, Sir. After the sale there was nothing to comply with.

Q. 55.

When did you first have any intimation that Mess. W. N. and P. D. Camp intended holding you liable under this contract of September 26th 1894 ?

A. 55.

I don't remember the day nor the date. I could not tell you who I first heard it from, but I heard it a number of times on the street and in my store.

Q. 56. Did you have any knowledge from either Mr. P. D. or Mr. W. N. Camp of their intention to hold you to this agreement or to hold you liable for damages in reference to the sale until they brought the damage suit against you ?

A. 56. No, Sir.

Q. 57. Did either of them make any demand on you for the property after you had finally bought it from Mr. Holland, special commissioner, until this present suit in chancery was brought ?

A. 57. No, Sir.

Q. 58. Then, the only demand, if I understand you correctly, Mr. Bruce, made by Mess. W. N. and P. D. Camp requiring you to convey this property to them, or the only proceeding mentioned by them to that effect, is this present suit in chancery ?

A. 58. Yes, Sir.

Q. 59. What was the character of this land ?---This Burrough's tract, and what is its chief value ?

A. 59. It is low land. Its chief value consists of timber according to my judgment.

Q. 60. When did you first examine this land, Mr. Bruce ?

A. 60. I had the land partly examined a little while after Mr. Sales became the purchaser. Before I got through I heard that Mr. Camp had put in an upset bid---I let the matter drop.

Q. 61. Is this the first examination that you have made ?

A. 61. Yes, Sir.

CROSS)EXAMINED by PLAINTIFFS' COUNSEL.

Q. 1.

Mr. Bruce, Mr. Colwing says in his examination that after the land was knocked off to you at \$2100.00 that he was speaking about the value of the land and what was on it, and that you approached him and asked him not to say anything about it. Is that a fact or not ?

A. 1.

Mr. Jno. A. Gum was the first man that spoke to me. I told Mr. Gum that I would take \$100.00 for my bid. I saw Mr. Gum about four minutes---He asked me if I would leave the offer open---I told him No, it was too uncertain. On my way coming out of the gate---about 10 yards outside of the Gate---I met Mr. Cowling. He began to tell me of the valuable timber that was on ^{there} ~~there~~, and he asked me to give him the job of surveying. I told him I would just as leave give it to him as anybody. I never approached anybody.

*Q. 1 1/2 Then you deny having told him to say nothing about what was on it ?
A. 1 1/2. I do, sir.*

Q. 2.

Mr. Bruce, you state in your examination in chief that you sold your bid of \$2100.00 to Mess. Camp for \$2600.00. How do you explain that you were so soon afterwards willing to give \$4850.00 for this property ?

A. 2.

I knew nothing of the value of the land when I first bought it, but after having the land examined by competent judges, I was satisfied it was worth what I paid for it.

Q. 3.

Did you find that out before or after you sold your bid to Mr. Camp ?

A. 3.

Afterwards, Sir.

Q. 4.

Why were you examining the land after you sold your bid ?

A. 4. I never examined the land during that period that that contract existed.

Q. 5. What interest did you have in it then after you sold your bid to Mr. Camp ?

A. 5. I examined the land after Mr. Camp had put in his upset bid. I was satisfied it was worth the money I paid for it.

Q. 6. Mr. Bruce, you have stated in your examination in chief that you took 1/2 interest in this farm soon after Mr. Sales became the purchaser ? That was before Mr. Camp put in his upset bid. Now explain why it was that you were willing to pay almost double of what you first bought the land for and what you sold to Mr. Camp for before you made any examination of the land at all ?

A. 6. Mr. Sales guaranteed me against all loss if any---to manage the land and sell it to the best advantage. I did not consider that I was running any risk.

Q. 7. Did he give you a written guarantee ?

A. 7. No, Sir; his word is enough for me; I have known him all my life.

Q. 8. Mr. Bruce, did you not go to Norfolk after you had made the contract with Mr. Camp of Sept. 26 1894 and before the upset bid of Mr. Sales was put in and in company with Mr. Sales and Mr. T. H. Wilcott, attorney-at-law in Norfolk, arrange to have this upset bid put in.?

A. 8. I did not, sir. I never knew Judge Wilcott for sometime after that. If I met him on the street I would not have known

him.

Q. 9. Mr. Bruce, You have just stated that you took one-half interest in this property because Mr. Sales guaranteed you against loss, and that you made no examination of the property until after Mr. Camp put in his upset bid. Did you not then know before this upset bid was put in by Mr. Camp that Mr. Sales had made an assignemnt and was insolvent ?

A. 9. I knew nothing of Mr. Sales' financial condition. I looked upon him as "A. 1.", and I believe he will pay every dollar that he owes if he owes any.

Q. 10. Did you not state in your examination in chief that you complied with the terms of the purchase because he informed you that he was financially embarrassed or in financial trouble ?

A. 10. I stated that he asked me to make the payment and take the receipt in my name as a guarantee to me, and the reason he did not comply was because he had some financial trouble. That is likely to occur with any of them.

Q. 11. Then, you did make the cash payment of \$2000.00, and did give your bond for the deferred payment of \$2000.00 without ever having made any examination of this property ?

A. 11. I did, Sir.

Q. 12. Did you or did you not approach Judge Rawles of Suffolk and ask him to put in an upset bid for you for this property before the upset bid was put in by Mr. Sales?

A. 12. Not for me; No, Sir.

Q. 13. Did you for any one ?

A. 13. Let me see---I repeated a conversation I rather think with Mr. Rawles. Mr. Sales asked me when in Norfolk who was my attorney here---who was the proper man. I recommended Mr. Holland, Mr. Rawles and Mr. Briggs, as they had all attended to legal business for me ~~that~~ and had done it satisfactorily.

Q. 14. Do you know why Mr. Sales put in an upset bid of \$2600.00, which was the amount you had sold out to Mr. Camp for, when \$2300.00 would have been an upset bid ?

A. 14. I do not , Sir.

Q. 15. Do you know how Mr. Sales came to know that you sold out to Mr. Camp for \$2600.00 ?

A. 15. I told him.

Q. 15. 1/2 And you and Mr. Sales had several talks about this matter after the sale to Mr. Camp of your bid and before the upset bid of Mr. Sales was put in ?

A. 15. 1/2 To the best of my memory he only talked once to me in regard to the upset bid.

Q. 16. Explain, Mr. Bruce, why it was that you were present at the sale of December 10th, 1894 with Mr. Sales during the entire time the sale was conducted, and why it was that you were with him after the sale until he (Sales) left town.

(This question objected to by Defendant's Counsel on the ground that there is no testimony showing that such was the fact.)

A. 16. He wrote me to meet him at the train---that he had never been to Suffolk, and that he wanted me to show him around, which I did do.

Q. 17. Do you mean to say that Mr. Sales bought a piece of land in Nansemond County, or offered to put in an upset bid for and bought a tract of land in Nansemond County, which he had never seen and had never examined, and had never been to the county seat of the County ?

A. 17. I can only judge by his act.

Q. 18. And you mean to say that that was his act ?

A. 18. Yes, Sir, to the best of my knowledge.

Q. 19. Were not you and Mr. Sales together at the time the land was cried for sale on December 10th, 1894, and did not you and he consult with reference to the bids made ?

A. 19. No, Sir; not until the sale was over did we have any talk at all. I introduced him to Col. Smith.

Q. 20. Did you make to him any representation as to the value of the property, or any statement as to its value ?

A. 20. No, Sir, I did not.

Q. 21. After the land was knocked off to Mr. Sales, was not the sale reported in your name at your suggestion upon the statement from you that Mr. Sales had advised it ?

A. 21. Mr. Sales asked me to make the payment, and take the receipt in my name as a guarantee.

(15.)

Q. 22. Did you not at the time you made the payment give your bonds for the deferred payments of the purchase price of the property ?

A. 22. I did..

Q. 23. Did you likewise have Mr. Sales' guarantee for the repayment of the amount of these bonds ?

A. 23. I had his word.

RE-EXAMINED by DEFENDANT'S COUNSEL.

Q. 1. Did you buy the land in question without an examination either on your part or by any agent of yours at the first sale?

Q. 1. Yes, Sir.

Q. 2. Do you know of your own knowledge whether or not Mr. Sales made any examination of the property previous to his putting in the upset bid?

Q. 2. I do not.

~~THE~~ (The End.)

CAMP vs. BRUCE.

D. M. No. 74 Ca.

From the Circuit Court of the County of Nansemond.

IN THE
SUPREME COURT OF APPEALS
OF VIRGINIA,
AT RICHMOND

CAMP vs. BRUCE.

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

W. N. Camp and Paul D. Camp respectfully represent that they are aggrieved by a final decree of the Circuit Court of Nansemond county, entered on the 11th day of December, 1896, in a suit therein then pending, in which your petitioners were complainants and B. M. Bruce was defendant. A copy of the record is herewith presented.

Your petitioners filed their bill in the said court on the 18th day of May, 1896, against the defendant, in which they alleged that the defendant had, on Sep, 26, 1894, entered into a contract in writing with them in which he sold to them his right, title and interest in and to a tract of land in the said county, known as "Burroughs," containing 2900 acres, which, it seems, the defendant had purchased on June 11, 1894, at a court sale for the price of \$2,100; your petitioners agreeing to give him \$500. for his bargain, by paying to him a certain amount in cash, and by assuming the payment of the bonds which the defendant had executed to the commissioner; the defendant binding himself to direct the Special Commissioner to ask that the deed should be made to them instead of to him.

Your petitioners alleged that the defendant broke this contract

by procuring, in bad faith, a third party to put in an upset bid thereby defeating the sale to himself.

The defendant filed his answer in which he admitted the contract but denied that he procured the upset bid to be put in, and averred that it was put in by the third party but entirely without origination or collusion on his part; admitted that he was the owner of the land, and claimed that his contract with petitioners was one that it was understood between them was dependent upon the court's confirming that particular sale; that it was defeated by the filing of the upset bid in which he had no part, and that that ended the matter and left both parties to the contract to act as they deemed best in the future.

Such was the issue made up in the case between the plaintiffs and the defendant, and the only issue, and yet the Circuit Court in its decree seems to have gone outside this issue and denied to your petitioners the relief of specific execution of the contract, prayed for by them; on the ground (1) that the price was grossly inadequate—(not made an issue by the bill or the answer) (2) that your petitioners were guilty of laches in acquiescing without suit or protest in the confirmation of the subsequent sale and conveyance of the said property to defendant—(no such defence was suggested in the answer), and (3) that by entering into competition with the defendant by bidding for the property at such subsequent sale, and by the institution of an action at law for damages for the alleged breach of contract the complainants evidenced their intention to abandon their right to the specific performance of the said contract.

Now, while it is true that the defendant in his answer says he is informed that the plaintiffs were present and bid at the re-sale, December 10, 1894, and that thereafter there were several other upset bids and several other re-sales, at one of which the plaintiffs were the highest bidders, but that in the end he put in the last bid and became the purchaser at \$4850, which, he says, was largely in excess of the price he first bid it in at; yet defendant nowhere suggests or relies on these facts as constituting a defense for him to the plaintiffs' demand; on the contrary, he immediately follows this narration in the answer with the charge of averment that *if the court had confirmed his first bid then he was ready and would have carried out, in good faith, his agreement with the plaintiffs.*

It is plain to see that this was made the issue between the parties, and such being the case your petitioners represent that it was error in the Court to ignore that issue and decide the case upon other issues, which, whether material or not, were not

joined in this case, and to meet which, therefore, it is not to be presumed that the plaintiffs took proof.

Your petitioners show that while the evidence introduced was somewhat latitudinous as occurs in almost any and every case, it nevertheless was directed to the proof and to the disproof of the issues as presented; that issue was the allegation by petitioners that defendant had, after making his contract with them, deprived himself of the ability to perform it by fraudulently getting another to put in the upset bid and the denial of this by the defendant, that was all on which they joined; no question was asked any witness as to whether or not the price agreed to be paid by your petitioners was, at that time, adequate or inadequate, (of course inadequacy of price, as a defense, means inadequacy as of the date of the contract): *Hale v. Wilkinson*, 21 Gratt., 75; 2 Min. Inst., (1892) p. 884. *Ambrose v. Keller*, 22 Gratt., 769; no defence as stated above, was suggested in the answer about laches or acquiescence of your petitioners. It is not to be pretended that your petitioners knew at the time the upset bid was put in that the defendant was at the bottom of it, nor that they knew it at the sale after the upset bid was accepted and a re-sale ordered; if they had known it and gone and bid on the property as they did that verily would have been acquiescence; their suspicions as to defendant's bad faith were first aroused at the re-sale December 10th, 1894; they then threw up at him the charge that he was covinously acting with the other man, but sufficient information establishing the fact was not gathered by petitioners until long afterwards, and if any such charges as this had been made in the answer, why the plaintiff's proof would have been more specific and detailed to show that they were acting in ignorance of the bad faith of the defendant. This will answer a part of the third ground assigned by the Court; another is that petitioners instituted their action at law for damages for breach of the contract which they dismissed, that was evidence of their abandonment of that form of action, but of nothing else, for they straightway brought this suit, without ever so much as filing any pleading in the suit at law. In this there was no inconsistency of conduct. Petitioners humbly submit that on this point the court misunderstood the rule of law, which is this; if petitioners had brought this action for breach, the defendant could not thereafter bring his suit for performance. *Moore vs. Fitz Randolph*, 6 Leigh 187.

"But they did not say, and could not say, that a vendor might break his covenant, *suffer* a suit on it at law, take his chance of defence there, and when judgment was recovered against him,

begin a new race in equity for a specific execution." 2 Min. Inst. (1892) 892.

THE ISSUE.

And now coming to the true issue between the parties, viz; did defendant break his contract by procuring an upset bid; your petitioners charge that they have by a preponderance of evidence established the affirmative of this proposition; and, if they shall succeed in demonstrating this to the court, they claim that a court of equity, aiming to do justice between parties, should in this case exercise that wise discretion lodged in it in a jurisdiction of this sort, and decree that the defendant should be made to perform his contract, which he has broken by fraud, endeavoring in every way to defeat the petitioners and to deprive them of the benefits of a fair contract which they made with him for the purchase of real estate, and which they have been ever ready and willing to perform on their part.

To relieve the court of some labor, petitioners here present an abstract of the pleadings and the evidence in this case, made out as briefly and as fairly as possible.

BILL.

(Filed May 18, 1896.)

The bill charges that the defendant was in possession of a tract of land in the county of Nansemond, containing 2,900 acres, known as the Burroughs land, being the same tract of land knocked out to defendant at a sale made by E. E. Holland, special commissioner of the Circuit Court of Nansemond county, in the case of *Raustead vs. Ranstead*, on June 11, 1894: that the defendant on September 26, 1894, before the sale had been reported to the court, agreed, for value, to convey to plaintiffs all his right, title and interest in said land, and in the sale and purchase, and that as soon as the sale was confirmed by the court he and his wife would join with the special commission in a deed to complainants: Copy of the agreement "A," is exhibited. That notwithstanding his agreements, before the sale was confirmed, defendant contrived by trickery and fraud to defeat the same by procuring one B. P. Sale to put in an upset bid; that the sale was thus defeated and the property ordered to be sold again; that it was accordingly put up and at the re-sale defendant became the purchaser, and that the defendant now has the property in possession by reason of the said upset bid and subsequent sale made in pursuance thereof and of other upset bids and sales

caused thereby; plaintiffs have all the while been ready to perform their part of the contract, but have been prevented from doing so by the contrivances of defendant; that their only redress is in specific performance of the contract of sale which the defendant has wilfully caused to be broken; that defendant has been requested and urged to comply with his contract but has declined. Prayer waves oath and asks specific performance.

EXHIBIT "A."

The exhibit "A" shows that it is a contract, dated Sept. 26th, 1894, signed by plaintiffs and defendant, whereby he, in consideration of \$1,565. payable by plaintiffs to defendant upon confirmation of the sale of said tract of land, which had been purchased by him for \$2,100. on June 11th, 1894, and the direction of the court to make a deed to plaintiffs, instead of to defendant, and in further consideration of the assumption by them of the payment of the bonds given by defendant to the special commissioner, for the deferred payments, transferred and conveyed to plaintiffs all his right, title and interest in said land and in the purchase, and further directed the special commissioner thereby to ask that the deed to said land be decreed to be made to plaintiffs and promised to unite in a deed to plaintiffs; plaintiffs on their part agreeing to pay the money and the bonds.

ANSWER.

Answer of the defendant shows that it is true that he is the owner of the land, and true that he made the contract of Sept. 26th, 1894, marked exhibit "A," by which he agreed to sell plaintiffs all his right, title and interest in said land as it then stood and to join in a deed to same when, and only when, the then specific sale had been confirmed; that the plaintiffs well knew they were dealing with a subject matter that was entirely under control of the court; that it was well understood that said agreement was to have no binding effect unless said specific sale was confirmed and no part of said consideration was to be paid unless the sale was confirmed, because both parties knew it was entirely competent for the court to receive outside bids from others for said land, or to refuse to confirm said sale for other good reasons; that defendant is informed that the Court did not confirm said sale for the reason that one B. P. Sale put in an upset bid, which the Court accepted and refused to confirm said sale to defendant and ordered a re-sale; denies that defendant was in any way instrumental in

having said Sale put in the upset bid, denies that by trickery or fraud he defeated the sale, denies that Sale was acting for him or for his benefit; further says that after Sale put in his upset bid and a re-sale was ordered he, defendant did not become the purchaser at the re-sale, but he is informed that Sale himself became the purchaser, that Sale attended the auction and bid in person and that plaintiffs themselves also were present and bid, and that it was knocked out to Sale; defendant is informed that after this there were several other upset bids and several other re-sales of said land had, at one of which the plaintiffs themselves became the highest bidder; but that he, the defendant, in the end, put in the last upset bid and became the purchaser at \$4850 which was largely in excess of the price he first bid it in at, says that if Court had confirmed his first bid, that he, the defendant, was ready and would, in good faith, have carried out his agreement with plaintiffs, but defendant says that by the very terms of said agreement it was not to be carried out unless said \$2100 sale was confirmed to him, and that the refusal of the Court to confirm said sale put an end to the agreement and left both parties free to act as they deemed best in the future.

PLAINTIFF'S DEPOSITIONS.

W. N. Camp, 48, lives in Florida; occupation, mining; some time after re-sale of the land saw Judge Rawls and he told witness that defendant had approached him (Judge Rawls) and asked him to draw up an upset bid, and that he refused to do so, stating that he drew up the contract between P. D. Camp and witness and Bruce; and that he (Rawls) referred him to Mr. Vanderslice; witness saw Vanderslice and he showed witness a letter from Sale, of Norfolk, asking him to draw up an upset bid and present his bill to Bruce and that Bruce would settle it.

Cross-Examination.

Does not remember understanding that the agreement was not to be good, &c.; supposes the sale referred to in the contract was never confirmed, or there would not have been another sale; he and P. D. Camp were jointly interested in the matter.

P. D. Camp: 47; lumber business; Franklin, Va.: was present in Suffolk December 10, 1894, at the re-sale of the Burroughs land by the special commissioner of the court; the upset bid was \$2,600; witness bid on the property and run it up to somewhere about \$3,000; when he stopped, Mr. Sale and Mr. Bruce were stand-

ing together; the crier called out the bid from where they (Sale and Bruce) were standing—from that direction; they (Sale and Bruce) were standing together and consulting together all the time during the sale—"and I remarked to Mr. Bruce that it looked like that they were bidding together—working together that day." Sale bid \$4,000, and was knocked out to him.

"Mr. Sales and Mr. Bruce appeared so friendly I suspicioned in my mind that they were interested in each other in the sale in some way, and then afterwards I made some inquiries around, and I understood that Mr. Bruce had made a contract to deliver the timber off the Burroughs' tract of land, and afterwards he told the party that he could not deliver this timber because the Camps had interfered in the bidding. At Nansemond Courthouse Mr. Sales and Mr. Bruce came there together, and as I stated above they were conversing together all the time during the sale, and after the sale they took the street car together and returned up town."

Record shows that Sale put in the upset bid; heard that Vanderslice drew it up; witness was in Norfolk talking to a friend who told him that Mr. Bruce, Mr. Sale and his attorney were there in consultation before the upset bid was put in; was informed by several parties that Mr. Bruce was the purchaser at the upset bid and that was why he looked into it to find out. On the day of the sale, December 10, 1894, witness went to Mr. Bruce's store, and before the sale asked him about the upset bid; he did not seem concerned or bothered in any way about the property's going to be sold; and we were to give him, under our contract, \$500, profit on his bid.

Cross-Examination.

Is one of the plaintiffs in this suit; was one of the plaintiffs in a common law action instituted on the contract "A;" that suit has been dismissed without prejudice; knew when he entered into contract "A" that court had a right to say whether it would accept or refuse the bid.

"Q 6 You knew also, did you not, that that contract was not to be carried out unless the court confirmed the specific sale? (The plaintiff's counsel object to the several questions above asked, because the contract is the best explanation of what it purports to contain.)

A 6 The contract shows the agreement."

Is asked about A. L. Nelms' bidding at the sale December 10, 1894; says after bids reached \$3,000 Nelms did not bid as their agent; Nelms did bid as their agent up to a certain amount; asked as to the character of the land says he understands it is woodland, but does not know of his own knowledge; witness started to have the land examined, but Mr. Bruce got out an injunction and stopped him; at the time witness bought the land from Bruce he did so because he thought it was cheap; understands it is fine grazing land; witness first learned of the upset bid through Mr. E. E. Holland.

"Q 34 Was not this the first knowledge that you had that you were not to get the property under the contract with Mr. Bruce because of this upset bid?

(This question objected to by plaintiff's counsel as being purely legal.)

A 34 We have always expected to get the property under that contract."

Learned of the upset bid between the dates October 6, 1894, when Sale put in the upset bid, and December 10, 1894, when the re-sale took place.

(By consent of counsel, any papers in the suit of *Ranstead vs. Ranstead*, or in the common law suit of *W. N. & P. D. Camp vs. B. M. Bruce*, may be read as evidence in this suit).

G. H. Rogers: 52; lumberman; Winton, N. C.; knows plaintiffs; went to Norfolk in January, 1895, and asked Mr. Sale if the timber on the Burroughs land was for sale, asked him if he would name a figure on it, he said he could not without seeing his partner or friend—does not know which he called him—who he said lived in Suffolk; that he would see him and correspond with witness and let witness know what price they would take; he corresponded with witness after that; files, as exhibit "B", a letter received by him from Sale.

EXHIBIT "B".

This letter dated Norfolk, Va., February 16, 1895, addressed to *G. H. Rogers*, Winton, N. C., from *B. P. Sale* states he is in receipt of a letter from his friend who declines naming a price for the timber. "I think if you will offer a fair price he will sell."

John Cowland: 48; surveyor and contractor and lumberman;

lives in Suffolk and knows parties; asked if he had any conversation with Bruce before or on December 10, 1894, in regard to the survey of the land, says:

"A. 2. I did have a conversation with him. The day of the sale that the track of land was bid off for \$2,100 by Mr. B. M. Bruce I was on the courthouse yard in Suffolk, and the price was so very low for that valuable tract of land that it set me to looking for a bidder—for somebody to buy it to give more than that for it; and in my remarks about the value of the land and what was on it Mr. Bruce approached me, and asked me to say nothing about it, that it was his bid, and if he bought the land he would give me all the surveying to do, and there would be a good deal of work for me to do. Upon that promise I ceased from talking then about the value of the land and what was on it. A short time after that Mr. Mr. Jno. A. Gum offered Mr. B. M. Bruce \$100 advance on his bid. Mr. Bruce appeared as though he would sell it, but wanted the cash. Mr. Gum refused, i. e., did not tender him the cash, and he wanted to wait until the sale was confirmed. Upon that condition Mr. Bruce would not agree to wait. Then, I expected Mr. Bruce to give me the work to do, but the sale was not confirmed, and along from time to time probably a month or sometime to two months when I would see Mr. Bruce I would speak to him about the surveying or something about the land, and he would put me off, and finally he told me that he was on a deal with Camp, and that the sale had not been confirmed. I went on at that some time until after awhile he told me that he was out of it; that the Camps had bought it; and I think the next conversation I had with him was, that the land was going to be sold again. I went down to the sale of it and he told me this time that he had a man at his back with plenty of money; he won't going to fool with the Camps any longer. I asked him who the man was, and he told me that it was Mr. P. B. Sale of Norfolk—a man that owned 17 bar-rooms. I went to Mr. Sales to secure the job or surveying from him before the sale. He told me it would be all right if he bought it, but Mr. Bruce would attend to it; and after the sale was over I went to him again after it was knocked off to Mr. Sales; I then went to Mr. Sales and him and Mr. Bruce were together, and he (Bruce) told me it would be all right, that he would give me the work to do. Then a month or more sometime after Mr. Bruce said he expected that the Camps would put in another upset bid; and after a while, probably a month or two more he told that they had put in another upset bid, and that he was going to raise it again.

He seemed to intimate from his conversation that Mr. Holland was aiding Mr. Camp or wanted Mr. Camp to buy it, and said he was going to Mr. Prentiss to see about it. Mr. Holland went off to the Springs and while Mr. Holland was gone to the springs he said he was going to Judge Prentiss and get Judge Prentiss to confirm the sale; and a short time after that—I don't know whether it was before Mr. Holland came back or not, but Mr. Bruce told me that the sale had been confirmed for \$4,800. and some dollars; I won't be positive about the odd dollars; I think it was \$4,850.; and that he wanted me to look into the survey, notes or boundaries and examine the record about the boundaries—if there were any—to prepare to go and survey it. I went to the clerk's office to examine the records, and I went to Judge Kilby's and got an old map and survey, or rather applied to Judge Kilby for it—Wm. B. Whitehead's old map of it—and I began to survey on the 24th day of September, 1895, but I never completed the survey, because Mr. Bruce failed to furnish me the help to complete the same.

(So much of the above answer as purports to relate conversations of the witness not had in the presence of defendant is objected to as hearsay.)

Q 3. Did Mr. Bruce on or about the sale on Dec. 10, 1894 ask you not to say anything about the value of this land?

(This question objected to by defendant's counsel as being leading.)

A 3. He did."

Cross-Examination.

Mr. Bruce and he are not on good terms; had a disagreement about the contract for the survey; he did not finish the survey because Mr. Bruce did not furnish him the assistance necessary; spent some ten to fourteen days on the work; Mr. Bruce failed to furnish the hands to help him and said he was going to get somebody else to do the work; denies that for part of the time he was in a state of intoxication; denies this charge with emphasis; supposes that Mr. Bruce wanted the land surveyed; they had made slow progress in the swamp because of the difficulties encountered; Bruce disputed the time the men had made; paid witness a part of the money he owed him and said he was going to get somebody else; was angry with him because he could not get a settlement; Mr. Camp approached him about testifying in the case; had overheard witness talking about the survey with some men in Sept. 1895; considered the land valuable because of its timber and rich soil; it is chiefly reed swamp; has been a vast

quantity of timber cut, but still what is there will become or is valuable.

E. E. Holland: 36; attorney at law; Suffolk, Va. knows the parties to this suit; was the Special Commissioner who made all the sales of the tract of land, Sale made the highest bid and the land was knocked out to him Dec. 10, 1894; soon after he asked Mr. Bruce, whom he had seen on the day of the sale in conversation with Mr. Sale, in whose name the sale should be reported and Mr. Bruce instructed me to report the sale in his (Bruce's) name, and a few days afterwards came into the office, made the cash payment and gave his bonds for the deferred payments. "I presumed that Mr. Bruce, whom I knew well, had seen Mr. Sale and that this was the arrangement between them and was satisfactory. I have not since that time heard a word from Mr. Sale with reference to the matter.

Cross-Examination.

If he had not heard from Mr. Bruce he would have reported Sale as the purchaser.

S. P. Vanderslice: 31. Suffolk; lawyer; knows the parties did not draw up the upset bid himself; was employed through Judge Rawls to represent Mr. Sale of Norfolk to put in an upset bid thinks the upset bid was prepared by Judge Rawls; witness submitted it to the court and it was accepted; received a letter from Mr. Sales confirming my employment by Judge Rawls; impression is the upset bid was sent him in a letter from Mr. Sale; drew on Mr. Sale for his fee; draft was returned and he wrote witness to present bill to Mr. Bruce and he would settle.

Cross-Examination.

Judge Rawls told witness that he (Rawls) had been requested by Sale to represent him [Sale], but that he [Rawls] could not do so, as he represented Bruce; witness received his first letter from Mr. Sale in regard to the upset bid Sept. 6th 1894, and received another letter from him after the thing was closed up after the re-sale was ordered."

"Q 8 You said something just now about the payment of your bill for services rendered Mr. Sales in the matter of said bid. Do you recollect whether this was paid by Mr. Sales or not?

A 8 I can't say that it was.

Q 9 Can you say it was not?

A 9 I cannot say that it was not.

Q 10 Then, you are not sure as to who paid the bill?

A 10 No sir, I know that my first draft on Mr. Sales was returned—Whether I ever made another or returned that one for payment I don't remember. I know acting under the instructions in his letter to me I called on Mr. Bruce for settlement, but cannot say whether Mr. Bruce paid it."

P. D. Camp recalled, he and W. N. Camp had been ready and willing ever since the contract of Sept. 26 1894 to comply with the terms of that contract.

Q 2 It seems from your testimony heretofore given that you bid upon the property after the upset bid claimed to have been put in by Mr. B. P. Sales was accepted by the court and a re-sale ordered?

A 2 We bid upon the property at the time because we wanted the property and did not know but that it might go into other hands, and we intended at all times to make Mr. Bruce if we could comply with the terms of the contract."

Cross-Examination.

Q 1 At the last sale of the property, Mr. Camp, was there anybody bidding on the same except you and Mr. Bruce?

A 1 There was no bid except the \$4400. bid.

Q 2 At the final sale were not the only bidders for the property you, your brother, and Mr. B. M. Bruce?

A 2 I do not know what sale you refer to.

Q 3 Was not an opportunity given to you and your brother, W. N. Camp and B. M. Bruce, the defendant in this suit, to bid against each other as to who should finally receive the title to the property in question from the special commissioner, Mr. E. E. Holland?

A 3 I think it was."

DEFENDANT'S EVIDENCE.

B. M. Bruce: 48; Suffolk, grocery and liquor, sometimes sells a little lumber, is the defendant, made the contract Sept. 26, 1894, has complied with the terms and conditions of this contract so far as he was able, E. E. Holland drew the contract and was aware of its terms, he was the commissioner, if the court had confirmed the sale he and his wife would have united in the deed, had no agreement with Sale as to the upset bid and no interest in

it, did not by trickery defeat the sale, did not cause Sale to put in the upset bid, it was some time before Sept. 26, 1894, that Sale and he had the first conversation in regard to this land, Sale mentioned it, saying: "I see you have bought a big tract of land." He asked witness what the property was worth, and witness told him it was estimated at \$5,000. or \$6,000., but that witness did not pay any attention to those estimates as the parties who made them did not know much about it, Sale asked what witness gave for it, he had seen it in the papers that witness had bought it; witness told him that witness had sold or agreed to sell his interest in it provided the court confirmed the sale he asked witness to let him in for one half on the land and witness told him "no." Sale mentioned to witness something about putting in an upset bid previous to Sept. 26, 1894.

Q 20 Did he ever say anything to you after Sept. 26, 1894, the date of this agreement, about putting in an upset bid?

A 20 He told me that I would never get the \$500.—that the land would never be sold for that money—that some one else would put in an upset bid—and that he was going to put in one."

Witness told him if he put in the upset bid witness would be \$500 short, and asked him not to do it.

Q 24 If he had done it you would lose your \$500?

A 24 Yes, sir."

Was present at the sale December 10th, 1894, property was knocked down to B. P. Sales; was not interested in his bid, witness then had no interest in the world in the property.

A 29 After the property was knocked out to Mr. Sales, I suppose it was a few minutes after he said to me: 'Join me in this, and I will guarantee you against loss. You are here on the spot and can attend to it.'

He offered to convey one-half interest in the property to witness:

Q 34 Well, will you state please what occurred after this conversation with Mr. Sales with reference to the property?

A 34 Mr. Sales and I left the Courthouse and came up town here and came to Mr. Holland's office here. Mr. Sales asked Mr. Holland if a week or ten days would make any difference, and that in all probability he could pay the full amount. Mr. Hol-

land I believe told him it would not make any difference. During that time Mr. Sales phoned me that the first payment was due—to make the payment and take the receipt in my name as a guarantee to me for the amount invested.

Q 35 Well, did you do that?

A 35 I did.

Q 36 You accepted Mr. Sales proposition then in reference to the one-half interest?

A 36 I did.

Q 37 Why did Mr. Sales desire that you should take the whole title in your own name instead of taking the title jointly?

A 37 He had some financial trouble and did not have the money at that time to comply with the terms of the sale.

Q 38 You are the owner of the property at present are you not, Mr. Bruce?

A 38 I am.

Q 39 Has Mr. Sales since then been in a financial position to pay his one-half of the property.

A 39 He says not, and I judge it is true."

Heard that W. N. and P. D. Camp after that put in an upset bid, did not pay Mr. Vanderslice his bill for his services; the injunction he got out against Camps going on the land was prior to September, 1894; (agreement here made that either party may introduce papers in that injunction suit).

"Q 45 Mr. P. D. Camp in his testimony in this cause stated that he remarked to you that it looked as if you and Mr. Sales were bidding together. Do you remember any such remark, and, if so, what was your reply to the same?

A 45 Mr. Camp remarked to me: "I thought you were in this." I said I had nothing in the world to do with it. Mr. Sales remarked to Mr. Camp that if he wanted the property why did he not bid on it.

Q 46 Then you denied to Mr. Camp that you and Mr. Sales were bidding together?

A 46 That is right, sir."

The Camps were bidding at the sale, they and Mr. Nelms were talking together; Mr. Nelms was also a bidder; denies the statement made by Mr. Cowling as to witnesses saying he had a man of money at his back and was not going to fool with the Camps any longer; did not say the man was Mr. Sales; witness was not able to pay for the property did not need assistance;

"Q 54 Mr. Bruce, did either Mr. W. N. Camp or Mr. P. D. Camp

ever approach you and make an offer to you to comply with their part of their agreement of Sept. 26th, 1894.

A 54 No sir. After the sale there was nothing to comply with.

Q 55 When did you first have any intimation that Messrs. W. N. and P. D. Camp intended holding you liable under this contract of Sept. 26th 1894?

A 55 I don't remember the day nor the date. I could not tell you who I first heard it from, but I heard it a number of times on the street and in my store.

Q 56 Did you have any knowledge from either Mr. P. D. or W. N. Camp of their intention to hold you to this agreement or to hold you liable for damages in reference to the sale until they brought that damage suit against you?

A 56 No; sir.

Q 57 Did either of them make any demand on you for the property after you had finally brought it from Mr. Holland, special commissioner, until this present suit in chancery was bought?

A 57 No, sir.

Q 58 Then the only demand, if I understand you correctly, Mr. Bruce, made by Messrs. W. N. and P. D. Camp requiring you to convey this property to them, or the only proceeding mentioned by them to that effect, is this present suit in chancery?

A 58 Yes sir.

Land is low; chief value is its timber:

Cross-Examination.

Denies telling Cowling not to say anything about the value of the land; did not know the value of the land when he sold his bid of \$2100 to the Camps at \$2600; as reason, he was afterwards willing to give \$4850 for it; had then had it examined by competent judges; that was after the witness had sold his bids to the Camps, but not during the period the contract lasted; examined the land after Mr. Camp put in his upset bid.

"Q 6 Mr. Bruce, you have stated in your examination in chief that you took ½ interest in this farm soon after Mr. Sales became the purchaser? That was before Mr. Camp put in his upset bid. Now explain why it was that you were willing to pay almost double of what you first bought the land for and what you sold to Mr. Camp for before you made any examination of the land at all?

A 6 Mr. Sales guaranteed me against all loss if any—to manage the land and sell it to the best advantage. I did not consider that I was running any risk.

Q 7 Did he give you a written guarantee?

A 7 No, sir, his word is enough for me; I have known him all my life."

Denies going to Norfolk just after Sept. 26, 1894, and arranging with Sales to have the upset bid put in:

"Q 9 Mr. Bruce, you have just stated that you took one-half interest in this property because Mr. Sales guaranteed you against loss, and that you made no examination of the property until after Mr. Camp put in his upset bid. Did you not then know before this upset bid was put in by Mr. Camp that Mr. Sales had made an assignment and was insolvent?

A 9 I knew nothing of Mr. Sale's financial condition. I looked upon him as "A 1," and I believe he will pay every dollar that he owes if he owes any.

Q 10 Did you not state in your examination in chief that you complied with the terms of the purchase because he informed you that he was financially embarrassed or in financial trouble.

A 10 I stated that he asked me to make the payment and to take the receipt in my name as a guarantee to me, and the reason he did not comply was because he had some financial trouble. That is likely to occur with any of them.

Q 11 Then, you did make the cash payment of \$2,000; and did give your bond for the deferred payment of \$2,000, without ever having made any examination of this property?

A 11 I did, sir.

Q 12 Did you or did you not approach Judge Rawls of Suffolk and ask him to put in an upset bid for you for this property before the upset bid was put in by Mr. Sales?

A 12 Not for me; no, sir.

Q 13 Did you for any one?

A 13 Let me see—I repeated a conversation I rather think with Mr. Rawles. Mr. Sales asked me when in Norfolk who was my attorney here—who was the proper man. I recommended Mr. Holland, Mr. Rawles and Mr. Briggs, as they had all attended to legal business for me and had done it satisfactorily.

Q 14 Do you know why Mr. Sales put in an upset bid of \$2,600, which was the amount you had sold out to Mr. Camp for, when \$2,300 would have been an upset bid?

A 14 I do not, sir.

Q 15 Do you know how Mr. Sales came to know that you sold out to Mr. Camp for \$2,600?

A 15 I told him.

Q 15½ And you and Mr. Sales had several talks about this

matter after the sale to Mr. Camp of your bid and before the upset bid of Mr. Sales was put in?

A 15½ To the best of my memory he only talked once to me in regard to the upset bid.

Q 16 Explain, Mr. Bruce, why it was that you were present at the sale of Dec. 10th 1894 with Mr. Sales during the entire time the sale was conducted, and why it was that you were with him after the sale until he [Sales] left town?

[This question objected to by defendant's counsel on the ground that there is no testimony showing that such was the fact].

A 16 He wrote me to meet him at the train—that he had never been to Suffolk, and that he wanted me to show him around, which I did so.

Q 17 Do you mean to say that Mr. Sales bought a piece of land in Nansemond County, or offered to put in an upset bid for and bought a tract of land in Nansemond County, which he had never seen and had never examined, and had never been to the County seat of the County?

A 17 I can only judge by his act.

Q 18 And you mean to say that that was his act?

A 18 Yes sir, to the best of my knowledge.

Q 19 Were not you and Mr. Sales together at the time the land was cried for sale on December 10th 1894, and did not you and he consult with reference to the bids made?

A 19 No sir, not until the sale was over did we have any talk at all. I introduced him to Col. Smith.

Q 20 Did you make to him any representation as to the value of the property, or any statement as to its value?

A 20 No sir, I did not.

Q 21 After the land was knocked off to Mr. Sales, was not the sale reported in your name at your suggestion upon the statement from you that Mr. Sales had advised it?

A 21 Mr. Sales asked me to make the payment and take the receipt in my name as a guarantee.

Q 22 Did you not at the time you made the payment give your bonds for the deferred payments of the purchase price of the property?

A 22 I did.

Q 23 Did you likewise have Mr. Sales' guarantee for the repayment of the amount of these bonds?

A 23 I had his word."

FACTS AGREED.

That before the institution of this suit, to wit: on Sept. 14th

1895, an action at law was instituted by same plaintiffs against same defendant for breach of the covenants contained in the contract of Sept. 26th 1894, and that same was dismissed by plaintiffs before trial; that this same tract of land was first sold by Holland, Special Commissioner, Dec. 11th 1893, when ———— Oler became the purchaser at \$1000; that on Apl. 2nd 1894 B. M. Bruce filed his upset bid, and property was re-sold June 11th 1894, when he purchased at \$2100. that sale was reported to court September 29th, 1894, and in the report Mr. Holland, Special Commissioner, states that he had been instructed by Mr. Bruce to ask the court to make a deed to the land to W. N. and P. D. Camp; that in October 1894, B. P. Sale filed his upset bid for \$2600. The property was resold December 10th 1894, and purchased by B. M. Bruce for \$4000., which sale was reported to court March 28th 1895:

The report of Special Commissioner Holland shows that Bruce made the highest bid and was the purchaser at \$4,000, and that he has complied:

April 3, 1895. P. D. Camp filed an upset bid of \$4,400, and the property was ordered to be resold and was sold May 13, 1895, to the Camp Manufacturing Company at \$4,400.

This sale was reported to court June 1, 1895, and B. M. Bruce filed an upset bid of \$4,850. July 9, 1895, this sale was confirmed to him, and a deed made to him by the special commissioner June 15, 1896

DECREE APPEALED FROM.

December 11, 1895. Circuit Court of Nansemond decreed for defendant on the ground of (1) inadequacy of price (2) that plaintiffs were guilty of laches in acquiescing without suit or protest in the confirmation of the subsequent sale and conveyance of said property to defendant, and (3) that by entering into competition with defendant by bidding for the property at such subsequent sale and by the institution of an action at law for damages for the alleged breach of the contract the plaintiffs evidenced their intention to abandon their right to the specific performance of the said contract.

Petitioners submit that the foregoing proof—or rather, the proofs in the record of which the foregoing is an abstract—established their case. When the defendant on Sept. 26, 1894 sold them his bid, he was bound by all the laws of usage and fairness to deal with them thereafter in respect to it, in the most candid

and confidential manner, indeed, with conspicuous good faith; instead of which, they discovered that almost immediately he is in Norfolk where, by his own admission, he tells Sale about it; what your petitioners had agreed to give him, that on his return to Suffolk he approaches Judge Rawls and asks him to draw up an upset bid, (W. N. Camp's uncontradicted evidence); Judge Rawls having declined because of the impropriety in which it would place him, the next thing is that Sale writes Mr. Vanderslice to do so, telling him that *Mr. Bruce* would pay the bill, the bid is put in, Mr. Sale comes up from Norfolk, was never at Suffolk before, defendant meets him at the train, goes with him to the sale, stands with him; confers with him, and while the property is knocked out in Sale's name, it is almost immediately after reported in defendant's name, and defendant complies. Could anything be wanted to make it plainer that defendant, after making his bargain with petitioners, repented of it and determined to get out of it in this perfidious manner? If he did this; if petitioners are right that the evidence in the record justifies them in reaching this conclusion, then is he to be allowed to take advantage of his own wrong and complain that it would be an injustice for petitioners to compel him to keep his contract with them when the property has cost him \$4,850 instead of \$2,100? The question itself suggests the answer that the increased burden is upon him, it is true, but it is there as the direct consequence of his own wrong doing.

THE LAW.

1. As to the issue:

Your petitioners in the first part of their petition complained that the Court did not confine itself to the issue joined, but based its decision on other issues.

In 1 Dan. Chy. Pr. (4th Ed.) pp. 326-7, your petitioners find the rule thus laid down with reference to bills, which by reference to page 853 of the same, applies equally to answers, viz:

"Care, however, must be taken in framing the bill that everything which is intended to be proved be stated upon the face of it; otherwise, evidence cannot be admitted to prove it. This is required in order that the defendant may be aware of what the nature of the case to be made against him is. The necessity of observing this rule strongly insisted on by the L. C. B. Richards, in the case of *Hall v. Matley*. And in *Montesquieu v. Sandys*, the principle upon which it is founded is strongly illustrated; in that

case a bill was filed to set aside a contract entered into by an attorney for the purchase of a reversionary interest from his client on the ground of fraud and misrepresentation; the evidence adduced in support of the allegation of fraud, did not, in Lord Eldon's opinion, substantiate the case as laid in the bill; a transaction however was disclosed in the evidence which his Lordship appeared to think would have raised a question of considerable importance in favor of the plaintiff, if it had been properly represented upon the pleadings; but as it had not been stated in the bill he thought it would be far too much to give relief upon circumstances which were not made a ground of complaint upon the record."

1 Id. p. 712:

* * * * "besides answering the plaintiff's case as made by the bill he should state to the Court upon the answer, all the circumstances of which the defendant intends to avail himself by way of defence; for a defendant ought to apprise the plaintiff by his answer of the nature of the case he intends to set up, and that too, in a clear, unambiguous manner; and in strictness he cannot avail himself of any matter in defence which is not stated in his answer even though it should appear in his evidence."

Pigg v. Corder, 12 Leigh (79):

"Tucker, P. Whether the evidence in this record establishes any claim against the appellant or not, it is apparent that upon legal principles this decree can never be supported. The bill sets up one claim, the testimony goes on to prove another and the decree is for a third."

"These discrepancies are fatal to the case unless we discard at once those principles which require the proofs to correspond with the demand, and the relief afforded to be consistent with both."

Anthony vs Leftwich, 3 Rand 238. A case in which specific performance was refused because of the indefiniteness of the parol contract; because of hardship &c., in this case the court, after commenting upon the uncertainty of the contract, saying the bill states it one way, the answer denies any, and six witnesses state it differently from the bill, say, on page 251.

"Indeed, as the answer acknowledges no agreement, can we decree on one different from that stated in the bill? Would it not be decreeing on a contract not in issue; which the defendant had

never been called on to confess or deny; and had had no opportunity to disprove? To decree a specific execution in such a case, would, it seems to me, be entirely a leap in the dark, and a violation of the best settled rules of practice."

Again, the case of *Ford v Euker*, 86 Va. 75, is referred to show that in that case where the defendant relied upon the bringing of an action at law, and upon the laches of the plaintiff in bringing his suit and upon the enhanced value of the property, all those defences were sent out in the answer.

2. Inadequacy of Price:

Your petitioners have stated above that no such defence was suggested in the case; that they are advised, inadequacy of price as a defence to specific performance, speaks as of the period of the contract. 2 Min. Inst. (4th Ed.) p 885:

"An accidental subsequent loss or disadvantage, not arising from the conduct or default of the applicant for relief, constitutes no objection to decreeing the specific execution of an agreement. The transaction must be viewed as it originally stood, and stand or fall accordingly."

Cases heretofore cited, and *Smith v Henkel*. 81 Va. 529.

"Neither inadequacy nor redundancy of price will vitiate a deed or contract unless there is fraud or mutual mistake connected with it; or there is some fiduciary relation between the contracting parties."

3. Nature of the Relief:

It is said that in specific performance courts of equity do not grant the relief *ex debito justitiæ*, but out of the sound, judicial discretion of the chancellor. In what sense is it discretionary? Waterman on Specific Performance, Sec. 6:

"By this is meant, not the exercise of an arbitrary and capricious will governed by the mere pleasure of the court, but, as compared with the absolute right of a party to a judgment at law for damages upon the breach of a contract, a sound judicial discretion, controlled by fixed rules and principles, in view of the special features and incidents of the case. When a contract concerning real estate is valid, unobjectionable in its nature and in the circumstances connected with it, and capable of being en-

forced, and it is just and proper that it should be fulfilled, it is as much a matter of course for a court of equity to decree a specific performance as for a court of law to give damages for a breach of it."

4. *Petitioners having brought suit at law for the breach:*

In addition to the authorities heretofore cited on this point, your petitioners refer to *Ford vs. Euker, supra*, which settles this point. In that case, the complainant in the equity suit asking specific performance, had first brought his action; this was a defence made and relied upon, but while the court denied relief in that case, it nowhere put it upon that ground; did not treat it as a valid defence at all. To the same effect is, *Waterman on Specific Performance*, p. 5:

"When a suit is entertained for specific performance, the court will in general stay any other action for the same cause by either party. But a person may be entitled to damages for violations of the contract up to the time of bringing the suit, with specific performance for the future."

5. *Laches of Petitioners*, in acquiescing without suit or protest in the confirmation of the subsequent sale and conveyance of the property to the defendant. Your petitioners respectfully represent that their acquiescence in the reporting of the sale of December 10, 1894, to the defendant was *in invitum* on their part. They did not acquiesce, for, with the light then before them, there was nothing for them to do, but to show their unceasing desire to get the land after their first bargain for it, they did just what was at hand for them to do, viz; put in an upset bid in ignorance, of course, of defendant's treachery.

As to the confirmation of the subsequent sale and the conveyance of the property to the defendant without suit or protest, petitioners cannot see that there was any obligation on them to protest. Then had then discovered defendant's bad faith, and were determined to sue him on his contract; if they are correct that his fraud was the cause which brought about the condition of things which surrounded defendant at the last sale when he had to bid \$4,850. to get the property, they certainly did not owe it to him to formally protest against the sale's being confirmed to him and against a conveyance being made to him. Their suits which followed soon after were the most effective protests which they could enter.

The sale was reported and confirmed to defendant July 9, 1895;

Sept. 14, 1895, petitioner's action at law was instituted, and May 18, 1896, their action at law having been dismissed, this suit was brought. If, then, they did not protest, they did sue. Then. *were your petitioners guilty of delay?* 2 Min. Inst. 891.

"It is to be observed, that even in those cases where time not of the essence of the contract, yet, where there has been great and unreasonable delay on one side, it may be terminated, as we have seen, by the other party's fixing a reasonable period within which the contract must be completed; and if that time be not conformed to, it precludes specific performance, and leaves the parties to their remedies at law."

"And so, in like manner, where one party notifies the other that he will no longer be bound by the contract, if the latter does not promptly assert his rights, he will in equity be considered as acquiescing in the notice and concurring in the abandonment of the agreement."

But no notice was ever given petitioners by defendant; if he had openly, in the beginning, notified them that he would not keep his contract with them, then petitioners would have been guilty of laches. *White vs. Dobson*, 17 Gratt. 265.

In *Bowles vs Woodson*, 6 Gratt. 78, where the defence of laches was sustained, the delay in bringing the suit was nine years.

In *Bryan vs. Loftus*, 1 Rob. 13, there was a default on the part of the vendor which lasted over eight years; when he then brought his suit the land had dropped 50 per cent in value. 1 Bart. Chy. Pr. p. 120.

"Cases of this character, except in special instances, are governed by the general rules applicable to laches; but where the suit is to enforce the specific performance of a contract to convey lands, courts of equity often follow and adopt the statutes fixing a limit to real actions.

In the case of *Tazewell's executors vs. Saunders*, 13 Grattan, page 362, Judge Moncure, speaking of the defense of laches, says: 'But laches in the operation or prosecution of a claim is not always enough to defeat it. The laches must be such as to afford a reasonable presumption of the satisfaction or abandonment of the claim, or such as to prevent a proper defence by reason of the death of the parties, loss of evidence or otherwise.'

6 *Entering into competition* with defendant by bidding at the subsequent sale.

This is much the same as the last two grounds considered. Petitioners have already stated that this conduct on their part was not made an issue in the case; that if they had known what defendant's conduct was they would not have bid. But, petitioners say if the defendant was himself guilty of the wrong which they have imputed to him, he cannot complain of their conduct in this respect on any grounds. Pom. on Specific Performance of Contracts, sec. 404:

"The defendant, in order to avail himself of the plaintiff's delay as a defence, must have performed, or been ready and willing to perform, all the terms of the contract on his own part." Idem. sec. 405:

"In accordance with the rule that a defendant who desires to rely upon the plaintiff's delay as a ground for defeating the suit, must himself have been ready, willing, and prompt, it follows that a defendant can never take advantage, as a defence of a delay which he himself has caused".

Idem. secs. 407 and 408; which apply to the cases (1) where vendor delays for the purpose of speculating upon the chances of appreciation in the property; and (2) of an unexcused delay on either part.

Neither of these conditions apply to your petitioners.

They certainly have taken no speculative chances; and there delay—if there can be said to have been any in this case—was excused by the conduct of defendant himself. As to evasion and attempt to defeat the contract, see *Welfley vs. Shenadoah I. L. M. & M. Co.* 83 Va. 775 *Young vs. Ellis* 91 Va. 302:

"A covenantor is excused from performing his part of an agreement when the other party hinders the performance."

Powell vs. Berry, 91 Va. 568, gives the general principles of specific performance. In that case relief was denied because the conduct of the plaintiff had disintitiled him to it.

Darling vs. Cumming, 92 Va. 521, is a case of a speculative suit; and for that and other causes the relief was denied.

Your petitioners respectfully submit that the said decree was erroneous and ask for an appeal from and a *supersedeas* to the same.

Respectfully,

W. N. CAMP,
PAUL D. CAMP,

By Jackson Guy, their counsel.

March 25th 1897.

I, Jackson Guy, counsel practising law in the Supreme Court of Appeals of Virginia, am of opinion that it is proper that the decree above complained of should be reviewed.

JACKSON GUY.

Appeal and supersedeas awarded. Bond required in the penalty of \$200.

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

I, A. P. Gomer, Clerk of the Circuit Court of the County of Nansemond, do hereby certify that due notice was given to the defendant on the 23rd day of February, 1897, by the complainants for a transcript of the record of the within cause.

A. P. GOMER, Clerk.

VIRGINIA:

Pleas before the Honorable Robert R. Prentis, Judge of the Circuit Court of the County of Nansemond, on the 11th day of December, A. D., 1896.

Be it remembered, that heretofore, to-wit:

At rules held in the clerk's office of the said court on the third Monday in May, 1896, to-wit: On the 18th day of May, 1896, came the complainants W. N. Camp and P. D. Camp and filed their bill; which bill and exhibits therewith filed are in the words and figures following—to-wit:

page 3 } To the Honorable Robert R. Prentis, Judge of the Circuit Court of Nansemond County, Virginia.

In Chancery.

Your orators, W. N. Camp and P. D. Camp complaining sheweth unto the court the following case:

That B. M. Bruce of the County of Nansemond, in the State of

Virginia, is now, and has for some time been in possession of a tract of land lying in said county and state, containing 2900 acres more or less, and known as the Burrough's land, it being the indentical same land, knocked out to the said Bruce at a special Commissioner's Sale, made by E. E. Holland on June 11th 1894 in the Chancery cause of Ramstead vs Ramstead pending in said court; that some time after the purchase by him at the sale as aforesaid of the said land, and before the sale as above mentioned, had been confirmed by the court, to-wit: On the 26th day of September 1894, the purchaser, B. M. Bruce agreed to convey and did then and there convey unto your complainants } by a contract under seal, and duly signed by him for a page 4 } good and valuable consideration therein expressed, all } of his right, title and interest in the said land and in the sale and purchase thereof, and further covenanted and agreed, that so soon as the sale was confirmed by the court, that he and his wife would join with the said Special Commissioner, E. E. Holland in making to the purchasers, your complainants a good and perfect title to the land aforesaid. All of which will more fully appear by a copy of the aforesaid contract of sale, filed herewith marked "A" and prayed to be read as a part of this bill.

That notwithstanding the covenants and agreements as above set forth and, before the regular time in course, for the sale made by the special commissioner as aforesaid to be confirmed by the } court, and a deed directed to be made to your orators, page 5 } in pursuance of the agreement aforesaid, the said B. M. } Bruce, did contrive, by trickery and scheming and fraud, to defeat the same, by improperly and fraudulently employing and using one B. P. Sale, whose name the said B. M. Bruce did use and employ fraudulently and deceitfully to defeat the said contract, and did cause the said B. P. Sale to put in an upset bid for the land aforesaid, for his the said B. M. Bruce's advantage and benefit, before the confirmation of the sale by the court, by reason of which upset bid the said land was ordered by the court to be, and was re-sold, at which re-sale B. M. Bruce became the purchaser and the said Bruce now has the property in his possession, by reason of the said upset bid and subsequent sale made in pursuance thereof and of other upset bids and sales caused thereby, } in all of which acts on the part of said B. P. Sale, the page 6 } said Bruce was the moving spirit, aiding abetting and } directing the said sale and furnishing the funds necessary to do the said acts and defeat his said contract.

Your complainants had all the while been ready and anxious to fulfill and perform their part of the contract of sale made between

them and the said B. M. Bruce, but have been prevented from doing so by the efforts and contrivances of the said B. M. Bruce, by which he has worked a fraud upon your orators, and subjected them to great loss and inconvenience and annoyance.

Your complainants aver and charge that the only complete redress for them is in compelling specific performance of the contract of sale which the said B. M. Bruce has wilfully and designedly caused to be broken and rendered inoperative (he being now in possession of the property, a result of his own actions and reward for his own wrong) } as such relief would only be in keeping with his page 7 } signed and sealed agreement with your orators. That } said B. M. Bruce has been requested and urged to comply with his solemn covenants, whereby he agreed to convey to complainants all of his interest, right and title in said land, but he has declined to do so, and on the contrary, as your orators are advised and believe he has sold, or is about to sell, the standing timber on the said farm or is about to cut the same.

Your complainants further aver and charge that the said B. M. Bruce has no equitable right to sell said property, nor to cause or allow the same to be wasted, destroyed or altered in its nature until the questions involved in this suit are litigated, and that they are entitled to an injunction restraining him from so doing. They are advised and therefore aver and charge, that they are } titled to a specific performance of their original and only page 8 } contract with the said B. M. Bruce, and that he } should be compelled to convey the said Burrough's land to them upon the payment by them of the sum agreed upon in their covenants and agreements of sale as aforesaid, all of which they have offered to do; and still stand ready and willing to do, keep and perform, and also stand ready to do, keep and perform all of the other covenants, agreements, and stipulations by them, on their part agreed to be observed, kept and performed, and the said B. M. Bruce still refuses to comply with the said contract on his part, though he has been several times applied to by your complainants and their agents to comply with the same, all of which acts and doings are contrary to equity and good conscience.

In tender consideration whereof and for as much as your complainants are remediless in the premises, save by the aid of a court of Equity, where all such matters are alone and properly cognizable, they pray that B. M. Bruce may be made party defendant to this bill had required to answer the same but an answer, under oath is hereby waived that said defendant may be

page 9 } required and compelled to comply with the spirit and intention, true intent and meaning of the aforesaid agreement; that the said Burrough land aforesaid may be conveyed to them under the direction of this court; that an injunction map be granted enjoining and restraining the said defendant from selling, or otherwise disposing of the farm aforesaid, or from the commission of waste thereon, either by himself or those acting by authority from him that all such decrees and orders may be entered, enquiries directed, and such other further general and special relief granted to your complainants as the nature of their case may require or to equity may seem meet.

And your orators will ever pray, &c. May it please the court.

page 10 } W. N. CAMP
P. D. CAMP
by Counsel.
Prince & McLemore, p. q.

page 11 } This agreement and contract made and entered into this the 26th day of September, in the year 1894, between B. M. Bruce, of Nansemond county, Virginia, of the first part, and W. N. Camp and P. D. Camp of the second part, witnesseth: that for and in consideration of the sum of fifteen hundred and sixty-five dollars, payable by said parties of the second part to B. M. Bruce upon the confirmation by the Circuit Court of Nansemond county of the sale of that certain tract of land containing twenty-nine hundred acres, more or less, known as the Burroughs land, sold by E. E. Holland, special commissioner in the chancery cause of Ranstead vs. Ranstead and others under a decree in said cause on the 11th day of June, 1894, and purchased at said sale by said B. M. Bruce for \$2100.00, and the direction of the Court to make a deed for said land to said W. N. Camp and P. D. Camp in the place and stead of said B. M. Bruce, and the assumption and payment by said W. N. Camp and Paul D. Camp of the bonds given by said B. M. Bruce to said E. E. Holland, special commissioner for the deferred payment and now held by him when it matures and falls due the said B. M. Bruce doth hereby assign, transfer, release and convey unto the said W. N. Camp and Paul D. Camp all his right, title and interest in said land and in the sale and purchase thereof as aforesaid and doth hereby direct the said E. E. Holland, special commissioner to ask that the deed for said land be decreed to be made to said W. N. Camp and Paul D. Camp in which said deed to said

W. N. Camp and Paul D. Camp he and his wife will unite with said commissioner.

And for said considerations the said W. N. Camp and Paul D. Camp do agree to pay to said B. M. Bruce the said sum of fifteen hundred and sixty-five dollars at the time as above specified and doth agree to assume and pay to said E. E. Holland the bonds given for the deferred payments of the purchase price as above stated with the interest accrued thereon.

Witness the following signatures and seals:

page 13 } W. N. CAMP, [Seal].
P. D. CAMP, [Seal].
B. M. BRUCE, [Seal].

page 14 } The answer of B. M. Bruce to the bill of complaint exhibited against him in the Circuit Court of Nansemond county by W. N. Camp and P. D. Camp.

This defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and imperfections in the said complainant's said bill of complaint contained for answer thereto, this defendant answering, says: That it is true he is now the owner of the Burrough's tract of land mentioned in the said bill and it is also true that after he had at the auction sale of said land on the 11th day of June, 1894, become the highest bidder for the same at the price of \$2,100 and, after the same had been knocked out to him, but before the said sale had been reported to, or been confirmed, by the Circuit Court of Nansemond county wherein the said suit of Ranstead vs. Ranstead was pending, he did enter into an agreement with the complainants as set forth in Exhibit "A" filed the bill, page 15 } by which he agreed for a certain to permit the complainants to step in his place and stead and take his said bid for the said land, provided the said court confirmed the sale of the same to him at the price for which he had bid it in, to-wit: For the sum of \$2,100; in other words, he agreed to sell to the said complainants all his right, title and interest in the said land as it then stood and agreed to join in a deed with the special commissioner for the said land to the complainants when and only after the said specific sale had been confirmed by the said court, and the said defendant says that it was well-known and well understood not only by him but by the complainants, that they were both dealing with a subject matter which was then

entirely under the control of the court. And it was well understood and agreed that the said agreement was to have no binding effect unless the said court did confirm the said specific sale and no part of the said consideration was to be paid to this defendant by the said complainants until said sale had been confirmed; because both the defendant and the complainant well knew that it was possible and entirely competent and proper for the court to receive other bids from other persons for said land or to refuse to confirm said sale for any good and sufficient reason which appeared unto the said court.

And the said defendant further says that he is informed that the said court did not confirm the said sale to him for the reason, as he is informed, that one B. P. Sale tendered to the court an upset bid for the same, which your defendant is informed the court entertained, and refused to confirm the sale to this defendant and ordered a resale of said land.

Now this defendant utterly denies that he was in any way instrumental in having the said B. P. Sale to put in the said upset bid; he denies and says he did not contrive by tricking or scheming or fraud or in any other manner to defeat the said agreement by employing and using the said B. P. Sale. He further denies that he caused or that he had anything to do with the said B. P. Sale's putting in the said upset bid for the said land and says he was no party whatever to the same and had nothing whatever to do with the same. And he further denies that the said B. P. Sale was acting for him or for his advantage and benefit and says that he was not so acting. That so far as he is informed and believes the said Sale was acting in good faith on his own responsibility and dealing directly with the Court for his (Sale's) own advantage and benefit.

And this defendant further says that after the said B. P. Sale had put in his upset bid and after it was entertained and a re-sale ordered, that he, Bruce, did not become the purchaser of the said land at the said re-sale; but he is informed that the said B. P. Sale himself became the purchaser, that he, the said B. P. Sale, attended the auction sale in person and bid on the land—the complainants being also present and bidding on said land and that it was knocked out to the said B. P. Sale, and this defendant is informed and charges that after this there were several other upset bids put in for the said land and several other re-sales of the same land, at one of which the complainants themselves became the highest bidders and had the said land knocked off to them. But this defendant says that in the end he himself put in the last upset bid and became the purchaser of the said land at the price of

\$4850 which was largely in excess of piece he first bid it in at, to-wit: the sum of \$2100.

And he further says that if the said Court had confirmed his first bid and had order a deed to have been made to him, then he, this defendant, was ready and would have carried out in good faith his said agreement with the complainants and would have sold them his interest in said land for the consideration named in said agreement.

But this defendant says that by the very terms of said agreement it was not to be carried into effect until and unless the said \$2100 sale was confirmed, and that the refusal of the court to confirm said sale put an end to said agreement and left both parties free to act as they deemed best in the future. And this defendant denies all fraud and conspiracy, all unlawful combinations in connection with said matter and especially denies that he induced or procured or was instrumental in having the said B. P. Sale to put in the said upset bid; or that he has in any manner or form misused or injured the said complainants. He therefore prays that the said bill may be dismissed, and having filed answer he prays to be hence dismissed with his reasonable costs by him in this behalf expended.

And he will ever pray, &c.

B. M. BRUCE.

AFFIDAVIT.

Virginia:

Nansemond County, to-wit:

I, R. H. Rawles a notary public for the county aforesaid in the State of Virginia do certify that B. M. Bruce whose name is signed to the foregoing answer has this day appeared before me in my said county and made oath after being duly sworn that the statements contained in said answer stated as coming of his own knowledge are true; and that all other statements contained therein which he derived from the knowledge or information of others he believes to be true.

Given under my hand this 23rd day of September 1896.

R. H. RAWLES N. P.

The depositions of W. N. Camp taken by consent of page 21 the counsel on this the 14th day of September 1896, to be read as evidence in the case of Camp and others against B. M. Bruce, in the presence of E. E. Holland, J. B. Prince

attorneys for the plaintiff, and Judge R. H. Rawls, attorneys for the defendant.

Witness: W. N. CAMP, being duly sworn deposes and says:

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

A Age 48 years; residence Albion, Fla.; occupation mining; I know the parties to the suit.

Q State what you know in regard to the re-sale of the Burrough's tract of land outside of the contract for the purchase of same had between P. D. Camp, B. M. Bruce and yourself?

A Sometime after the re-sale of the Burrough's land I saw Judge Rawls, and he told me that Bruce had approached him and asked him to draw up an upset bid, and that he refused to do so stating that he drew up the contract between P. D. Camp, myself and B. M. Bruce, and that he referred him to Mr. Vanderslice, I saw Mr. Vanderslice, and he showed me a letter
page 22 } from Mr. Sales of Norfolk, asking him to draw up an
upset bid and present the bill to B. M. Bruce and he will settle.

Q Was that before or after the contract was made between yourself, P. D. Camp and B. M. Bruce?

A After.

Cross-Examined by Judge Rawls.

Q When you entered into this agreement with B. M. Bruce for the purchase of his interest—whatever the same might be, in the said tract of land, was there not a distinct understanding between you, that the said agreement was to be good only upon the condition that the court confirmed that specific sale referred to in the agreement as having been made by E. E. Holland special commissioner?

This question objected to by plaintiff's counsel because it seeks to vary the contemporaneous written agreement, which must speak for itself.

page 23 } A I do not remember any agreement that was not mentioned in the contract.

Q Do you know whether the sale referred to in the contract was ever confirmed by the court?

This question objected to by plaintiff's counsel.

A I suppose not, or there would not have been another sale.

Q As a matter of fact was there not another sale of the said land?

Objected to by plaintiff's counsel.

A I think so. I was not at the sale.

Q Were you and Mr. P. D. Camp jointly interested in this matter?

A We understood so.

Q Did not P. D. Camp, representing yourself and himself, attend another public sale of this land under the order of the court and make bids for the same?

A I don't know.

Signature waved by consent of counsel.

page 24 } The further taking of depositions for the plaintiffs in
the suit of Camp and others against B. M. Bruce,
Taken on the 25th day of September, 1896, pursuant
to adjournment on the 16th day of September, 1896.

Present: E. E. Holland & J. B. Prince, attorneys for the plaintiff, and R. H. Rawles, Merritt Briggs and A. B. Seldmer, for the defendant.

The counsel for the defendant appeared and objected to the answer of the 2d question in the deposition of W. N. Camp taken by consent of counsel on the 14th day of September, 1896, on the ground of said answer being hear-say testimony; a similar objection being entered as to the answer of question No. 3 in the said deposition.

P. D. CAMP being duly sworn, deposes and says:

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

A 1 47 years old, lumber business, Franklin, Va.: yes.

Q 2 Were you present in Suffolk at the re-sale of the Burrough's tract of land on Monday, December 10, 1894, sold in the chancery suit of Ranstead against Ranstead, sold by E. E. Holland's special commissioner in said suit?

A 2 Yes, sir.

Q 3 State who bid at that sale and all the circumstances connected with it so far as you know.

A 3 The upset bid was \$2,600.00, and then I bid on the property and run it up to somewhere about \$3,000.00, then I quit bidding. Mr. Sales and Mr. Bruce were standing together. I don't know that anybody called out the bid, but the crier cried the bid from where Mr. Sales and Mr. Bruce were standing—from that direction. I don't know that it was called out who made the bid. Then Mr. Nelms commenced bidding. Mr. Sales and Mr. Bruce were standing together and consulting, and they were the only bidders up to \$4,—
 page 25 } 000.00—Mr. A. L. Nelms and Mr. Sales. Mr. Bruce
 } and Mr. Sales were consulting together all the time
 } during the bidding—standing together and talking with
 each other—and I remarked to Mr. Bruce that it looked like that they were bidding together—working together that day. Mr. Sales bid \$4,000.00 and the property was knocked off to him. “Mr. Sales and Mr. Bruce appear so friendly I suspicioned in my mind that they were interested in each other in the sale in some way, and then afterwards I made some inquiries around, and I understood that Mr. Bruce had made a contract to deliver the timber off the Burrough's tract of land, and afterwards he told the party that he could not deliver this timber because the Camps had interfered in the bidding. At Nansemond Courthouse Mr. Sales and Mr. Bruce came there together, and as I stated above they were conversing together all the time during the sale, and after the sale they took the street car together and returned up town.”

So much of the above answer objected to by defendant's counsel as hear-say as purports to convey to the witness any information obtained from sources, which may make his answer hear-say.

Q 4 Do you know who put in the upset bid for \$2,600.?

A 4 The record shows that P. B. Sales did.

Q 5 Do you know who drew up the form of the upset bid?

A 5 I only know from hear-say—Mr. Vanderslice.

Q 6 If there are any other facts in connection with this matter that you want to state, state them.

A 6 I was in Norfolk and was talking to a friend, and he said that Mr. Bruce, Mr. Sales and his attorney were there in consultation. That was before this upset bid was put in. I was informed by several parties that Mr. Bruce was the purchaser of the Burrough's tract of land sold on December 10th, 1894, and that is why I looked into it to find out and made inquiries, on the day of the sale, December 10th, 1894, before I went to the court-

house I went into Mr. Bruce's store and spoke to him about this upset bid. He did not seem concerned or bothered in anyway
 } about the property going to be sold, and under our con-
 page 26 } tract we were to give him \$500.00 profit on his bid, and
 I thought it looked rather strange that he seemed to feel such a little
 interest in the property going to be sold.
 i

So much of the above answer as purports to convey information which he receives in reference to the sale of the land in question from friends and others as stated in answer is objected to by defendant's counsel as being hear-say; also all opinions of the witness objected to.

Cross-Examined.

By Defendant's counsel:

Q 1 Are you one of the plaintiff's in this suit?

A 1 Yes, sir.

Q 2 Were you one of the plaintiffs in a common law action instituted by W. N. and P. D. Camp against B. M. Bruce in the Circuit Court of Nansemond county to recover damages for a breach of contract which is filed in this suit and marked “Exhibit A,” a copy of which contract I now hand you?

A 2 Yes, sir.

Q 3 What has become of that suit?

A 3 It has been dismissed without prejudice.

Q 4 When you entered the contract that is here filed and marked “Exhibit A” with B. M. Bruce, were you well aware that you were contracting with reference to a subject matter, that was entirely under the control of the Court?

A 4 I knew the Court had a right to say whether they would accept the bid or not.

Q 5 Then you knew that the Court had a right to refuse to confirm that sale and to receive upset bids?

A 5 Yes, sir.

Q 6 You knew also, did you not that that contract
 page 27 } was not to be carried out unless the court confirmed
 } that specific sale?

(The plaintiff's counsel object to the several questions above asked, because the contract is the best explanation of what it purports to contain.)

A 6 The contract shows the agreement,

Q 7 You have stated in answer to questions on examination in chief that at the sale of December 10th 1894 you run the property up to about \$3000.00, and that then one, A. L. Nelms began to bid. Is it not a fact that Mr. A. L. Nelms was bidding for you as your agent?

A 7 After the property was run up to somewhere in the neighborhood of \$3000.00, Mr. Nelms was not bidding as our agent.

Q 8 Was he bidding before it reached \$3000.00 or thereabouts as your agent?

A 8 I am not positive whether I bid up to \$3000.00 or whether Mr. Nelms bid.

Q 9 Was he authorized on that day to make any bids for you for the said property?

A 9 I am not positive, but I think he was. I think he did the bidding up to a certain amount.

Q 10 Did you not see him before the sale began and ask him to bid on that property for you?

A 10 I think that he was authorized by me to bid to about \$3000.00, but he was not authorized to run the property up to \$4000.00 by me.

Q 11 Have you not already stated that A. L. Nelms did not begin bidding until after the property reached about \$3000.00?

A 11 If I said that, I am not positive whether Mr. Nelms did the bidding for us up to about \$3000.00, or whether I bid myself.

Q 12 What was the highest bid Nelms made for the property that day?

A 12 I don't recollect.

Q 13. Then, you do not know that he exceeded your page 28 } authority in bidding?

A 13 Yes, sir, on his own accord he bid.

Q 14 Did he make any bid of his own accord that day?

A 14 He made bids that I did not authorize him to make for us.

Q 15 How much did you authorize him to bid that day?

A 15 I am not positive, it was somewhere in the neighborhood of \$3,000.

Q 16 After Nelms had bid about \$3,000 on the said property for you, can you say whether or not he bid a further sum on said property for either W. N. or P. D. Camp?

A 16 He was not representing either one of us; I was there to represent W. N. Camp and myself.

Q 17 In answer to the 3rd question you state that during the sale you remarked to Mr. Bruce that it looked as if he and Mr. Sales were bidding together. Did not Mr. Bruce in reply to that

remark of yours deny that he had anything to do with Mr. Sales bidding?

A 17 I don't recollect that he did.

Q 18 Did Mr. Sales deny that Mr. Bruce had anything to do with it?

A 18 If he did I do not recollect.

Q 19 Then you do not recollect the answer of either Mr. Sales or Mr. Bruce to your remarks?

A 19 No, sir, I do not recollect the answer.

Q 20 What was the character of this land in question. Is it not woodland?

A 20 I have heard it was; from my own knowledge I do not know.

Q 21 What did you desire it for? Why were you anxious to get the land?

A 21 I have stated that from my own knowledge I do not know.

Q 22 Have you ever sent any representative of page 29 } yours to examine it?

A 22 I started to have it examined, and Mr. Bruce got out an injunction preventing me from having the land examined.

Q 23 What I desire to ascertain is, whether your representative reported to you whether it was cleared or wood-land?

A 23 He did not get through, so he could not make a report of all the land.

Q 24 Then you don't know whether this land is wood-land or cleared land?

A 24 I stated above of my own knowledge I did not.

Q 25 Do you know from the knowledge obtained from others whether it is wood-land or cleared land?

A 25 I understand it is all wood-land land.

Q 26 What is your business?

A 26 Saw-mill business and farming.

Q 27 Did you not desire this land in order to get the timber from it to be used in your business?

A 27 Well, at the time I bought it from Mr. Bruce I was just buying because I thought it was cheap.

Q 28 Isn't its chief value the wood upon the land?

A 28 I don't understand your question.

Q 29 Well, I mean to say, is not the principal value of the land the wood and timber upon it?

A 29 From my information it is not.

Q 30 Then what is the principal value of the land?

A 30 The timber and the wood is a part of the value, but I

consider the land as valuable as the other for farming or other purposes.

Q 31 Do you know whether it is mostly swamp land or low land?

A 31 I understand it is fine grazing land.

page 30 } Q 32 When did you first learn that you were not to get the land under your contract with Mr. B. M. Bruce filed as "Exhibit A" with the papers in this cause? Was it not when Mr. Sales put in his upset bid?

This question objected to by the plaintiff's counsel as being purely legal.

A 32 I learned through Mr. E. E. Holland that there was an upset bid put in by Mr. Sales.

Q 33 Then that was the first time that you learned that you were not to get the property under this contract, was it not?

This question objected to by plaintiff's counsel.

A 33 I answered that that was the first intimation that there was an upset bid.

Q 34 Was not this the first knowledge that you had that you were not to get the property under your contract with Mr. Bruce because of this upset bid?

This question objected to by plaintiff's counsel as being purely legal.

A 34 We have always expected to get the property under that contract.

Q 35 When did you first learn of any difficulty in the way of your getting title to this property under the contract marked "Exhibit A" and filed with the papers in this suit?

This question objected to on same ground as that above.

A 35 The first intimation that we had that there would be any trouble was when we were notified that there was an upset bid put in.

Q 36 Now, when did you learn of this upset bid?

A 36 I could not tell you, I do not recollect.

Q 37 Did you know it between the dates, between which Mr. Sales put in his upset bid on the 6th day of October, 1894, and the 10th day of December, 1894, the time at which the property was sold?

page 31 } A 37, Yes, sir.

Q 38 But you don't know how soon after the 6th day of October?

A 38 No, sir.

Signature waived by consent of counsel.

By consent of counsel any papers in the suit of Ranstead against Ranstead pending in the Circuit Court of Nansemond county may be read as evidence in this case, and also any papers in the common law suit of W. N. and P. D. Camp vs. B. M. Bruce lately pending in said Court.

G. H. ROGERS being duly sworn deposes and says:

page 32 } Q 1 State your age, occupation, residence, and do you know the parties to this suit?

A 52 years old; Lumberman; Winton, Hertford County, N. C.; I know the plaintiff.

Q 2 Did you have any consultation with Mr. P. B. Sales, the alleged purchaser of the Burrough's tract of land which is the subject of this suit, after he had bought it December 10th, 1894, and, if so, state what that conversation was, where it was and all about it?

(This question objected to by defendant's counsel because calling for an answer which would be hearsay testimony, unless there was proof that Mr. Bruce, the defendant, was present at the time of the alleged conversation.)

A 2 I did after the 10th of December-sometime in January, 1895. I went to the city of Norfolk, and I asked Mr. Sales if this timber was for sale, and he said it was. I asked him if he would name a figure on it, and he said he could not without seeing his partner or his friend—I do not know which he called him—and I remarked to him that it was inconvenient and expensive for me to go to Norfolk, and could not see his partner while we were in the city at that time and have some understanding about it. He told me his partner did not live in Norfolk, but lived in Suffolk—or his friend I don't recollect which, and after seeing his partner that he would correspond with me and let me know what price they would take; and he corresponded with me after that. I think that is about all the conversation.

This answer objected to by defendant's counsel as being hearsay testimony.

Q 3 Where did he say his partner or friend lived?

This question objected to by defendant's counsel as calling for hearsay testimony.

page 33 } A In Suffolk.

This answer objected by Def. counsel as being hearsay testimony.

Q 4 Did you receive any letter from Mr. Sales on that subject?

This question objected on same ground as above.

A Yes, sir.

This answer also objected to on the same ground as above.

(The counsel for the plaintiff here hands the witness a letter.)

Q 5 Look at this letter and see if you identify this as the letter from Mr. Sales, dated February 16th, 1895, and filed as "Exhibit B."

This question objected to by Def. counsel as calling for hearsay testimony, and "Exhibit B" objected to because of being hearsay.

A This is the letter.

(The letter is here filed and marked "Exhibit B.")

The Def. Counsel object to the filing of this letter on the ground of its being irrelevant and hearsay.

Signature waived by consent of counsel.

EXHIBIT B.

Norfolk Va., Feby 16th 1895.

G. H. Rogers, Esq.,
Winton N. C.

My Dear Sir:

page 34 } Since seeing you I have been quite sick. Am in a receipt of a letter from my friend.

He is desirous of knowing what figures you will offer. He declines naming price he will take. I think if you will offer a fair price he will sell. Let me know your offer, I will try and induce him to business. Please excuse my delay in not writing you earlier, but was caused by sickness.

Yours Truly

P. B. SALE.

page 35 } MR. JOHN COWLAND being duly sworn, deposes and says:

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

A 1 48 years old; occupation, surveyer and contractor, and I have been getting lumber a good deal. I live in Suffolk now; yes, sir.

Q 2 State whether you had any conversation with Mr. B. M. Bruce before the sale of the Burrough's tract of land, or on the day of the sale of the Burrough's tract of land on Dec. 10th, 1894, in regard to the survey of this land, and what that conversation was?

A 2 I did have a conversation with him. The day of the sale that tract of land was bid off for \$2,100 by B. M. Bruce. I was on the court-house yard in Suffolk, and the price was so very low for the valuable tract of land that it set me to looking for a bidder—for somebody to buy it to give more than that for it; and my remarks about the value of the land and what was on it Mr. Bruce approached me, and asked me to say nothing about it, that it was his bid, and if he bought the land he would give me all the surveying to do, and there would be a good deal of work for me to do. Upon that promise I ceased from talking then about the value of the land and what was on it. A short time after that Mr. John A. Gum offered Mr. B. M. Bruce \$100.00 advance on his bid. Mr. Bruce appeared as though he would sell it, but wanted the cash. Mr. Gum refused i. e. did not tender him the cash, and he wanted to wait until the sale was confirmed. Upon that condition Mr. Bruce would not agree to wait. Then, I expected Mr. Bruce to give me the work to do, but the sale was not confirmed, and along from time to time probably a month or sometime two months when I would see Mr. Bruce I would speak to him about the surveying or something about the land, and he would put me off, and finally he told me that he was on a deal with Camp, and that the sale had not been confirmed. It went on at that some

time until after awhile he told me that he was out of page 36 } it; that the Camps had bought it; and I think the next } conversation I had with him was, that the land was going to be sold again. I went down to the sale of it and he told me this time that he had a man at his back with plenty of money; he won't going to fool with the Camps any longer. I asked him who the man was, and he told me it was Mr. P. B. Sale of Norfolk—a man that owned 17 bar-rooms. I went to Mr. Sales to secure the job of surveying from him before the sale. He told me it would be all right if he bought it, but Mr. Bruce would attend to it; and after the sale was over I went to him again after it was knocked off to Mr. Sales; I then went to Mr. Sales and him and Mr. Bruce were together, and he (Bruce) told me it would be all right, that he would give me the work to do.

Then a month or more sometime after Mr. Bruce said he expected that the Camps would put in another upset bid; and after awhile probably a month or two more he told me that they had put in another upset bid, and that he was going to raise it again.

He seemed to intimate from his conversation that Mr. Holland was aiding Mr. Camp or wanted Mr. Camp to buy it, and said he was going to Mr. Prentiss to see about it. Mr. Holland went off to the Springs and while Mr. Holland was gone to the Springs he said he was going to Judge Prentiss and get Judge Prentiss to confirm the sale; and a short time after that—I don't know whether it was before Mr. Holland come back or not, but Mr. Bruce told me that the sale had been confirmed for \$4800.00 and some dollars; I won't be positive about the odd dollars; I think it was \$4850.00; and that he wanted me to look into the survey, notes or boundaries and examine the record about the boundaries—if there were any—to prepare to go and survey it. I went to the Clerk's Office to examine the records, and I went to Judge Kilby's and got an old map and survey, or rather I applied to Judge Kilby for it—Wm. B. Whitehead's old map of it—and I began to survey on the 24th day of September 1895, but I never completed the survey, because Mr. Bruce failed to furnish me the help to complete the same.

So much of the above answer as purports to relate conversations of the witness not had in the present of defendant is objected to.

Q 3 Did Mr. Bruce or on about the sale on December 10th, 1894, ask you not to say anything about the value of page 37 } this land?

This question objected to by defendant's counsel as being leading.

A 1 He did.

Cross-Examined.

By defendant's counsel:

Q 1 Are you and Mr. Bruce now on good terms?

A 1 Well, I don't love him, fear him, or hate him, so far as that goes.

Q 2 Is it not a fact that you are now on good terms?

A 2 I don't think we are.

Q 3 How long have you been out with each other?

A 3 Ever since he failed to comply with his contract.

Q 4 To what contract do you allude?

A 4 The survey contract with me about the same land.

Q 5 What was the true cause of your not finishing the survey of that land?

A 5 I have already stated that he failed to furnish me the necessary assistance and help to complete the work.

Q 6 How long did you work after you began the survey?

A 6 I don't recollect exactly—about 10 or 11 days, including my work on the map; and in looking up the notes and all I suppose I lost probably some 12 or 14 days including the whole time.

Q 7 Is it not a fact that Mr. Bruce discharged you from further work in surveying that land?

A 7 Well, he failed to furnish the hands to help me, and said he was going to get somebody else to do the work. Part of the time I was at work I had one hand, sometimes two or three.

Q 8 Is it not a fact that during the time you were engaged in making that survey that you were in a state of intoxication to that extent that you could not make a proper survey?

A 8 No sir.

Q 9 Mr. Cowland, I have to caution you. Were you not intoxicated at any time during the 10 or 14 days that you were engaged in making that survey?

A 9 No sir.

Q 10 Did you not go to Mr. Bruce's store during that time in a state of beastly intoxication?

A 10 No sir, I did not, and I can prove it by the axeman and chain bearers that I did not drink a drop of liquor while I was on that survey, and the man or men who says I did, lies.

Q 11 Did not Mr. Bruce tell you that if you kept in the state of intoxication that he could not allow you to make that survey?

(All of these questions objected to by counsel for the plaintiff as being totally irrelevant to the point at issue.)

A 11 No sir.

Q 12 Did he not discharge you on account of your being intoxicated?

(This question objected to by plaintiff's counsel on same ground as above.)

A 12 No sir.

Q 13 It is a fact, is it not, that Mr. Bruce wanted that land surveyed?

A 13 Yes, I suppose he did; he wanted it surveyed.

Q 14 Then, why did he discharge you if you were prosecuting your work in a creditable manner?

(This question objected to by the plaintiff's counsel on the same ground as above.)

A 14 I don't know; he seemed to be dissatisfied with the progress we were making. As I said before some days we had one man and some days two, and some three, and with only one man a surveyor could make very slow progress cutting through reeds 10 and 12 feet high—too thick for a man to walk through without cutting his way. Mr. Bruce did complain about getting along very slow, but one man stuck a reed in his hand and he had to leave, and one man give as excuse that he had a sick wife and had to knock off, and with but one man left my progress was so slow that I come out on Friday night and never went back any more, and the next day was Saturday and I applied to Bruce for some money and he put me off and disputed the time that the men had worked in the swamp, and on Saturday evening he paid me a part of what he owed me. I went to him the following Monday, a week to complete the work, and he said he was going to get another man.

Q 16 How often did Mr. Bruce go down to the Burrough's tract while you were making that survey?

A 16 He went with me the first day to begin at Jones' Corner, and that was the only day that he ever went in the swamp while I was there.

Q 17 On the Saturday that you have alluded to that you went

to the store of Mr. Bruce and asked for money, is it not a fact that Policeman Matthews, of this town, was sent to that store to arrest you for drunkenness and disorderly conduct?

All these questions objected to by the plaintiff's counsel as being irrelevant.

A 17 Matthews did come there, but I was not drunk or disorderly either. Bruce refused to pay me my money, and I went with Matthews to the Mayor, and I did go back to Bruce's store and got the one-sided settlement that he choose to give, but he broke his contract and ain't filled it yet.

Q 18 And then you became very angry with him, did you not?

This question objected to by the plaintiff's counsel on the same ground as the above.

A 18 Yes, I was angry with him.

Q 19 Have you not been since that time, and are you not now angry with him?

A 19 Yes.

Q 20 How did you come to testify in this case?

A 20 I was notified to appear here by Mr. Holland and Mr. Camp.

Q 21 Do you know what case you are testifying in?

A 21 I suppose it is over the sale of the Burrough's tract of land.

Q 22 Did you approach Mr. Camp in reference to this matter, or did he approach you, or neither?

A 22 Mr. Camp approached me.

Q 23 Had you informed Mr. Camp of this knowledge you had about this matter before he approached you?

A 23 I have not.

Q 24 Do you know how Mr. Camp knew that you knew anything about this matter?

This question objected to by the plaintiff's counsel as being irrelevant.

A 24 Mr. Camp heard me talking to Mr. Wash. Dennis—I think Mr. Camp was at the depot, and heard me talking to Wash. Dennis, or Barton, or some one—I think it was Wash. Dennis, about the lumber on the Lee farm and about surveying the Lee farm, adjoining this land that Bruce had bought, and about running a line between this Lee farm and the Burrough's land. Then, Mr.

Camp asked me some questions about the swamp, and about the land, and about the timber, and about the sale of it.

Q 25 When did all this take place?

A 25 I think it was sometime before, or about the time, I reached the Lee farm in the survey.

Q 26 Well, when was that?

A 26 September, 1895:

page 41 } Q 27 Which Mr. Camp do you refer to?
 } A 27 This gentleman here, Mr. Paul Camp I think.
 } Q 28 Did you then and there repeat to him all the con-
 versations that you had or claim to have had between Mr. Sales
 and Mr. Bruce as given in your answer No. 2?

A 28 I don't think I did.

Q 29 In the lengthy answer to question No. 2 of the direct examination you state a number of different conversations which you say you have had both with Mr. Sales and Mr. Bruce in reference to the survey of this land. Did you take any written memorandums of any of these conversations or are you only now speaking from memory?

A 29 I took no writing of it.

Q 30 Then you were only speaking about these conversations from memory?

A 30 Those conversations occurred as often sometimes as once a fortnight about the land and what was on it.

Q 31 My meaning is then you are speaking of these conversations from memory only, are you not?

A 31 Yes.

Q 32 Do you recollect the dates of these different conversations, the month or time?

A 32 They were going on for nearly a year.

Q 33 Then you don't recollect the time at which you had these different conversations mentioned in your answer to the 2nd question?

A 33 No.

Q 34 Do you pretend to give any exact language used in any of these conversations?

A 34 I did.

page 42 } Q 35 Do you mean to say that you did give the ex-
 } act language in your answer to the 2nd question?

A 35 Part of it I did.

Q 36 What was the exact language that Mr. Sales used when you approached him and asked him to give you the survey of the land?

A 36 He referred me to Mr. Bruce—that Mr. Bruce would attend to that part of it—to see Mr. Bruce.

Q 37 So the language used in your answer just above is the exact language used by Mr. Sales when you approached him in reference to giving you the survey of this land?

A 37 I think it is.

Q 38 How many years ago did this conversation between Mr. Sales and yourself take place?

A 38 I don't recollect exactly; it was the day he was up here; you can tell that by the date of sale. I did not tax my memory with the date of every sale.

Q 39 Do you know what year it was?

A 39 1894.

Q 40 Was it in the fall or in the spring?

A 40 It was in the fall 1894 or the spring of 1895.

Q 41 That is about as near as you can come to it with your memory?

A 41 Yes.

Q 42 Well, are there any other of the conversations, which you refer to in your answer to the 2nd question in chief between Mr. Sales or Mr. Bruce and yourself, the exact language of which you can give now?

A 42 Yes, I told you if you will look in that 2nd answer to Judge Prince's question you will find each conversation as it is coupled along before and after each sale.

Q 43 What I am asking you about is the different language page 43 } in the different conversations. Do you remember the
 } exact language of any of those conversations other than the exact language, which you state was used in answer to my previous question?

A 43 I don't think I give half of what was said. I give as near the meaning of what I could recollect as I could.

Q 44 Then, you don't remember the exact language of any of these conversations other than the one single conversation, in which you have given, as you state, the exact language?

A 44 I had a conversation with Mr. Sales of Norfolk, and he stated that Bruce would attend to it.

Q 45 I am not asking you the substance, but the exact language used in these conversations. Can you give that?

A 45 I told you that I had given it as near as I could.

Q 46 Do you remember what you said a short while ago as appears in your answer to the 2nd question asked you by Judge Prince in the above deposition in reference to the conversations, which you claim to have had with Mr. Sales and Mr. Bruce in connection with this land?

A 46 I don't think I can give the exact words of my language, but I could come pretty near it.

Q 47 Did you not come up to Mr. E. E. Holland, the attorney for the plaintiff in this case, and volunteer to him the information, which you testify to here to-day?

A 47 No, sir.

Q 48 Have you not ever told Mr. Holland what you were going to testify in this case?

This question is objected to by the plaintiff's counsel as being irrelevant.

A 48 I don't think I have; I have not told him before.

Q 49 Then, you admit having talked to him on this subject before you testified?

This question is objected to by the plaintiff's counsel as being irrelevant.

page 44 } A When I was in Mr. Holland's office the day set to
take the depositions I asked Mr. Holland when it
postponed when the case would be called again.

Q 50 And this is the only conversation that you ever had with Mr. Holland on this subject, is it?

This question objected to by plaintiff's counsel on the same ground as above.

A No, sir.

Q 51 Well, state what conversation you had and when it was?

This question also objected to as being irrelevant.

A 51 Mr. Holland saw me on the street and asked me if I saw Mr. Nelms to tell him to come to the office when the case was set before to come here to testify, and I saw Mr. Nelms and told him to come here like Mr. Holland asked me.

Q 52 You have been on the Burrough's tract of land, have you?

A Yes, sir.

Q 53 Do you consider it a valuable tract of land?

A I do.

Q 54 Will you state what gives it its chief value?

A Its timber and its rich soil.

Q 55 It is mostly wood-land?

A 55 Chiefly reed swamp.

Q 56 It is not well covered with timber?

A 56 Well, there has been a vast quantity cut of it, but still there is good quantity of Gum, Poplar, Maple, Pine, Oak, and other woods that may become valuable.

Q 57 Is any of that land under cultivation?

A I don't think there is but little of it, if any. I believe that old man Harris did cultivate a little field in there.

Mr. E. E. HOLLAND, being duly sworn, deposes and says:

Questioned by Plaintiff's Counsel:

Q 1 State your age, occupation, residence, and do you know
page 45 } the parties to this suit?
A 1 36 years old; attorney at law; Suffolk; and I
know the parties to this suit.

Q 2 You were the Commissioner of Sales for all the sales made of the Burrough's land in the suit of Ranstead vs. Ranstead, to whom we have referred heretofore?

A 2 I was.

Q 3 At the sale made on the 10th of December, 1894, who was the land knocked out to according to your recollection?

A 3 My recollection is, that at that sale Mr. P. B. Sales made the highest bid and the land was knocked off to him by the auctioneer.

Q 4 Who complied with the terms of that sale and executed the bonds for the deferred payments?

A 4 Soon after that time, I do not remember the exact date, I asked Mr. B. M. Bruce, whom I saw on the date of the sale in conversation with Mr. Sales, in whose name the sale should be reported, and Mr. Bruce instructed me to report the sale in his name, and a few days afterwards came into the office, made the cash payment and gave his bonds for the deferred payments. I presumed that Mr. Bruce, whom I knew well, had seen Mr. Sales, and that this was the arrangement between them and was satisfactory. I have not since that time heard a word from Mr. Sales with reference to the matter.

Cross-Examined.

By Defendant's Counsel:

Q 1 The land was knocked out at the public sale to Mr. P. B. Sales?

A 1 That is my recollection.

Q 2 If you had not then heard from Mr. Bruce a few days afterwards, would you not have reported Mr. P. B. Sales as the purchaser?

A 2 I should have done so, and I would not have reported Mr. Bruce as the purchaser thereof, if I had not known him well and if I had not believed having seen him with Mr. Sales on the date of the sale, that it was satisfactory both to Mr. Sales and Mr. Bruce.

Q 3 How many days was it after the sale before Mr. Bruce first approached you?

A 3 I can't recollect the exact number of days.

Q 4 Was it as much as 10 days?

A 4 I could not say. The conversation to which I refer took place in the barber shop.

Q 5 After the sale did not Mr. Sales himself ask you if he made the arrangement any time within ten or twelve days if that would answer?

A 5 It may be true that he did, but not having charged my memory with it I do not recollect it.

Signature waived by consent of counsel.

The further taking of depositions for the plaintiffs in the suit of Camp and others against B. M. Bruce, taken on this, the 9th day of October, 1896, pursuant to adjournment on the 25th day of September, 1896.

Present: E. E. Holland and J. B. Prince, attorneys for the plaintiffs, and R. H. Rawles and A. B. Seldner, attorneys for the defendant.

Mr. S. P. VANDERSLICE being duly sworn, deposes and says:

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

A 1 S. P. Vanderslice; I live in the town of Suffolk; 31 years of age; attorney at law; I know the parties to this suit.

Q 2 State whether you drew up an upset bid for the re-sale of the Burrough's tract of land in the suit of Ranstead vs. Ranstead.

A 2 I did not draw up the upset bid myself. I was employed through Judge Rawles to represent Mr. Sales, of Norfolk, to put in an upset bid on what was commonly called the Burrough's tract of land. I think the upset bid was prepared by Judge

Rawles. I submitted it to the court and it was accepted. I received a letter from Mr. B. P. Sales confirming my employment by Judge Rawles to represent him in the matter. My impression is that the upset bid was sent me in a letter from Mr. Sales. I received two letters from Mr. Sales, one of which I cannot find.

The letter here referred to is made a part of the deposition.

(The witness has examined his papers and states now that he cannot find either one of the letters here referred to.)

Q 3 Have you ever been paid for that upset bid, and, if so, who paid you?

A 3 Yes, sir. Well, I never expected the matter to be brought up. My impression, as well as I can remember, is this: I drew on Mr. Sales for my fee. The draft was returned as well as I remember. I received a letter from him, in which he said that I could present my bill to Mr. Bruce, and he would settle. I remember the letter distinctly, but I don't remember the contents, except the post-script; I can recollect that. I had that letter in my hand only a few months ago.

Cross-Examined by the counsel for the Defendant.

Q 1 Mr. Vanderslice, you are an attorney-at-law?

A 1 Yes, sir.

Q 2 When Judge Rawles approached you in reference to representing Mr. Sales in the matter of this upset bid, did you agree to being employed by Mr. Sales for this purpose at this time?

A 2 I did. I told Judge Rawles it would be all right.

Q 3 Then, from that day you were Mr. Sales' attorney in this matter?

A 3 After the confirmation by letter from Mr. Sales.

Q 4 I suppose you mean the first letter you received from Mr. Sales was the confirmation of your employment?

A 4 Yes, sir.

(Counsel for the defendant appeared and desired to note an objecting to all of the testimony of the witness in reference to or connected with the filing of this upset bid for Mr. B. P. Sales on the ground that all communications between Mr. Sales and himself in reference to this matter are privileged communications between client and attorney, and without waiving objection counsel for the defendant here proceed to further cross-examine the witness).

(Counsel for the plaintiffs insist that it is proper evidence, because neither Mr. Sales nor Mr. Vanderslice claimed the privileges).

Q 5 Did not Judge Rawles state to you at the time he had a conversation with you in reference to representing Mr. Sales in the matter referred to, that Mr. Sales had requested him (Judge Rawles) to put in this upset bid, but that he (Judge Rawles) was not in a position to represent him in this matter, as he
page 49 } represented Mr. Bruce, and that Judge Rawles had given Mr. Sales his (Mr. Vanderslice's) name as an attorney to represent him?

A Yes, sir, I think he did.

Q 6 Do you remember the day on which you received your first letter from Mr. Sales in reference to the putting in of this upset bid?

A September 6th, 1894.

Q 7 Subsequent to that date did you also receive letters from Mr. Sales in reference to representing him in this matter?

A No, sir. I received one after the matter had been closed up — after the bid had been accepted the resale ordered by the court.

Q 8 You said something just now about the payment of your bill for services rendered Mr. Sales in the matter of said bid. Do you recollect whether this was paid by Mr. Sales or not?

A 8. I can't say that it was.

Q 9 Can you say it was not?

A 9 I cannot say that it was not.

Q 10. Then, you are not sure as to who paid the bill?

A 10. No, sir. I know that my first draft on Mr. Sales was returned—Whether I ever made another or returned that one for payment I don't remember. I know acting under the instructions in his letter to me, I called on Mr. Bruce for settlement, but cannot say whether Mr. Bruce paid it.

page 50 } MR. P. D. CAMP re-called by plaintiff's counsel.

The counsel for the defendant object to Mr. Camp being recalled to testify, because the witness has already testified in chief, and his testimony cannot be in rebuttal; the defendant having as yet placed no witness on the stand.

P. D. CAMP being duly sworn, deposes and says:

Q 1 Mr. Camp, have you been ready at all times since the exe-

cution of the contract between yourself, W. N. Camp and B. M. Bruce in regard to the purchase of this Burrough's tract of land to comply with the terms of that contract, and are you now ready?

A 1 Yes, sir, we have been ready and willing ever since we made the contract to comply with the terms of that contract.

Q 2 It seems from your testimony heretofore given that you bid upon the property after the upset bid claimed to have been put in by Mr. B. P. Sales was accepted by the Court and a re-sale ordered?

A 2 We bid upon the property at the time because we wanted the property and did not know but that it might go into other hands, and we intended at all times to make Mr. Bruce if we could comply with the terms of that contract.

Cross-Examined.

By Defendant's counsel:

Without waiving the objection heretofore noted to the witness testifying, the counsel for the defendant proceed to cross-examine the witness.

Q 1 At the last sale of the property Mr. Camp was there anybody bidding on the same except you and Mr. Bruce?

A 1 There was no bid except the \$4400.00 bid.

Q 2 At the final sale were not the only bidders for the property you, your brother and Mr. B. M. Bruce?

A 2 I do not know what sale you refer to.

Q 3 Was not an opportunity given to you and your brother, W. N. Camp and B. H. Bruce, the defendant in this suit
page 51 } to bid against each other as to who should finally receive the title to the property in question from the special commissioner, M. E. E. Holland?

A 3 I think it was.

The taking of depositions, by consent of counsel, the defendant in the case of Camp and others against B. M. Bruce, this 9th day of October, 1895.

Present; E. E. Holland and J. B. Prince, attorneys for the plaintiffs, and R. H. Rawles and A. B. Seldner for defendant.

MR. B. M. BRUCE being duly sworn deposes and says:

page 52 } Q 1 What is your name, age, residence, occupation, and are you the defendant in this case?

A 1 My age is 47, will be 48 this December. My occupation is grocery and liquor business, sometimes I sell a little lumber; I live in Suffolk; I am the defendant in this case and I know the plaintiffs.

Q 2 Mr. Bruce, did you enter into a contract dated the 26th day of September, 1894, with W. N. and P. D. Camp, which contract is filed and marked "Exhibit A" with bill in this cause?

A 2 I did. The contract will show for itself.

Q 3 Have you complied with the terms and conditions of this contract so far as you have been able to comply with the same?

A 3 I did.

Q 4 Was Mr. E. E. Holland, special commissioner in the suit of Ranstead against Ranstead and others, directed to ask that the deed for the land mentioned in the said contract under the sale mentioned in the same be made to W. N. and P. D. Camp, and was Mr. E. E. Holland aware of the said contract and the terms of the same?

A 4 Mr. E. E. Holland drew the contract, and if I understand it right the deed was to be made to Mr. Camp and his brother instead of me, provided the court confirmed the sale.

Q 5 Then, Mr. Holland was aware of the terms of this contract?

A 5 Yes, sir.

Q 6 Did he know the terms of the contract on the day it was entered into?

A 6 Mr. Holland wrote the contract and we signed it.

Q 7 If the court would have confirmed the sale to you of the property mentioned in said contract, would you and your wife have united in the deed with the commissioner in accordance with the terms of said contract?

A 7 We would. Yes, sir.

Q 8 It appears from the record in the suit of Ranstead vs. Ranstead and from the evidence heretofore taken in this cause that after you had entered into this contract of September 26th, 1894, that one B. P. Sales put in an upset bid for the Burrough's land. Were you any party to said upset bid, or did you have any interest or agreement with the said Sales with reference to the same at the time said bid was made or previous thereto?

A 8 There was no agreement; I had no interest.

Q 9 You are charged in the bill in this cause with contriving by trickery, scheming and fraud to defeat the contract of the 26th day of September, 1894. Did you in any way attempt to defeat said contract?

A 9 I did not.

Q 10 Did you cause the said B. P. Sales to put in the upset bid above referred to?

All of these questions objected to by the plaintiff's counsel as being leading.

A 10 I did not.

Q 11 When did you first have any conversation with Mr. Sales in reference to this property?

A 11 I don't remember the day, but it was sometime after I bought it. He asked me what the property was worth. I told him it had been estimated to be worth about \$5,000.00 or \$6,000.00, but I did not put any reliance on the estimation that I heard, from the fact that I did not believe they knew much about it.

Q 12 Was your first conversation with Mr. Sales previous to the time of your entering into this contract of September 26th, 1894?

A 12 Yes, sir.

Q 13 Do you know how Mr. Sales knew that you were interested in any way in this property?

A 13 He mentioned the matter to me. I see you have bought a big tract of land," and asked what good it was, and how much I gave for it, and I told him.

Q 14 Well, do you know how he found out how you were interested in the property?

A 14 I can't say positively; I rather think he got it from the papers or some one here.

Q 15 When did you have any conversation with Mr. Sales about this property?

A 15 I go down to Norfolk about once a week, sometimes once a fortnight. I always get my lunch or dinner at his place. He mentioned this property to me. I told him that I had sold what title I had to it, or had agreed to sell it provided the court confirmed the sale.

Q 16 Did he at any time ask you to sell him any interest in the property before you had made this contract of September 26th, 1894?

A 16 Yes, sir. About the time that Mr. Camp was having the land examined. He asked me to let him in for one-half of it, and I told him no.

Q 17 Did Mr. Sales ever mention to you anything about putting in an upset bid for this property?

A 17 Yes, sir.

Q 18 When did he do that?

A 18 I don't remember the day or the date.

Q 19 Previous to this agreement of September 26, or after?

A 19 It was previous to that, sir.

Q 20 Did he ever say anything to you after September 26th, 1894, the date of this agreement, about putting in an upset bid?

A 20 He told me that I would never get the \$500.00; that the land would never be sold for that money; that some one else would put in an upset bid, and that he was going to put in one.

Q 21 What \$500.00 do you refer to, Mr. Bruce?

A 21 The \$500.00 that the two Mr. Camps promised me for my bid provided the sale was confirmed.

Q 22 What did you say to Mr. Sales at the time he threatened to put in this bid?

A 22 I told him if he did I would be \$500.00 short.

Q 23 Were you desirous, or did you prefer Mr. Sales not putting in this bid?

A 23 I asked him not to do it.

Q 24 If he had done it you would lose your \$500.00?

A 24 Yes, sir.

Q 25 Were you present at the sale of the property at public auction made after Mr. Sales had put in his upset bid by the special commissioner, Mr. E. E. Holland?

A 25 Yes, sir; I was.

Q 26 To whom was the property knocked down at that sale?

A 26 B. P. Sales.

Q 27 At the time of the knocking down of the property to Mr. B. P. Sales, were you interested in his bid?

A 27 No, sir.

Q 28 Did you then have any interest in the property?

A 28 No, sir; none in the world.

Q 29 When did you first have any interest in the property after the sale to Mr. B. P. Sales?

A 29 After the property was knock out to Mr. Sales—page 56 I suppose it was a few minutes after he had said to me—“Join me in this, and I will guarantee you against loss. You are here on the spot and can attend to it.”

Q 30 That was after the property had been knocked down to him?

A 30 Yes, sir.

Q 31 Previous thereto I understand you to say that you had no interest in any of Mr. Sales bids for the property?

A 31 None at all.

Q 32 Well, what do you mean by Mr. Sales saying that you could attend to it?

A 32 As I said before he told me to join him and he would guarantee me against loss, and to handle it to the best advantage.

Q 33 What interest did Mr. Sales offer to convey to you in the property at that time?

A 33 One half interest.

Q 34 Well, will you state please what occurred after this conversation with Mr. Sales with reference to the property?

A 34 Mr. Sales and I left the court-house and came up town here and came to Mr. Holland's office here. Mr. Sales asked Mr. Holland if a week or ten days would make any difference, and that in all probability he could pay the full amount. Mr. Holland I believe told him it would not make any difference. During that time Mr. Sales phoned me that the first payment was due—to make the payment, and take the receipt in my name as a guarantee to me for the amount invested.

Q 35 Well, did you do that?

A 35 I did.

Q 36 You accepted Mr. Sales proposition then in reference to the one-half interest?

A 36 I did.

Q 37 Why did Mr. Sales desire that you should take the whole title in your own name instead of taking the title jointly?

A 37 He had some financial trouble and did not have the money at that time to comply with the terms of the sale.

Q 38 You are the owner at present of the property, are you not, Mr. Bruce?

A 38 I am.

Q 39 Has Mr. Sales since then been in a financial position to pay his one-half of the property?

A 39 He says not, and I judge it is true.

Q 40 After this property had been knocked down at this public auction to Mr. Sales, did Messrs. W. N. and P. D. Camp put in an upset bid?

A 40 I heard so; I never saw it.

Q 41 Mr. Bruce, did you pay Mr. S. P. Vanderslice a bill for his services for putting in the upset bid of Mr. Sales?

A 41 I did not.

Q 42 Have you ever paid to Mr. Sales or to any one else the bill of Mr. Vanderslice or any part of it?

A 42 Mr. Sales handed me \$7.00 or \$7.50—I don't know which—and asked me to hand that to Mr. Vanderslice and take his receipt for it. I called at Mr. Vanderslice's office three times.

I was in Norfolk the day after the last time I called at his office—Mr. Sales said: "You have neglected to pay Mr. Vanderslice his charges. His draft is here. I owe you a little bill for some hams you shipped me sometime ago and you can credit my bill with that.

Q 43 What do you mean—with the \$7.50?

A 43 Yes, sir, either with \$7.00 or \$7.50—a little bill for some hams I shipped him.

page 58 } Q 44 Mr. Bruce, Mr. Camp spoke about an injunction from his going on the land. Was this injunction issued before the 26th day of September 1894, and, if so, state how you came to get the injunction?

The plaintiff's counsel object to this question on the ground that the record of that case will show all about it and is the best evidence.

A 44 I guess that the injunction was gotten out sometime previous to that. Why I got out the injunction was that Mr. Camp's agent was cutting bush tracks through the land for the purpose of examining the timber—I objected to it—That is why I got out the injunction.

It is hereby agreed that either party may introduce as evidence such parts of the records and papers as they desire in the chancery cause of B. M. Bruce vs. W. N. Camp and others lately pending in the Circuit Court of Nansemond County.

Q 45 Mr. P. D. Camp in his testimony in this cause stated that he remarked to you that it looked as if you and Mr. Sales were bidding together. Do you remember any such remark, and if so, what was your reply to the same?

A 45 Mr. Camp remarked to me;—"I thought you were in this". I said I had nothing in the world to do with it. Mr. Sales remarked to Mr. Camp that if he wanted the property why did he not bid on it.

Q 46 Then, you denied to Mr. Camp that you and Mr. Sales were bidding together?

A 46 That is right, sir.

Q 47 Were either of the Mr. Camps bidding at the sale?

A 47 Yes sir.

Q 48 Did you notice either Mr. P. D. or Mr. W. N. Camp in conversation with any other bidder at that sale during the progress of the sale?

A 48 Mr. Camp and Mr. Nelms—I won't be sure—but I think they were talking together at one time.

page 59 } Q 48½ Was Mr. Nelms also a bidder on that day?
A 48½ Yes, sir.

Q 49 Mr. Cowling in his testimony in this case stated that he went down to the sale of the property and you told him at that time that you had a man at your back with plenty of money, and that you were not going to fool with the Camps any longer. Did you make any such remark?

A 49 I did not.

Q 50 Did you make a remark to the effect that the man was Mr. B. P. Sales, of Norfolk—a man that owned 17 bar-rooms?

A 50 No, sir. I don't know how many bar-rooms he owns. Mr. Cowling is mistaken.

Q 51 Did you require Mr. Sales or any one else to assist you in the purchase of this property?

A 51 I never bought a piece in my life I could not pay for.

Q 52 You could have paid for this property, could you not?

A 52 Yes, sir.

Q 53 Did you not eventually pay for it yourself without the assistance of Mr. Sales or anyone else?

A 53 Yes, sir.

Q 54 Mr. Bruce, did either Mr. W. N. Camp or P. D. Camp ever approach you and make an offer to you to comply with their part of their agreement of September 26, 1894?

A 54 No, sir. After the sale there was nothing to comply with.

Q 55 When did you first have any intimation that Messrs. W. N. and P. D. Camp intended holding you liable under this contract of September 26, 1894?

A 55 I don't remember the day nor the date. I could not tell you who I first heard it from, but I heard it a number of times on the street and in my store.

page 60 } Q 56 Did you have any knowledge from either Mr. P. D. or Mr. W. N. Camp of their intention to hold you to this agreement or to hold you liable for damages in reference to the sale until they brought the damage suit against you?

A 56 No, sir.

Q 57 Did either of them make any demand on you for the property after you had finally bought it from Mr. Holland, special commissioner, until this present suit in chancery was brought?

A 57 No, sir.

Q 58 Then the only demand if I understand you correctly, Mr. Bruce, made by Messrs. W. N. and P. D. Camp requiring you to convey this property to them, or the only proceeding mentioned by them to that effect, is this present suit in chancery?

A 48 Yes, sir.

Q 59 What was the character of this land?—this Burrough's tract, and what is its chief value?

A 59 It is low land. Its chief value consists of timber according to my judgment.

Q 60 When did you first examine this land, Mr. Bruce?

A 60 I had the land partly examined a little while after Mr. Sales became the purchaser. Before I got through I heard that Mr. Camp had put in an upset bid—I let the matter drop.

Q 61 Is this the first examination that you have made?

A 61 Yes, sir.

Cross-Examination.

By plaintiff's counsel:

page 61 } Q 1 Mr. Bruce. Mr. Cowling says in his examination
that after the land was knocked off to you at \$2,100.
that he was speaking about the value of the land and
what was on it, and that you approached him and asked him not
to say anything about it. Is that a fact or not?

A 1 Mr. Jno. A. Gum was the first man that spoke to me. I told Mr. Gum that I would take \$100.00 for my bid. I saw Mr. Gum about four minutes—He asked me if I would leave the offer open—I told him no, it was too uncertain. On my way coming out of the gate—about 10 yards outside of the gate—I met Mr. Cowling. He began to tell me of the valuable timber that was on there, and he asked me to give him the job of surveying. I told him I would just as leave give it to him as anybody. I never approached anybody.

Q 1½ Then you deny having told him to say nothing about what was on it?

A 1½ Why, I do, sir.

Q 2 Mr. Bruce, you state in your examination in chief that you sold your bid of \$2,100.00 to Messrs. Camp for \$2,600.00. How do you explain that you were so soon afterwards willing to give \$4,850.00 for this property?

A 2 I know nothing of the value of the land when I first bought it, but after having the land examined by competent judges, I was satisfied it was worth what I paid for it.

Q 3 Did you find that out before or after you sold your bid to Mr. Camp?

A 3 Afterwards, sir.

Q 4 Why were you examining the land after you sold your bid?

page 62 } A 4 I never examined the land during that period
that that contract existed.

Q 4 What interest did you have in it then after you sold your bid to Mr. Camp?

A 5 I examined the land after Mr. Camp had put in his upset bid. I was satisfied it was worth the money I paid for it.

Q 6 Mr. Bruce, you have stated in your examination in chief that you took ½ interest in this farm soon after Mr. Sales became the purchaser? That was before Mr. Camp put in his upset bid. Now explain why it was that you were willing to pay almost double of what you first bought the land for and what you sold to Mr. Camp for before you made any examination of the land at all?

A 6 Mr. Sales guaranteed me against all loss if any—to manage the land and sell it to the best advantage. I did not consider that I was running any risk.

Q 7 Did he give you a written guarantee?

A 7 No, sir; his word is enough for me; I have known him all my life.

Q 8 Mr. Bruce, did you not go to Norfolk after you had made the contract with Mr. Camp of Sept. 26 1894 and before the upset bid of Mr. Sales was put in and in company with Mr. Sales and Mr. T. H. Wilcox, attorney-at-law in Norfolk, arrange to have this upset bid put in?

A 8 I did not, sir. I never knew Judge Wilcox for sometime after that. If I met him on the street I would not have known him.

page 63 } Q 9 Mr. Bruce, you have just stated that you took
one-half interest in this property because Mr. Sales
guaranteed you against loss, and that you made no
examination of the property until after Mr. Camp put in his upset bid. Did you not then know before this upset bid was put in by Mr. Camp that Mr. Sales had made an assignment and was insolvent?

A 9 I knew nothing of Mr. Sales' financial condition. I looked upon him as "A 1", and I believe he will pay every dollar that he owes, if he owes any.

Q 10 Did you not state in your examination-in-chief that you complied with the terms of the purchase because he informed you that he was financially embarrassed or in financial trouble?

A 10. I stated that he asked me to make the payment and take the receipt in my name as a guarantee to me, and the reason he did not comply was because he had some financial trouble. That is likely to occur with any of them.

Q 11 Then, you did make the cash payment of \$2,000.00 and did give your bond for the deferred payment of \$2,000.00 without ever having made any examination of this property?

A 11 I did, sir.

Q 12 Did you or did you not approach Judge Rawles of Suffolk and ask him to put in an upset bid for you for this property before the upset bid was put in by Mr. Sales?

A 12 Not for me; no, sir.

Q 13 Did you for anyone?

A 13 Let me see— I repeated a conversation I rather think with Mr. Rawles. Mr. Sales asked me when in Norfolk who was my attorney here—who was the proper man. I recommended Mr. Holland, Mr. Rawles and Mr. Briggs, as they had all attended to legal business for me and had done it satisfactorily.

Q 14 Do you know why Mr. Sale put in an upset bid of \$2600.00, which was the amount you had sold out to Mr. Camp for, when \$2300.00 would have been an upset bid?

A 14 I do not, sir.

Q 15 Do you know how Mr. Sales came to know that you sold out to Mr. Camp for \$2600.00?

A 15 I told him.

Q 15½ And you and Mr. Sales had several talks about this matter after the sale to Mr. Camp of your bid and before the upset bid of Mr. Sales was put in?

A 15½ To the best of my memory he only talked once to me in regard to the upset bid.

Q 16 Explain, Mr. Bruce, why it was that you were present at the sale of Dec. 10th 1894, with Mr. Sales during the entire time the sale was conducted, and why it was that you were with him after the sale until he (Sales) left town?

This question objected to by defendant's counsel on the ground that there is no testimony showing that such was the fact.

A 16 He wrote me to meet him at the train—that he had never been to Suffolk, and that he wanted me to show him around, which I did so.

Q 17 Do you mean to say that Mr. Sales bought a piece of land in Nansemond County, or offered to put in an offset bid for and bought a tract of land in Nansemond County, which he had never seen and had never examined, and had never been to the county seat of the county?

A 17 I can only judge by his act.

Q 18 And you mean to say that that was his act?

A 18 Yes, sir, to the best of my knowledge.

Q 19 Were not you and Mr. Sales together at the time the land

was eried for sale on December 10th, 1894, and did not you and he consult with reference to the bids made?

A 19 No, sir, not until the sale was over did we have any talk at all. I introduced him to Col. Smith.

Q 20 Did you make to him any representation as to the value of the property, or any statement as to its value?

A 20 No, sir, I did not.

Q 21 After the land was knocked off to Mr. Sales, was not the sale reported in your name at your suggestion upon the statement from you that Mr. Sales had advised it?

A 21 Mr. Sales asked me to make the payment, and take the receipt in my name as a guarantee.

Q 22 Did you not at the time you made the payment give your bonds for the deferred payments of the purchase price of the property?

A 22 I did.

Q 23 Did you likewise have Mr. Sales' guarantee for the repayment of the amount of these bonds?

A 23 I had his word.

Re-Examined.

By Defendant's Counsel:

Q 1 Did you buy the land in question without an examination either on your part or by any agent of yours at the first sale?

A 1 Yes, sir.

Q 2 Do you know of your own knowledge whether or not Mr. Sales made any examination of the property previous to his putting in the upset bid?

Q 2 I do not.

To be filed as a part of the record in the chancery cause of W. N. and P. D. Camp against B. M. Bruce.

It is a fact agreed that before the institution of this suit for specific performance, to-wit: On the 14th day of September, 1895, W. N. and P. D. Camp instituted an action of covenant broken against B. M. Bruce, alleging a breach of the same contract which is the basis of this suit for specific performance, and that before trial, and before any of the pleadings were filed or issues made up, the same was dismissed on the motions of the plaintiffs.

The same having been dismissed on May 6, 1896.

W. N. & P. D. CAMP.
By Prince & McLemore,
Attorneys.
R. H. Rawles,
Attorney for defendant.

The following are facts, agreed to be read as evidence in the case of Camp vs. Bruce:

page 68 } That on the 11th day of December 1893, E. E. Holland Special Commissioner in chancery cause of Ranstead vs Ranstead pending in the Circuit Court of Nansemond Co. exposed the farm known as the "Burroughs" land containing 2900 acres and being the same land referred to in this cause to public sale at Suffolk Va. at which sale Wesley M. Oter became the purchaser at \$1000 that on April 2, 1894, B. M. Bruce filed his upset bid of \$1200 for said property with proper security, and the said property was re-sold on 11th day of June 1894 by virtue of decree entered therein on the 13th day of April 1896, at which re-sale B. M. Bruce became the purchaser at the sum of \$2100. This sale was duly reported to the court on Sept. 29th 1894 and is as follows:—

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

page 69 } The undersigned commissioner appointed by decree in the chancery cause of Ranstead vs. Ranstead and others, pending in the Circuit Court of Nansemond county entered on the 13th day of April, 1894, proceeded after advertising the time, terms and place of sale as directed by said decree to resell the real estate in the bill and proceedings mentioned at public auction, to the highest bidder at the front-door of the courthouse of Nansemond county, on the 11th day of June, 1894, at which sale the said B. M. Bruce, having made the highest bid therefor, became the purchaser at the price of twenty-one hundred dollars. The purchaser has complied with the terms of resale by paying the cash instalment and giving his bonds for the credit instalments. A copy of the advertisement of sale is returned herewith. Your commissioner after deducting the costs of resale, including commissioners, and after deducting the cash instalment paid by Wesley M. Oler the first purchaser, has deposited the res-

page 70 } idue of the cash instalment in the Farmer's Bank of Nansemond to his credit as special commissioner in this cause. Your commissioner has withdrawn from the papers the bonds given for credit instalments on the first sale by Wesley M. Oler and forwarded same to him, and returns herewith his receipt for same and for his cash instalment, returned as instructed by said decree.

Your commissioner has since the said sale been instructed by B. M. Bruce to ask the court to make a deed for said land purchased by him to W. N. Camp and P. D. Camp.

Respectfully submitted,

E. E. HOLLAND,
Spl. Commr.

page 71 } That in October, 1894, B. P. Sale filed his upset bid which is in the following words:

Norfolk, Va., October, 1894.

Hon. E. E. Holland:

Special Commissioner in the chancery cause of Ranstead vs. Ranstead, et als.
Suffolk, Va.

Dear Sir:

I hereby make you an upset bid of twenty-six hundred (\$2600.00) for the tract of land sold by you as special commissioner in the chancery cause of Ranstead vs. Ranstead, et als, on the 11th day of December, 1893, and again re-sold by you on the 13th day of June, 1894, at which last sale the said land was sold for twenty-one hundred (\$2100.00) dollars.

I hand you herewith my bond with surety deemed sufficient in the penalty of twenty-six hundred dollars, the amount of my upset bid' obligating myself to appear on the day of re-sale of the said property if the Court should order the same bid the sum of twenty-six hundred dollars therefor and otherwise comply with the terms the sale.

Respectfully,

B. P. SALE.

page 72 } Pursuant to this bid a re-sale was ordered and the property re-sold on the 10th day of December 1894, for the sum of \$4000. and purchased by B. M. Bruce

which sale was reported to the court on March 28th 1895, and is as follows:

In the Circuit Court of Nansemond County.

Ramstead

vs.

Ramstead and others.

To the Hon. R. R. Pientiss, Judge of said Court.

The undersigned Special Commissioners appointed by decree in this cause proceeded on the 10th day of Dec. 1894, after advertising the time, terms and place of sale, as required by said decree to re-sell by public auction, the land in the bill and proceedings mentioned.

For said tract of land described in said bill B. M. Bruce made the highest bid and became the purchaser at the price of four thousand dollars. The said purchaser has complied with the terms of sale by paying the cash instalment and giving his bonds for the deferred payments, which are returned herewith.

Your commissioner after deducting the following from the cash instalment.

[Page 74]

Commissions on the sale,	89 00
Writ tax and taxed attorneys fee,	16 50
G. T. Parker, crier,	10 00
J. W. Hosir, crier,	10 00
J. J. S. Branch,	5 00
Delinquent taxes, 1892,	57 13
Taxes 1893 and 1894,	104 60
To advertising bills,	31 56
To amount paid commissioners, \$1.00 each,	3 00

has deposited the balance in the Farmers Bank of Nansemond of *Nansemond*, and returned herewith a certificate of deposit for said sum for the amount of \$1,673.27.

Your commissioner has returned to B. M. Bruce, the purchaser at the last sale, his cash instalment and also his bonds for the deferred payments, and returns herewith his receipts for same.

Your commissioner has given the bond required and returns herewith a copy of the advertisement of sale.

Respectfully submitted,

E. E. HOLLAND,
Special Commissioner.

To this sale Paul D. Camp filed an upset bid offering \$4,400 on April 3, 1895; with approved security, in pursuance of which a re-sale was ordered and was had on the 13th day of May, 1895, at which sale the Camp Manufacturing Company became the purchasers at the sum of \$4,400. This sale was duly reported to court on June 1, 1895.

On the 9th day of July, 1895, an upset bid of \$4,850 was filed by B. M. Bruce with satisfactory security and in pursuance thereof a decree was entered approving the said bid and confirming the sale at the price of \$4,850 and a deed was executed by the special commissioner to said B. M. Bruce on the 15th day of June, 1896, reported to court and the same duly confirmed.

Virginia:

At a special term of the Circuit Court continued and held for the county of Nansemond at the Courthouse in the town of Suffolk on Friday, the 11th day of December, A. D., 1896.

W. N. Camp and P. D. Camp, Complainants,
against
B. M. Bruce, Defendants.

In Chancery.

This cause came on this day to be heard on the bill and exhibits filed, the answer of B. M. Bruce and the depositions of witnesses and was argued by counsel.

On consideration whereof the Court being of the opinion that the price named for the property referred to in the bill in the contract dated September 26th, 1894, is grossly inadequate, that the complainants were guilty of laches in acquiescing without suit or protest in the confirmation of the subsequent sale and conveyance of the said property to the defendant and that by entering into competition with the defendant by bidding for the property at such subsequent sale and by the institution of an action at law for damages for the alleged breach of contract the complainants evinced their intention to abandon their right to the specific performance of the said contract; that under all the circumstances of the case the prayer of the bill should be denied, doth therefore adjudge, order and decree that the complainants' bill be dismissed, and that the defendant recover of them his costs by him about his suit in this behalf expended. But at the instance of the complainants who by counsel have expressed

a desire to appeal from this decree, it is ordered that the execution of this decree be suspended for ninety days from this date when the complainants or one of them shall execute a proper bond before the clerk of this court in a penalty of five hundred dollars, with a condition reciting this decree and the intention of such complainants to present a petition for a supersedeas and providing for the payment of all such damages as may accrue to any person by reason of said suspension in case a supersedeas should not be allowed and be effectual within the timeso specified in accordance with the statute law of the State of Virginia.

I, A. P. Gomer, Clerk of the Circuit Court of the county of Nan-
 semond, do certify that the foregoing are true copies of
 page 78 } such parts of the record in the above-styled chancery
 } cause as were directed to be copied by the respective
 counsel therein.

Certified under my hand this the 10th day of March, 1897.

A. P. GOMER, Clerk.

Ten dollars is the fee of the clerk for the foregoing transcript of the record in the chancery cause therein mentioned.

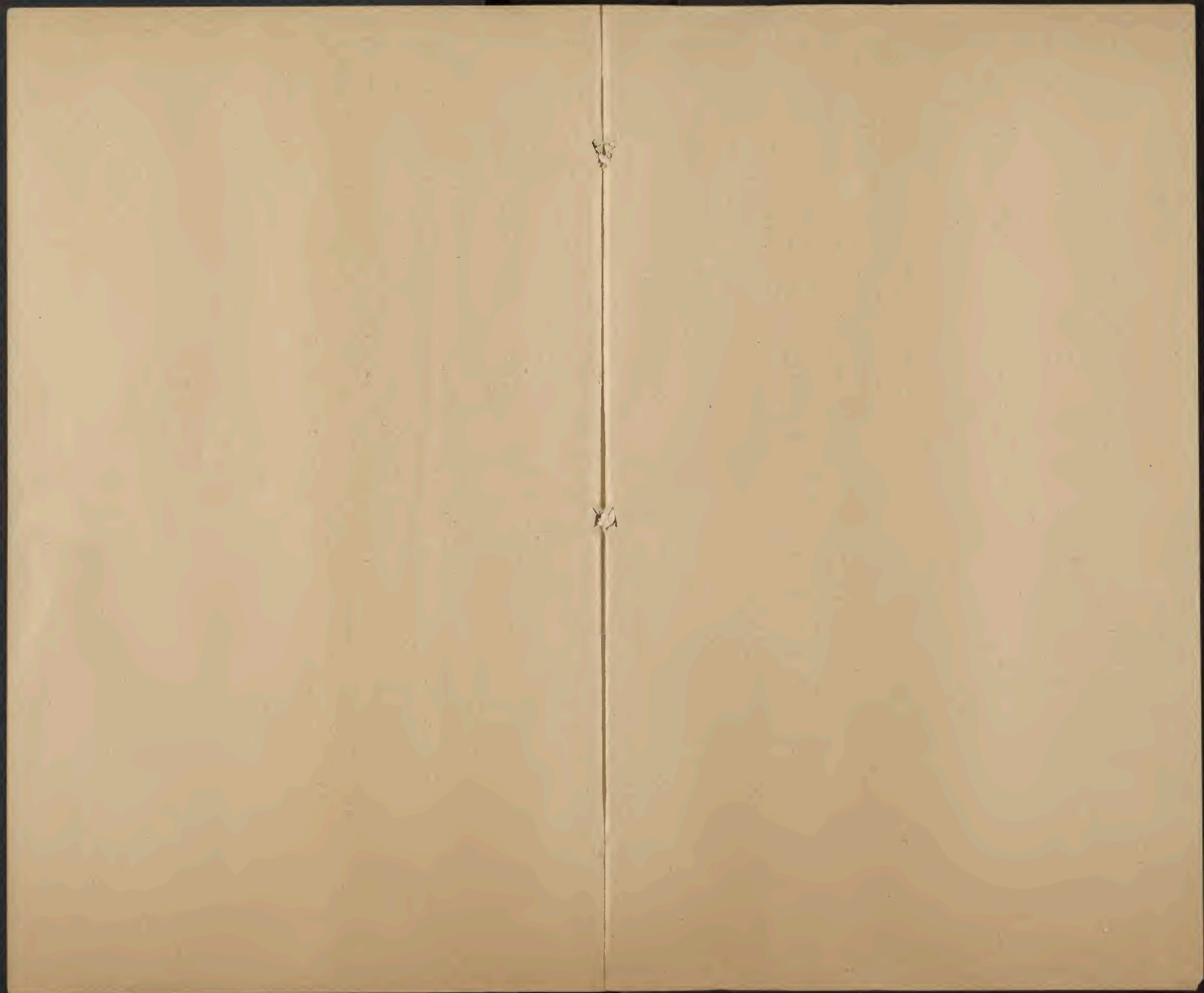
A. P. GOMER, Clerk.

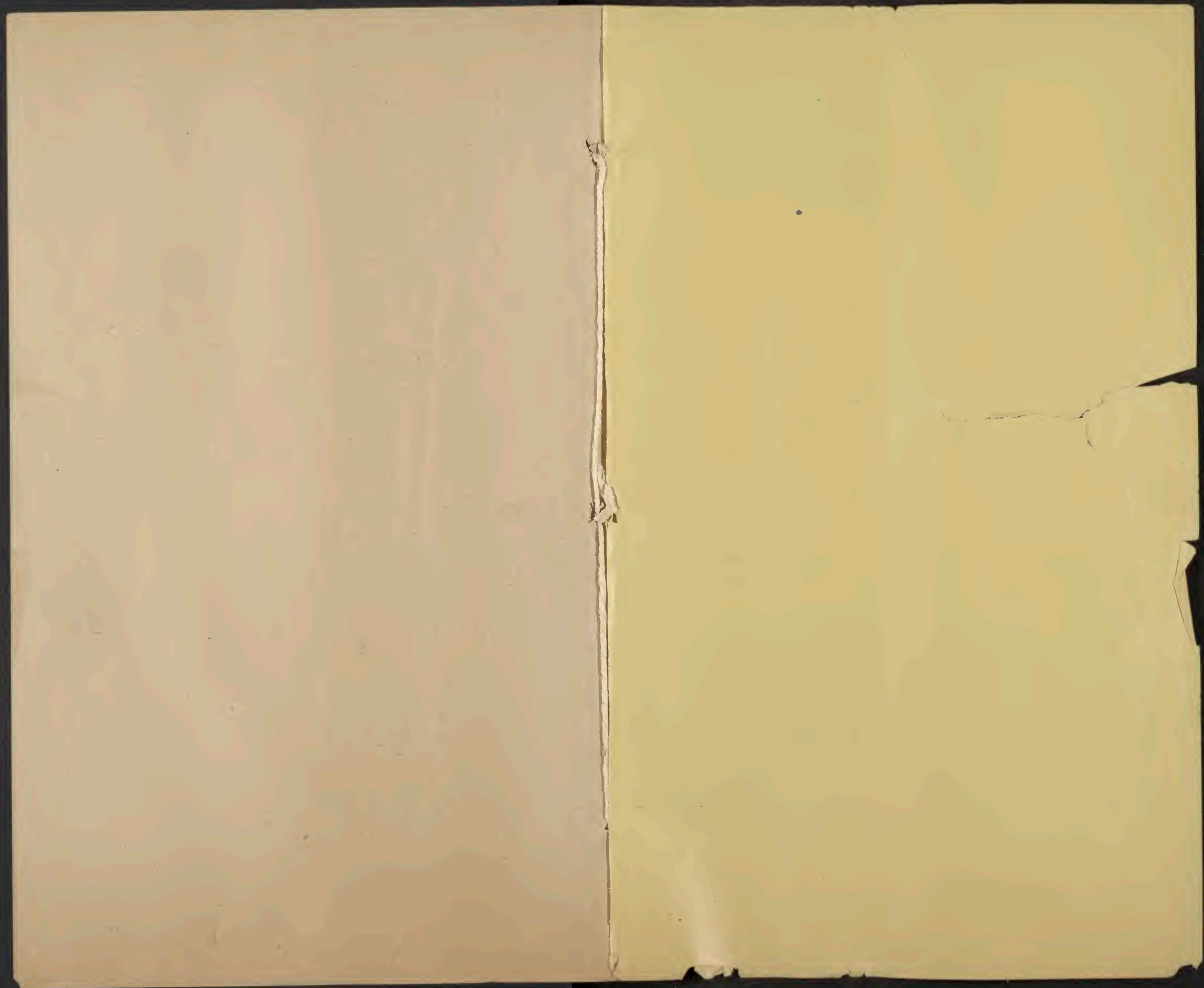
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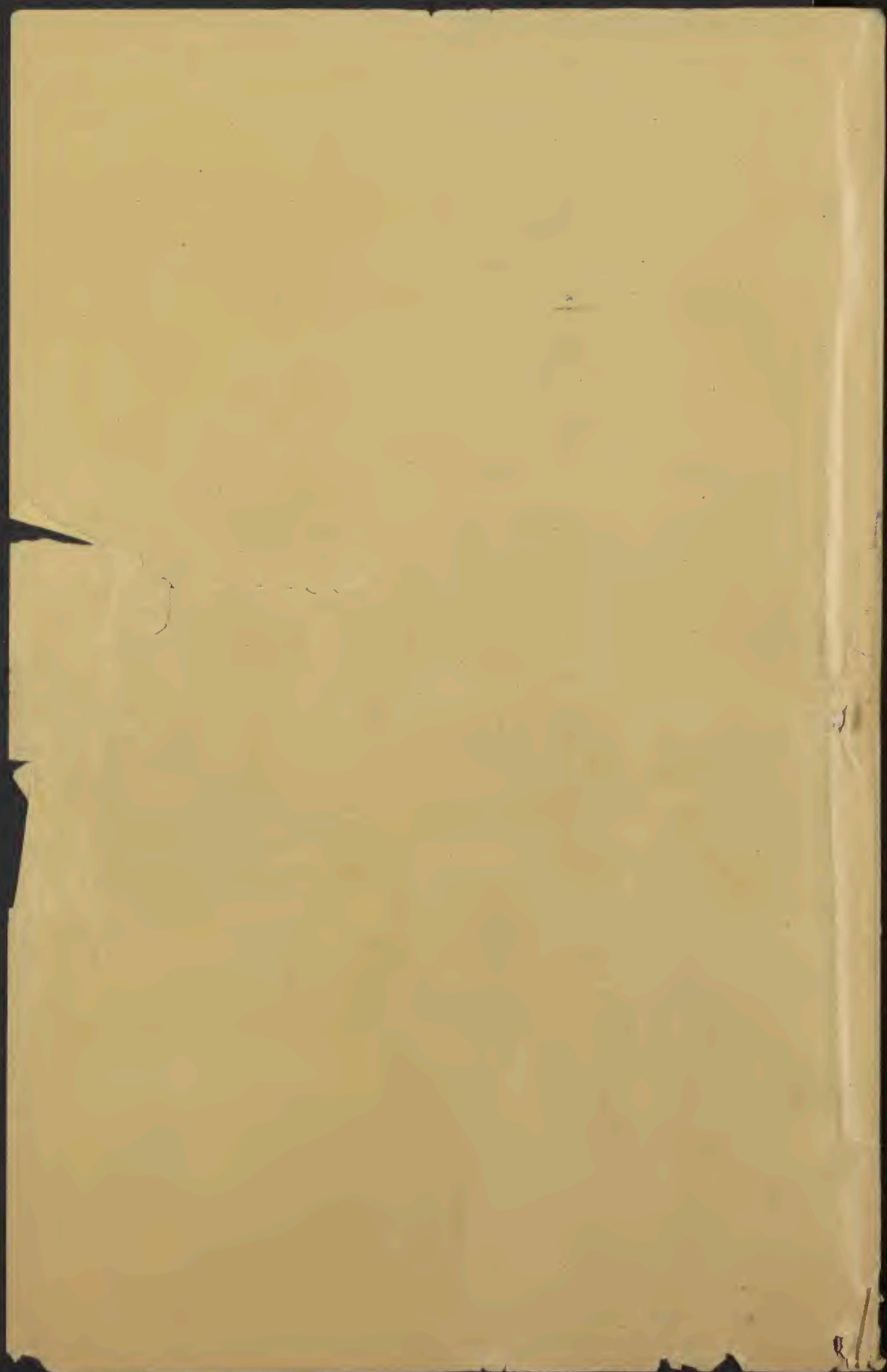
GEO. K. TAYLOR C. C.

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Copy

The answer of B. M. Bruce to the Bill of Complaint exhibited against him in the Circuit Court of Nansemond County by W. N. and P. D. Camp.

This defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's said bill of complaint contained for answer thereto, this defendant answering says:-

That it is true he is now the owner of the Burroughs tract of land mentioned in the said bill and it is also true that after he had at the auction sale of said land on the 11th day of June, 1894, become the highest bidder for the same at the price of \$2100 and, after the same had been knocked ~~down~~ out to him, but before the said sale had been reported to, or been confirmed by, the Circuit Court of Nansemond County wherein the said suit of Renstead vs. Renstead was pending, he did enter into an agreement with the complainants as set forth in exhibit "A" filed with the bill, by which he agreed for a certain consideration to permit the complainants to step in his place and stead and take his said bid for the said land, provided the said court confirmed the sale of the same to him at the price for which he had bid it in, to wit: for the sum of \$2100: in other words he agreed to sell to the said complainants all his right, title and interest in the said land as it then stood and agreed to join in a deed with the special commissioner~~s~~ for the said land to the complainants when and only after the said specific sale had been confirmed by the said court. And the said defendant says that it was well known and well understood not only by him but by the complainants that they were both dealing with a subject matter which was then entirely under the control of the court. And it was well understood and agreed that the said agreement was to have no binding effect unless the said court

did confirm the said specific sale and no part of the said consideration was to be paid to this defendant by the said complainants until said sale had been confirmed; because, both the defendant and the complainants well knew that it was possible and entirely competent and proper for the court to receive other bids from other persons for said land or to refuse to confirm said sale for any good and sufficient reason which appeared unto the said court.

And the said defendant further says that he is informed that the said court did not confirm the said sale to him for the reason, as he is informed, that one B. P. Sale tendered to the court an upset bid for the same, which your defendant is informed the court entertained, and refused to confirm the sale to this defendant and ordered a resale of said land.

Now this defendant utterly denies that he was in any way instrumental in having the said B. P. Sale to put in the said upset bid; he denies, and says he did not contrive by tricking, scheming or fraud, or in any other manner to defeat the said agreement by employing and using the said B. P. Sale. He further denies that he caused or that he ~~had~~ anything to do with the said B. P. Sale's putting in the said upset bid for the said land and says he was no party whatever to the same and had nothing whatever to do with the same. And he further denies that the said B. P. Sale was acting for him or for his advantage and benefit and says that he was not so acting. That so far as he is informed and believes the said Sale was acting in good faith on his own responsibility and dealing directly with the court for his (Sale's) own advantage and benefit.

And this defendant further says that after the said B. P. Sale had put in his upset bid and after it was entertained and a resale ordered, that he, Bruce, did not become the purchaser of the said land ~~and~~ at the said resale; but he is informed that the said B. P. Sale himself became the purchaser; that he, the said B. P. Sale, attended

the auction sale in person and bid on the land - the complainants being also present and bidding on said land - and that it was knocked out to the said B. P. Sale; and this defendant is informed and charges that after this there were several other upset bids put in for the said land and several other resales of the same had, at one of which the complainants themselves became the highest bidders and had the ~~xxd~~ said land knocked off to them. But this defendant says that in the end he himself put in the last upset bid and became the purchaser of the said land at the price of \$4850. which was largely in excess of the price he first bid it in at, to wit, the sum of \$2100.

And he further says that if the said court had confirmed his first bid and had ordered a deed to have been made to him, then he, this defendant, was ready and would have carried out in good faith his said agreement with the said complainants and would have sold them his interest in said land for the considerations named in said agreement.

But this defendant says that by the very terms of said agreement it was not to be carried into effect until and unless the said \$2100 sale was confirmed, and that the refusal of the court to confirm said sale put an end to said agreement and left both parties free to act as they deemed best in the future. And this defendant denies all fraud and conspiracy, all unlawful combinations in connection with said matter and especially denies that he induced or procured or was instrumental in having the said B. P. Sale to put in the said upset bid; or that he has in any manner or form misused or injured the said complainants. He therefore prays that the said bill may be dismissed And having filed answer, he prays to be hence dismissed with his reasonable costs by him in this behalf expended, and he will ever pray &c

(signed) X. X. Bruce

B. M. Bruce

(affidavit)

Virginia;
Nassau County to wit;

I R. H. Rawles a Notary
Public for the County aforesaid in the
State of Virginia do hereby certify that B. M.
Brum whose name is signed to the
 foregoing answer has this day ap-
peared before me in my said County
and made oath after being duly sworn
that the statements contained in said
answer stated or coming of his own
knowledge are true; and that all
other statements contained therein, which
he derived from the knowledge or
information of others he believes
to be true. Given under my
hand this 23rd day of September
1896.

R. H. Rawles N. P.

Wm. Leamp & P. D. Leamp

Pls In Chancery

B M Bruce

1896, April 30th. Process issued returnable to
May Rules Third Monday.

" May 18th. Process returned executed on
the defendant

Bill filed and decree nisi
against said defendant

" June 1st. Decree nisi confirmed and
cause set for hearing

Wm Campbell & others
vs Chancery Notes.
B M Bruce

Prince & McLenore }
& E E Hullana } pg

Wm & P D Leamp
vs } In Chancery

B M Bruce

Bill in this suit filed
in Review Case of
B M Bruce

vs
Wm & Leamp & others
as Exhibit - "A"